**Title:**
A Contract Code: Drawn up on Behalf of the English Law Commission

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Part I - VALID CONTRACTS

FORMATION

AGREEMENT

GENERAL RULES

13. Agreement without offer and acceptance

(1) The existence of an agreement may be inferred even though there is no clearly identifiable offer and acceptance and even though the precise time at which the agreement is concluded cannot be identified.

(2) The rules which follow as to the making of agreements by way of offer and acceptance apply, so far as circumstances permit, to agreements made without offer and acceptance.
CERTAINTY

41. Indefinite or incomplete agreements

An agreement is not a contract if its terms are indefinite or incomplete except where there is a reasonably certain basis, by reference to methods agreed by the parties or prescribed by law or custom, upon which the court can resolve the uncertainties and supply the omissions.

CONTENT

NATURE OF A CONTRACT'S PROVISIONS

101. Types of provision

(1) A contract contains one or more of the following obligations:

(a) promises as to future conduct of the contracting parties
(b) undertakings as to future events beyond the control of the contracting parties
(c) representations as to existing or past events, fact or law, and
(d) obligations imposed by law or custom, and may contain provisions suspending, ending or otherwise affecting the operation of the contract.

(2) Each of the parties to a contract is bound to fulfil the obligations assumed by or imposed on him by the contract.

INTERPRETING THE CONTRACT'S PROVISIONS

111. Rules of interpretation

The wordy used by contracting parties are to be taken to be used in their natural meaning in the context in which they appear unless a special meaning is attributed to any of them by the parties themselves, or by trade custom or local usage not inconsistent with the wordy of the contract taken as a whole.

PERFORMANCE

201. Method of performance

(1) Performance must be in accordance with the standards of fair dealing reasonably to be expected in the circumstances and, so far as is consistent with such standards, in accordance with the method agreed by the contracting parties.

(2) Unless the contract expressly or by implication provides otherwise, then subject to the provisions of subsection (1)

(a) performance in several parts at different times is not permissible
(b) performance consisting in the payment of money must be in legal tender.
(3) If in accordance with sub-section (1) payment by cheque or other negotiable instrument is permissible or required or if such instrument is accepted by the payee, then, unless otherwise agreed, performance takes place when the instrument is delivered to the payee or his agent authorised to receive it but is ineffective if the instrument is dishonored.

REMEDIIES
SPECIFIC ENFORCEMENT

408. Hardship out of proportion to benefit of performance

Specific enforcement is not available where it would occasion hardship to the person against whom the claim is made out of all proportion to the benefit likely to be gained by the claimant.

GROUNDSD RELATING TO THE CLAIMANT’S PERFORMANCE FOR REFUSING SPECIFIC ENFORCEMENT

409. Claimant’s own performance not assured

Specific enforcement of a contract is not available unless the court is satisfied that the person against whom the claim is made will not be left in the position of having performed his side of the contract without the claimant having performed his.

DAMAGES

GENERAL RULES AS TO AVAILABILITY OF DAMAGES

431. Entitlement to damages to compensate for loss

(1) A party to a contract upon the other party’s breach is entitled to damages to compensate him for loss resulting from the breach assessed in accordance with the rules set out in sections 434 to 448.

(2) Damages are generally awarded by way of a lump sum of money expressed in sterling.

432. No action for damages where no loss

No action for damages lies where the claimant fails to prove any loss resulting to him from the breach of contract.

LIMITS PLACED ON THE AVAILABILITY AND ASSESSMENT OF DAMAGES

437. Unforeseeable loss
Damages are available only for loss which the party against whom the claim is made

(a) foresaw or had reason to foresee at the time of contracting as liable to result from the breach of contract because its occurrence was a serious possibility, and

(b) could reasonably be regarded as having contracted to be liable.

438. Uncertain loss

(1) Damages are available only for loss which is proved by the claimant and, where the amount of such loss is uncertain, are limited to a sum which is a fair assessment of the loss likely to arise.

(2) Damages are available for the loss of the chance of realising a particular gain and are measured by the value of the chance at the time of breach.

439. Avoidable and avoided loss

(1) Damages are not available for loss which the claimant could have avoided by reasonable steps.

(2) Damages are not available for loss which the claimant has avoided by steps, taken before or after the breach, which are outside the requirements of sub-section (1).

(3) Damages are available for loss, and in particular for expenses, incurred in taking reasonable steps to avoid loss resulting from the breach both where the steps succeed in reducing the overall loss and also where they are unsuccessful and so either increase the overall loss or leave it unreduced.

(4) In deciding whether there has been a failure to take reasonable steps to avoid loss, the standard of reasonableness is not a rigorous one, requiring the claimant to incur neither undue financial risk nor undue personal humiliation, and the burden of proof lies upon the party in breach.

