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# DOES P HAVE A RIGHT TO TERMINATE (RTT)?

## Scenario where a party wants to or has attempted to terminate the contract?

It is probable that P wants to terminate the contract with D, which requires P to establish a right to terminate (RTT) the contract. D will likely argue that they do not have a RTT or P has wrongfully terminated the contract. To ensure that P does not bear the risk of being sued for repudiating by wrongfully terminating the contract, it is advised that P should ultimately seek a court order on this RTT.

## TOPIC 1: TERMINATION BY AGREEMENT

| FACTOR                                     | SCRIPT                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | PERSONAL NOTES                                                                                                                                           |
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| <b>Termination - General Principles</b>    | <p>Termination brings a contract to an end with respect to future obligations, but it does not affect accrued rights that have already arisen (<a href="#">Shevill v Builders Licensing Board</a>).</p> <p>P would argue that termination provides a lawful mechanism to discharge future performance duties once a valid right arises, serving both as a self-help remedy and as leverage for negotiation.</p> <p>D may respond that termination was premature or invalidly exercised, preserving ongoing obligations.</p> <p>Termination differs from rescission, which has a retrospective effect by unwinding the contract entirely. Courts may loosely use the term “rescission,” but the legal consequence depends on the parties’ intention and the underlying right. Correct characterisation is crucial because termination preserves accrued rights, whereas rescission extinguishes them.</p> | <p>Termination = prospective; rescission = retrospective.</p> <p>Check whether accrued rights (e.g., damages or payments) survive termination.</p>       |
| <b>Termination Under Original Contract</b> | <p><u>Express Right to Terminate:</u></p> <p>P would argue that clause [X] constitutes an express termination clause, granting P a contractual right to bring the agreement to an end on specified grounds (e.g., breach, notice period, lapse of time). Courts will enforce such clauses strictly, provided procedural requirements - such as written notice within the prescribed timeframe - are met.</p> <p>Analogising to <a href="#">Shevill</a>, P may contend that an express clause like that in <a href="#">Shevill</a> empowers the lessor to terminate for rent default; here, the clause equally authorises termination for [insert trigger]. If P strictly complied with the clause - by giving valid written notice and satisfying any preconditions - the termination will likely be effective.</p>                                                                                      | <p>Always check clause wording + compliance with notice procedures.</p> <p>If no fixed term → argue implied right to terminate on reasonable notice.</p> |

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|                                            | <p>D, however, would argue that termination was invalid because the clause was not properly invoked (e.g., inadequate notice, incorrect form, premature reliance). Courts demand exact compliance with procedural steps; minor defects can render the purported termination ineffective.</p> <p>Where the contract is silent on duration, P may alternatively argue that a right to terminate on reasonable notice should be implied, based on the presumption that parties do not intend an agreement to last indefinitely. Reasonableness depends on the circumstances - such as the nature of the contract, reliance, and the parties' expectations.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                                                                                                                                                                                                                                     |
| <b>Termination by Subsequent Agreement</b> | <p><u>Express Subsequent Agreement to End the Contract:</u></p> <p>P would argue that a new agreement between the parties effectively discharged the original contract by mutual consent. This "contract to end a contract" must satisfy ordinary contract-formation principles, including consideration and intention to create legal relations.</p> <p><u>Wholly Executory:</u></p> <p>If the original contract remained executory (both parties still owed obligations), each party's promise to release the other provides sufficient consideration. P would contend that because both sides were yet to perform, their mutual release was valid consideration, making the termination binding.</p> <p><u>Executed By One Party But Not Other (Partly Executed):</u></p> <p>Conversely, D may argue that the contract was already partly executed, and P - having fully performed - could not supply fresh consideration to support the discharge. In such a case, D might claim the purported termination lacked consideration and was therefore ineffective unless executed by deed.</p> <p>P could respond that the agreement was supported by fresh consideration, for example, D providing payment, property, or a new obligation. This is characterised as accord and satisfaction - where the accord is the agreement to release and the satisfaction is the new consideration that makes it operative. Courts generally prefer that satisfaction involve actual performance, ensuring fairness to the performing party.</p> <p>If executed as a deed of termination, no consideration is required; P could argue the deed alone validly ended the contract.</p> <p>On balance, where mutual consideration or a valid deed exists, the subsequent agreement will effectively terminate the contract prospectively, extinguishing future obligations while preserving accrued rights.</p> | <p>Executory = mutual release = sufficient consideration.</p> <p>Partly performed = need deed or fresh consideration (accord &amp; satisfaction).</p> <p>Accord = agreement; Satisfaction = performance or fresh consideration.</p> |

