

TERMINATION

Termination for Breach (Unilateral Termination)

Why terminate? - to escape from a contract and be relieved of unperformed obligations, and to claim 'loss of bargain' damages

Common Law Rights of Termination

1. For breach of an essential term

1. Essential terms = conditions: any breach justifies termination
2. Non-essential terms = warranties: no breach justifies termination

Identifying an essential term

- Parties are free to designate any term as essential, regardless of how 'fundamental' it is, though clear words must be used in designation (*Gumland v Duffy Bros*)
- Otherwise, the courts must infer whether termination was intended for any breach
 - Test: whether promisee would not have entered into the contract unless assured of strict compliance - objectively inferred (*Tramways Advertising v Luna Park*) ◦ Application of the test:

Associated Newspapers v Bancks

Bancks a cartoonist, appeared in newspapers, part of contract said that his cartoons had to be on the front page, objectively found to be of such importance giving rise to a right to terminate if on a given occasion the cartoons did not appear on the front page

Gough v South Sky Investments

Name change case, compliance with term was not so important that objectively, investors would pull out

2. For a fundamental breach of an intermediate term

3. Intermediate terms: a term which can be breached in a major or minor or major way, termination permitted only for fundamental breach