(5) Where the breach of contract consists of a repudiation before the due time for performance, the claimant is required to act reasonably from the time of repudiation.

442. Interest

Where the loss which the claimant has suffered as a result of the breach of contract includes deprivation of a specific sum of money, the court may award him damages by way of interest for any period from the time of breach but damages in these circumstances are not necessarily limited to an award of interest.

Part II - Defective Contracts

INTRODUCTORY

501. Defective contracts in general

Where a contract

(a) is illegal or is otherwise affected by public policy

(b) fails to comply with prescribed formalities
is entered into by a person lacking full contractual capacity  
(d) lacks the free consent of a contracting party because his field of choice it curtailed by pressure or influence  
(e) lacks the full consent of a contracting party because he has misunderstood the contract  
(f) is entered into under a common mistake as to existing circumstances  
(g) is frustrated by changed circumstances after it has been entered into  
it is not a nullity but is unenforceable, and gives rise to rights of restitution, to the extent provided in the following sections.

CONTRACTS AFFECTED BY PUBLIC POLICY

ILLEGAL CONTRACTS

511. General rule

Subject to the qualifications contained in sections 515 to 519, a contract which is illegal is unenforceable against either party to the contract and gives rise to no rights of restitution in respect of benefits conferred under it.

TYPES OF ILLEGALITY

512. Definition of illegal contracts

(1) A contract

(a) declared to be illegal or unlawful, or otherwise specifically prohibited by statute, or  
(b) to do something, or intended to enable something to be done, which is illegal  
(2) Something is illegal if it is forbidden by statute, is a common law wrong or it contrary to public policy.  
(3) A contract is not rendered illegal solely by reason of the occurrence of a breach of the law in the course of its performance; it will be illegal only if the law which is broken prohibits, expressly or by implication, that type of contract.

513. Contracts illegal in formation or performance

A contract

(a) the making of which constitutes a criminal or civil wrong  
(b) to commit a criminal or civil wrong  
(c) to cell public officer  
(d) to trade with the enemy or do other acts harmful to the state in its external affairs  
(e) to abuse the legal process, interfere with the course of justice or oust the jurisdiction of the courts  
(f) to make payments in consequence of the deliberate commission of a crime or of a civil wrong  
(g) unreasonably to restrain a marriage  
(h) to commit sexual immorality  
(i) in unreasonable restraint of trade  
(j) the making or performance of which would be manifestly contrary to public policy in any other way is illegal.

514. Contracts illegal in purpose

A contract which is intended by one or both of the contracting parties

(a) to assist in the commission of a crime  
(b) to defraud the revenue or any other fiscal authority  
(c) to enable sexual immorality to be practised
(d) unreasonably to restrict personal liberty, or to promote any of the acts listed in section 513, is illegal.

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**CONTRACTS LACKING FULL CONSENT**

571. General rule for unilateral mistake

(1) Where, objectively interpreted, an agreement is sufficiently certain to be regarded as a valid contract but one contracting party is under a mistake as to

(a) the identity or characteristics of the other or
(b) the character, provisions or meaning of the contract
and he would not have entered into the contract but for the mistake, and the mistake is known or ought to have been known to the other contracting party, the contract is unenforceable against the mistaken party and he is entitled to restitution of benefits conferred by him under it, unless the mistake is of type (b) and the other contracting party is prepared to have the contract interpreted in the way in which it was understood by the mistaken party.

(2) Otherwise, the existence of a mistake of one contracting party cannot affect a contract's validity.

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**CONTRACTS INITIALLY AFFECTED BY COMMON MISTAKE**

581. General rule

(1) Where before a contract has been entered into

(a) the performance of a contracting party is impossible and neither contracting party knows of such impossibility or
(b) circumstances exist which are radically different from what both contracting parties believe them to be then, unless in the case of impossibility one contracting party has assumed the risk of that impossibility, the contract is unenforceable against either and both are entitled to restitution and reimbursement of expenses so far as sections 585 to 587 allow.

(2) Otherwise, the existence of a mistake common to both contracting parties cannot affect a contract's validity.

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**CONTRACTS SUBSEQUENTLY FRUSTRATED**

591. General rule

Where a contract is frustrated because after it has been entered into

(a) the performance of a contracting party becomes impossible or illegal and neither party can show that the other has assumed the risk of impossibility or illegality, or
(b) a radical change of circumstances has occurred, the parties are excused from the moment of frustration from further performance and are entitled to restitution and reimbursement of expenses so far as sections 598 and 599 allow.