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| <b>Termination Inferred from Subsequent Agreement or Conduct</b> | <p>P may argue that, even absent an express termination agreement, the parties' later dealings demonstrate an implied intention to abandon or replace the original contract. Where a subsequent contract covers the same subject matter and is inconsistent with the first, courts may infer termination because both cannot coexist.</p> <p>P could rely on <a href="#">DTR Nominees v Mona Homes</a> to argue that prolonged inactivity, adoption of a new arrangement, or conduct inconsistent with the earlier obligations evidence mutual abandonment. For instance, where both parties ceased performing under the first agreement and instead acted under a new one, the court may infer a shared intention to discharge the prior contract.</p> <p>D may counter that the subsequent arrangement was intended only to vary or supplement - not replace - the original contract. Continued performance, correspondence, or acknowledgment of prior obligations would indicate the parties did not intend to terminate.</p> <p>Ultimately, the court will consider the objective intention of both parties, determined by their words, actions, and surrounding circumstances. If the obligations of the two agreements cannot logically coexist, termination by inference is likely to be found.</p> | <p>Check for inconsistent obligations between old and new contracts.</p> <p>Abandonment inferred from inactivity or conduct (see <a href="#">DTR Nominees</a>).</p> <p>Continued performance weakens inference of termination.</p> |
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## TOPIC 2: TERMINATION FOR BREACH

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| <b>Common-Law Rights to Terminate</b>         | <p>At common law, P may terminate a contract where D breaches a condition, commits a sufficiently serious breach of an intermediate term, or repudiates the agreement. These rights exist independently of any express clause and operate as default protections to ensure parties are not bound to a fundamentally broken bargain.</p> <p>Where an express termination clause also exists, P may rely on either the contractual or common-law right, provided procedural steps are followed. Failure to comply with a contractual procedure does not destroy the common-law right if the breach itself is serious enough. The rights therefore operate concurrently unless the contract expressly excludes the common-law remedy.</p> <p><b>D may counter that P has affirmed the contract or is estopped from terminating, for example, by continuing to perform after breach or accepting benefits.</b></p> <p>Once P elects to affirm, the right to terminate is lost. Wrongful termination without an adequate basis constitutes repudiation, exposing P to damages for wrongful termination.</p>                                                               | <p>Termination = prospective; damages = retrospective.</p> <p>Always check election → termination vs affirmation.</p> <p>If in doubt → seek declaration before acting.</p>                                                                                                                                                                   |
| <b>Characterise - Classification of Terms</b> | <p>Whether P may terminate depends on how the breached term is classified:</p> <ul style="list-style-type: none"> <li>1 Condition - breach of any gravity entitles termination (<a href="#">Arcos</a>).</li> <li>2 Intermediate (Innominate) Term - termination only if breach is serious enough to deprive P of substantially the whole benefit (<a href="#">Hongkong Fir</a>).</li> <li>3 Warranty - no right to terminate; damages only.</li> </ul> <p>Courts favour flexibility: most terms are treated as intermediate unless clearly intended otherwise (<a href="#">Koompahtoo</a>). The classification is determined objectively from the contract's construction, language, context, and commercial purpose.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                            | <p>Step 1 identify breach → Step 2 classify term → Step 3 assess remedy.</p> <p>Labels ("condition", "warranty") ≠ conclusive; intention is.</p>                                                                                                                                                                                             |
| <b>Termination for Breach of a Condition</b>  | <p>P would argue that clause [X] is a condition, making strict compliance essential. Under the <a href="#">Luna Park v Tramways</a> essentiality test, the question is whether the promise was so vital that P would not have entered into the contract without assurance of its strict performance. If so, any deviation gives rise to a right to terminate, even if minor (<a href="#">Arcos v Ronaasen</a>).</p> <p>Analogy to Bancks: P would analogise to <a href="#">Associated Newspapers v Bancks</a>: publishing Bancks's cartoon on the front page was central to the bargain, and breach justified termination. Similarly, P would contend that [insert promise] was fundamental to the contract's commercial purpose and that non-performance deprived P of the benefit of the bargain.</p> <p>Damages Inadequate: P may emphasise that damages would be inadequate, reinforcing that strict compliance was intended (<a href="#">Ankar v National Westminster Finance</a>). Where performance underpins the entire contractual risk allocation or the loss cannot be readily quantified, the court is more likely to treat the term as a condition.</p> | <p>Key factors: importance to bargain (<a href="#">Tramways</a>); adequacy of damages (<a href="#">Ankar</a>); commercial context (<a href="#">Bancks</a>); avoidance of absurd or unreasonable results (<a href="#">Schuler</a>).</p> <p>Courts prefer continued performance → hesitate to construe a term as a condition unless clear.</p> |

