

Interpreting the terms of a contract

- When determining the meaning of a clause in a contract, firstly, the court gives the words their ordinary and natural meaning
- The court will also consider the intention of the parties, giving effect to the nature and extent of the obligations negotiated by the parties
- In doing so, the court applies an objective approach, asking what a third party would reasonably understand the terms to mean and what a third party would reasonably conclude the intent of the parties to be
- If after giving the words in a contract their ordinary meaning and the terms nonetheless remain ambiguous, for commercial contracts, the court will give the words an interpretation that is not commercially inconvenient, unrealistic or nonsensical (commercial realism)
- This principle however, cannot be used to avoid giving effect to a clearly expressed term, even if those terms prove inconvenient or disadvantageous
- Post-contractual behaviour will not be taken into account when interpreting a contract for the parties' behaviour may be based on a mistaken view of what the agreement objectively meant, and this, should not prevent either party from asserting their actual rights

Discharge of contractual obligations by performance

- Contractual obligations are normally discharged by voluntary performance
- When terms are implied into a contract by operation of the law, the performance due depends on what particular terms have been implied
- When there exists reciprocal duties of performance, it is presumed that the parties intended that these duties would be performed at the same time unless otherwise stated. This includes payment and delivery for example
- A failure to perform a number of the terms in a divisible contract does not constitute a breach of the other divided contracts^{1 2}

Breach of contract

- Non-performance occurs when a party either makes no effort to perform at all or tenders a performance of something that is completely different from what the contract required, this in both regards, is considered a complete failure to perform that may lead to the discharging of the contract³
- Anything less than full performance is considered partial performance which is insufficient to discharge the contractual obligations⁴
- Substantial performance occurs when despite the fact that there is a failure to fully perform, the performance tendered is close enough to complete performance that the non-defaulting party substantially receives the benefit they expected to get from the contract, albeit to a lesser extend then intended^{5 6}

¹ Phillips v Ellinson Brothers

² Government of Newfoundland v The Newfoundland Railway

³ Varley v Whipp

⁴ Steele v Tardiani

⁵ Hoenig v Isaacs

⁶ Connor v Stainton

1	<p>Phillips v Ellinson Brothers</p> <p>Ellinson Brothers employed Phillips to work for a period of two years. Phillips was obliged to work 160 hours per month and at the end of the two year agreement, was to be paid a percentage of the profits made during the period. Through an informal agreement however, Phillips reduced his work to 60 hours per month. At the end of the two year period, the court found that Phillips was not entitled to the payment under the contract for he had not performed his complete contractual obligations as specified in the contract. The court treated this contract as a single indivisible contract and thus Phillip had not performed his entire obligations, this however, did not mean that Phillip was not entitled to any payment at all</p>
2	<p>Government of Newfoundland v The Newfoundland Railway</p> <p>The Newfoundland government contracted with Newfoundland railway for the company to build a railway. It was agreed that the government would grant the company 25 000 acres of land on the completion of each five-mile section of railway. The project however, came to an end after just seven section has been constructed. The court found that the company was entitled to the 25 000 acres of land for each of the seven completed sections despite the fact that the complete railway could no longer be built. This was a consequence of the contract suggesting the land would be available upon the completion of each section as opposed to the completion of the contract as a whole, thus a divisible contract existed</p>
3	<p>Varley v Whipp</p> <p>Varley offered to sell Whipp a second-hand reaping machine under the description that the machine was a year old and had been used to cut 50 or so acres of crops. Whipp had not seen the machine but decided to buy it, yet when the machine was delivered, it proved to be a very old machine that had been broken and mended. Subsequently, Whipp returned the machine and refused to pay the price. The court found that Varley had not delivered what was promised as the machine was not in the same class or category of goods as it had been described, thus Whipp was entitled to reject the machine under the basis of Varley's non-performance</p>
4	<p>Steele v Tardiani</p> <p>Tardiani and others were employed to cut firewood with an agreement stipulating that payment would be made at the rate of six shillings per ton of wood cut in six foot lengths and split six inches in diameter. Tardiani however, split the pieces ranging from six to fifteen inches in diameter. The court found that although the work was only partially performed, Steele was nonetheless obliged to pay for the value of the work done (on a quantum meruit basis) as he had chosen not to exercise his right to insist on complete performance but rather had accepted the partially completed work</p>
5	<p>Hoenig v Isaacs</p> <p>Isaacs contracted Hoenig to paint his apartment and supply some furniture. After completing the work Hoenig claimed payment in full yet Isaacs, in complaining that the work had been performed poorly paid only a fraction the amount owing, hiring another worker to complete the job. Hoenig sued isaacs for the balance of the agreed price. The court found that Hoenig had only delivered substantial performance and thus wasn't entitled to the full amount owing, rather, he was entitled to the amount owing less the amount paid to rectify the unsatisfactory work. Thus his breach was treated as a breach of a warranty as opposed to a breach of a condition</p>