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**RANGE OF APPLICATION**

592. Performance impossible

Performance is impossible where under the contract

(a) acts are to be performed personally by either party to the contract or some other person and he is unable
substantially to perform them because of his death or because of incapacity or unavailability in such circumstances that it is unlikely that he will be able substantially to perform them within a reasonable time.

(b) a particular piece of property or property of a particular description is to be provided or made available by a contracting party if the contract is to be substantially performed and that property has been destroyed or become unavailable to that party in such circumstances that it is unlikely that he will be able substantially to perform within a reasonable time.

593. Performance illegal

Performance is illegal where a contracting party cannot substantially perform without committing an act which is illegal within the meaning of section 512 (1) (b) and which is unlikely to become legal within a reasonable time.

594. Assumption of risk

(1) It is a question of construction of the contract whether the risk of impossibility or illegality has been assumed by one party to the contract and, if so, by which party, but the fact that the impossibility or illegality was foreseen by the contracting parties or that they must, as reasonable men, have expected it as likely to result does not establish that either has assumed the risk of its occurring.

(2) A party assumes the risk of impossibility where he brings it about by an unreasonable act or omission which was intended or likely to cause it to occur.

(3) A party may not assume the risk of illegality where to do so would be contrary to public policy.

595. Radical change in circumstances

Circumstances have radically changed where it would be unfair for one contracting party to require the other to perform; and in determining whether it would be unfair account shall be taken of whether one contracting party has made a reasonable offer to modify the terms of the contract in the light of the changed circumstances and of the other party’s response to that offer.

596. Part illegality

Where a contracting party can substantially but not fully perform without committing an act which is illegal within section 512 (1) (b), then, although he must not perform the act so long as it remains illegal, he is liable in damages for breach unless in the circumstances to impose such liability would be contrary to public policy.

597. Part frustration

(1) Where a person has entered into more than one contract, whether with the same person or different persons, and performance of one or more but not all of the contracts has become impossible or illegal because of circumstances that would have frustrated a single contract if all the contracts had been one, then, except to the extent that he can show that there are sound commercial or other reasons why he should give preference to any such contract or contracts by rendering full performance or offering more than pro rata performance, he must offer the other party to each contract pro rata performance of it.

(2) If any such offer is accepted within a reasonable time,

the contract to which it relates continues in existence as so varied; otherwise it is frustrated.
REMEDIAL RIGHTS

598. Rights of restitution

(1) Except where the contract indicates a contrary intention, a party to a frustrated contract may claim restitution, including specific restitution, of benefits conferred by him in performing the contract subject to his restoring, specifically or otherwise, benefits conferred on him under it.

(2) Benefit is to be interpreted in accordance with section 465 and measured in accordance with sections 467 to 469.

(3) It is in the discretion of the court whether to order specific restitution or restitution in money and, in either case, whether to require the claimant to make specific restoration of benefits received or restoration of their value in money and, in particular, if the court is satisfied that specific restitution or specific restoration would cause disproportionate harm to either party, it shall not order or require specific restitution or specific restoration.

599. Rights of reimbursement of expenses

(1) Except where the contract indicates a contrary intention, a party to a frustrated contract who has incurred expenditure in, or in connection with, its performance may claim reimbursement of such part of the expenditure, if any, as the court taking all the circumstances into account considers reasonable.

(2) Expenditure includes overhead expenses and the value of time and effort expended in performance of the contract.

Part III-Three party situations

CONTRACTS CONCLUDED THROUGH AGENTS

CREATION OF RIGHTS AND DUTIES IN PRINCIPAL

621. Agent with authority to contract

Where, in negotiating a contract, a person is authorised to act for and is acting on behalf of another and it is apparent to the other negotiating party that such person is acting as agent on behalf of a principal, a party unless it can be shown that the agent and the other party intended to contract only with each other.

(2) Where the other party is unaware, and it is not apparent, that the agent is acting on behalf of a principal, no contract it made between the other party.

622. Agent with apparent or usual authority to contract

Where the agent does not have authority to contract on behalf of the principal but the principal has acted so as to lead the other party to contract in the reasonable belief that

(a) the agent has such authority or
(b) the agent has power to enter into the contract on behalf of whomever turns out to be his principal a contract is made between the principal and the other party.
TRANSFER OF CONTRACTUAL RIGHTS AND DUTIES

GENERAL RULES AS TO TRANSFER OF RIGHTS AND DUTIES

661. Transfer of rights to third parties

(1) Subject to the limitations set out in sections 663 to 665 a party to a contract may transfer to a third party the rights created in him by the contract so that the transferee acquires, and the transferor ceases to possess, the right to receive the performance due under the contract and to any remedies for its breach.