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|  | <p>Pre-contractual Correspondence: Surrounding circumstances, including pre-contractual communications, may indicate essentiality. As in <a href="#">Tramways</a>, where conversations revealed the importance of continuous advertising, such evidence may show that both parties attached great importance to the promise, supporting its classification as a condition.</p> <p>Language of Clause: The language used in the clause can indicate essentiality. If the clause employs clear, strong, or absolute wording (such as “we guarantee”), this suggests the parties intended strict compliance, supporting a finding of a condition. However, even where the contract expressly labels a term a “condition,” that is not conclusive.</p> <p>Label Not Conclusive: D would rely on <a href="#">Schuler v Wickman Machine Tools</a>, where a term described as a “condition” was held not to be one because literal compliance would have been impractical and unreasonable. The court will look beyond terminology to the commercial context and intention of the parties.</p> <p>Express Right to Termination: P may argue that the presence of an express right to terminate for breach of [breached clause] demonstrates the importance of strict compliance. An express right to terminate does not exclude a common law right to terminate (<a href="#">Progressive Mailing House</a>). Conversely, D may argue that where an express termination clause exists elsewhere but not for [breached clause], this indicates the parties did not intend it to be essential, consistent with <a href="#">Shevill</a>, where the right to terminate was limited to the express clause.</p> <p>Likelihood and Nature of Breach: If a term can be breached in minor or technical ways, it is less likely that the parties intended strict compliance. Where literal performance would produce an unreasonable or disproportionate result (<a href="#">Schuler</a>), or breaches may be trivial, the court is reluctant to classify the term as a condition.</p> <p>Intermediate Term Concept: D may alternatively argue that the clause is an intermediate term, capable of being breached in ways ranging from trivial to serious. Following <a href="#">Hong Kong Fir</a>, where the seaworthiness clause could be breached in varying degrees, a term will be treated as intermediate if classification as a condition would produce an unreasonable result. Termination then depends on the seriousness of the actual breach and whether it deprives the aggrieved party of substantially the whole benefit of the contract.</p> <p>Minor or Trivial Breach: D might argue that their breach was minor or technical. However, P would refute this by noting that once a clause is classified as a condition, <i>any</i> breach - however small - entitles termination (<a href="#">Arcos v Ronaasen</a>).</p> <p>Preference for Continued Performance: D may argue that construing the clause as a condition would unduly encourage termination. Courts apply a high threshold before classifying a term as a condition, preferring interpretations that promote continued performance rather than termination (<a href="#">Ankar</a>).</p> | <p>Other relevant points: express termination clauses may indicate importance but are not conclusive (<a href="#">Progressive Mailing House</a>; <a href="#">Shevill</a>); intermediate terms depend on seriousness of breach (<a href="#">Hong Kong Fir</a>).</p> |
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|                                                       | <p>Conclusion: On balance, the court will determine essentiality by assessing whether the clause was central to the contract's operation and risk allocation.</p> <ul style="list-style-type: none"> <li>Where the term goes to the root of the bargain or its performance was crucial to the promisee's entry into the agreement, it is a condition, and breach (however minor) entitles termination.</li> <li>Where the term may be breached in varying degrees or where strict compliance would be unreasonable, it is more likely to be an intermediate term, and termination will depend on the seriousness of the actual breach (<a href="#">Hong Kong Fir</a>).</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| <b>Termination for Breach of an Intermediate Term</b> | <p>If the clause is not a condition, P may argue that it is an intermediate term - one capable of being breached in a variety of ways, from minor to serious. Where a term is intermediate, termination is justified only if the breach is sufficiently serious to deprive the innocent party of substantially the whole benefit of the contract (<a href="#">Hongkong Fir</a>).</p> <p><u>Nature of Intermediate Terms:</u><br/>P would submit that the clause is an intermediate term because it can be breached in both minor and serious ways, similar to the seaworthiness clause in <a href="#">Hongkong Fir</a>, which could be breached by defects ranging from trivial to fundamental. Classifying a term as intermediate allows the court to balance flexibility with fairness - avoiding termination for insignificant breaches while still allowing it where performance failure is grave.</p> <p><u>Was the Breach Sufficiently Serious?</u><br/>If the clause is deemed intermediate, the key question is whether the breach was sufficiently serious to deprive P of substantially the whole benefit of the contract (<a href="#">Hongkong Fir</a>). This is a factual inquiry into both the extent and consequences of the breach.</p> <p>P would argue that D's non-performance [insert breach] fundamentally undermined the purpose of the agreement, mirroring <a href="#">Koompahtoo</a>, where the managing company's persistent failures deprived the Council of the contract's intended benefits. In such cases, termination is justified because the breach goes to the root of the bargain, and damages would be inadequate to restore the lost value.</p> <p>Conversely, D would argue that while the breach may have caused inconvenience or delay, it did not deprive P of substantially the whole benefit. Drawing an analogy to <a href="#">Hongkong Fir</a>, D may contend that substantial performance was still received - just as the ship in <a href="#">Hongkong Fir</a> remained usable for 19 of the 24 months, making termination unjustified. Where the contract's overall purpose remains achievable, the court is likely to find the breach insufficiently serious.</p> <p><u>Assessment Factors:</u><br/>In determining whether a breach of an intermediate term is sufficiently serious, the court will consider the nature of the contract and its relationship, the nature and importance of the term, the kind and degree of the breach, the consequences of non-performance, and the adequacy of damages (<a href="#">Koompahtoo</a>; <a href="#">Ankar</a>).</p> | <p><a href="#">Hongkong Fir</a> → establishes the "substantial deprivation of benefit" test; intermediate terms allow flexibility between conditions and warranties.</p> <p><a href="#">Koompahtoo</a> → serious and sustained non-performance deprived the party of the benefit; termination allowed.</p> <p><a href="#">Ankar</a> → confirms adequacy of damages as a key factor; courts assess the breach's gravity and commercial consequences.</p> <p><a href="#">Intermediate term test</a> = whether the breach deprived the innocent party of substantially the whole benefit of the contract.</p> <p>Assessment considers nature of term, extent and seriousness of breach, and whether performance still substantially delivered the bargain.</p> <p>Compare: <a href="#">Hongkong Fir</a> (no termination - benefit retained) vs</p> |

