

## Contract B Outline

### Termination by Agreement

#### Under original contract

Contracts that have a fixed term and expire or terminate at the end of that period per *Shevill*

#### By subsequent agreement

##### Express agreement

- The contract to end a contract must fulfil the ordinary principles of contract formation (good consideration)
- Sufficient consideration depends on whether the contract is partly or wholly executed.
  - If a contract is executory, each party provides consideration in agreeing to release the other from obligations.
  - If a contract is fully executed by one party, they give a promise to release the other from obligations AND the other party must provide consideration before release from their performance.

##### Inferred agreement

- Where parties make a subsequent contract covering similar ground, it can sometimes be inferred that they intended to terminate the initial contract (intention)

##### Abandonment

- After a period of inactivity or other conduct that indicates the parties no longer desire their contract to be on foot, the courts may treat the parties as having mutually agreed to abandon the contract - *DTR Nominees*

### Termination for Breach

**A breach of a contract** is committed when a party, without lawful excuse, fails or refuses to perform what is due from him under the contract, or performs defectively. Common Law confers the right to terminate to the aggrieved party to exit the contract.

The CL RTT co-exists with an express RTT per *Shevill*

## Types of Breach

Actual - occurs after time for performance has expired i.e, non-performance, effective/delayed performance

Anticipatory - occurs before performance is due i.e, party has a well founded conclusion that the other will not perform when due

### Step 1: Identify the breach

### Step 2: Classify the term

#### 1. **Condition:** Essentiality test per *Tramways*

- a. The aggrieved is entitled to terminate the contract for any breach of that term, even if it is of little gravity/consequence per *Arcos*
- b. Was the term so important that P would not have entered into the contract unless assured of strict performance of it and this is apparent to the D?
  - i. The intention of the parties as appearing in the contract
  - ii. General nature and subject matter
  - iii. Language used per *Schuler* : the word 'condition' is not conclusive: when a construction leads to an unreasonable result, strict compliance is unlikely to be required
  - iv. Other terms
  - v. Whether breach is likely per *Schuler*
  - vi. Likely consequences of breach per *Hong Kong*
  - vii. Courts won't readily deem a clause to be a condition as they prefer a construction that encourages performance

#### 2. **Intermediate term:** *Hong Kong Fir* test

- a. The aggrieved is entitled to terminate the contract for a sufficiently serious breach.
- b. Must be able to be breached in multiple ways of different severity.
- c. Does the breach deprive the innocent party of substantially the whole benefit of the contract which they were intended to obtain?
- d. If it does not deprive, can only claim damages
- e. Breach must go to the root of the contract per *Sanpine*
  - i. Nature of the contract and term, kind and degree of breach, consequences, adequacy of damages