(2) Except where the transfer is of rights under a negotiable instrument the transferee can acquire only such rights as the transferor himself has against the other party to the contract.

662. No transfer of duties to third parties

A party to a contract cannot transfer to a third party the duties created in him by the contract so as to make the transferee liable to render the performance under the contract or to any remedies for its breach, but can only impose conditions upon the enjoyment of any benefit by him.

RIGHTS WHICH MAY NOT BE TRANSFERRED

663. Transfer prohibited or restricted by the contract

(1) A right cannot be transferred if the contract prohibits, or to the extent that the contract restricts, transfer.

(2) A contractual prohibition of transfer or restriction on transfer only prevents the transferee from acquiring rights against the promisor and does not prevent either the transferee from acquiring rights against the transferor or the promisor from discharging his duty by rendering performance to the transferee.

664. Transfer prohibited by public policy or statute

(1) A contractual right cannot be transferred if transfer is against public policy or forbidden by statute.

(2) Transfer of a right of action for damages for breach of contract is not against public policy except where damages for non pecuniary loss can be recovered.

665. Transfer altering promisor's duty

(1) A right cannot be transferred if the nature of the right is such that the substitution of the transferee for the transferor would substantially alter the duty of the promisor under the contract.

(2) If the promisor consents to the transfer of the promisee's rights under the contract, this overrides any objection on his part that the transfer falls within the prohibition of sub-section (1).

METHOD OF TRANSFERRING RIGHTS

666. Basic requirement: manifestation of intention

Rights created by contract are transferred to a third party once the party to the contract has manifested his intention to make a present transfer of them, without his complying with any further requirements except to the extent indicated by the
rules as to transfer of property generally.

667. Effect of notice to promisor

(1) After the promisor is notified of the transfer he becomes liable to the transferee if he renders performance to the transferor or in any other way fails to render performance to the transferee.

(2) Notification may be given by the transferor or transferee or the agent of either, may be in writing or oral, and is effective when communicated to the promisor.

PARTICULAR TYPES OF TRANSFER

668. Partial transfer

Part of a right created by contract is as capable of transfer as the whole, except that the promisor in any claim made against him can insist that both transferor and transferee be joined wherever possible.

669. Conditional transfer

A right created by contract may be transferred conditionally as well as absolutely but the promisor in any claim made against him can insist that both transferor and transferee be joined wherever possible.

670. Transfer of conditional rights

A right created by contract which is in any way conditional, and in particular which is conditional upon the transferor performing his own obligations under the contract, is as capable of transfer as an absolute right.

671. Transfer of future rights

A right created by contract which it expected to arise out of a contract to be made in the future cannot be presently transferred but an attempt at present transfer will operate as a transfer from the moment that the right comes into existence.

TRANSFER BY OPERATION OF LAW

672. Transfer on death

Subject to contrary agreement between the contracting parties, the death of either operates to transfer all his rights and duties arising out of the contract to his personal representatives, except that

(a) where damages for breach of contract would include compensation for non-pecuniary loss, the right to such damages does not survive the death of the contracting party entitled to them;
where the contract is of a personal nature so that one party cannot transfer his rights under it and the other cannot delegate his duties under it, the death of either contracting party operates to transfer to his personal representatives only such rights and liabilities as have accrued before his death.

### 673. Transfer on bankruptcy

The adjudication in bankruptcy of a party to a contract operates to transfer all his rights and duties arising out of the contract to his trustee in bankruptcy, except that

(a) where damages for breach of contract would include compensation for non-pecuniary loss, the right to such damages remains with the contracting party entitled to them and is not transferred by his bankruptcy;

(b) where the contract is of a personal nature so that one party cannot transfer his rights under it and the other cannot delegate his duties under it, the bankruptcy of either contracting party operates to transfer to his trustee in bankruptcy only such rights and liabilities as have accrued before his bankruptcy and leaves unaccrued rights and liabilities remaining in one bankrupt.

**Referring Principles:**

- I.1.1 - Good faith and fair dealing in international trade
- II.1 - Prerequisites and effects of agency
- II.4 - Agency by estoppel / apparent authority
- III.2 - Assignment of claim
- IV.1.2 - Sanctity of contracts
- IV.2.1 - Contractual consent
- IV.7.1 - Invalidity of contract that violates good morals ("boni mores")
- IV.7.3 - Right to avoid the contract for mistake in fact or law
- V.1.4 - Principle of simultaneous performance; right to withhold performance
- VI.3 - Force majeure
- VII.1 - Damages in case of non-performance
- VII.2 - Principle of foreseeability of loss
- VII.3.1 - Limits to claims for damages
- VII.4 - Duty to mitigate
- VII.6 - Duty to pay interest