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|                                               | <p><u>Conclusion:</u><br/>Ultimately, the inquiry is both quantitative and qualitative - asking how much of the expected contractual benefit was lost and whether that loss was substantial. If the breach frustrates the commercial purpose or goes to the root of the bargain, termination will be justified; if not, P's remedy lies in damages only.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | Koompahtoo (termination allowed - benefit lost).                                                                                                                                                                                                                                                                                |
| <b>Warranties and Minor Breaches</b>          | <p>D may argue that clause [X] is merely a warranty, conferring no right to terminate. Warranties are non-essential promises; their breach entitles only damages, not termination. D would contend that no possible breach of the clause could deprive the aggrieved party of substantially the whole benefit of the contract (Hongkong Fir), and therefore it should be classified as a warranty.</p> <p>However, courts rarely adopt this classification unless the contract or statute clearly provides. Because the warranty category is narrow, and true warranties are uncommon, courts generally prefer to treat such terms as intermediate if a breach could ever deprive a party of a substantial benefit.</p> <p>Accordingly, unless the clause is expressly drafted as a warranty or its breach could never go to the root of the bargain, P's right to terminate will depend on whether the breach was sufficiently serious under the intermediate term analysis. If the clause is a true warranty, P is limited to a claim in damages and has no right to terminate.</p> | <p>True warranties are rare.</p> <p>Breach of a warranty → damages only, no right to terminate.</p> <p>If a clause could ever be seriously breached → courts prefer intermediate term classification (Hongkong Fir).</p> <p>Only where breach can never substantially deprive benefit will a term be treated as a warranty.</p> |
| <b>Effect and Restrictions on Termination</b> | <p>Once a right to terminate arises, P must elect to terminate or affirm.</p> <p>If P elects to terminate, future obligations end but accrued rights remain; if P affirms, the right is lost.</p> <p>Termination is self-help, but wrongful termination amounts to repudiation. P must therefore ensure readiness and willingness to perform its own obligations at the time of termination, or the election may be invalid.</p> <p>Equitable doctrines such as waiver, estoppel, or relief against forfeiture can limit termination rights, particularly where D has relied on P's conduct suggesting continuation. Courts aim to uphold commercial fairness and discourage opportunistic terminations.</p>                                                                                                                                                                                                                                                                                                                                                                          | <p>Election = terminate or affirm → cannot do both.</p> <p>Must be ready + willing to perform own obligations.</p> <p>Wrongful termination = repudiation risk.</p>                                                                                                                                                              |

