

Contracts and Torts

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Contracts and Torts

Obligations are imposed on “persons” in two broad areas:

- Under the common law of negligence, which makes persons liable for harm caused to other persons to whom they have a duty not to harm; and
- Under contract law, which makes persons liable, under certain circumstances, for failing to do things they have agreed to do.



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Contracts



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Elements of a Contract

- Two or more parties with legal capacity;
- Who intend to create a legal obligation by agreement;
- Who reach a consensus, usually by way of offer and acceptance;
- Who provide consideration; and
- Who contract for a lawful purpose.



Legal Capacity



- Infants
- Intoxicated Persons
- Insane or Mentally Incompetent
- Companies
- Unincorporated Voluntary Associations and Organizations



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Offer, Acceptance And Consideration

- Offer to do or not to do something
- Offer must be accepted as proposed
- Consideration must be exchanged



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Form Of Contract

- Oral v. Written
- Must be written
 - Land
 - Guarantee
 - Lease > 3 years
 - Contract >1 year



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What to Include in Contract

- Date
- Who
- What
- For who
- How much
- When
- Signatures



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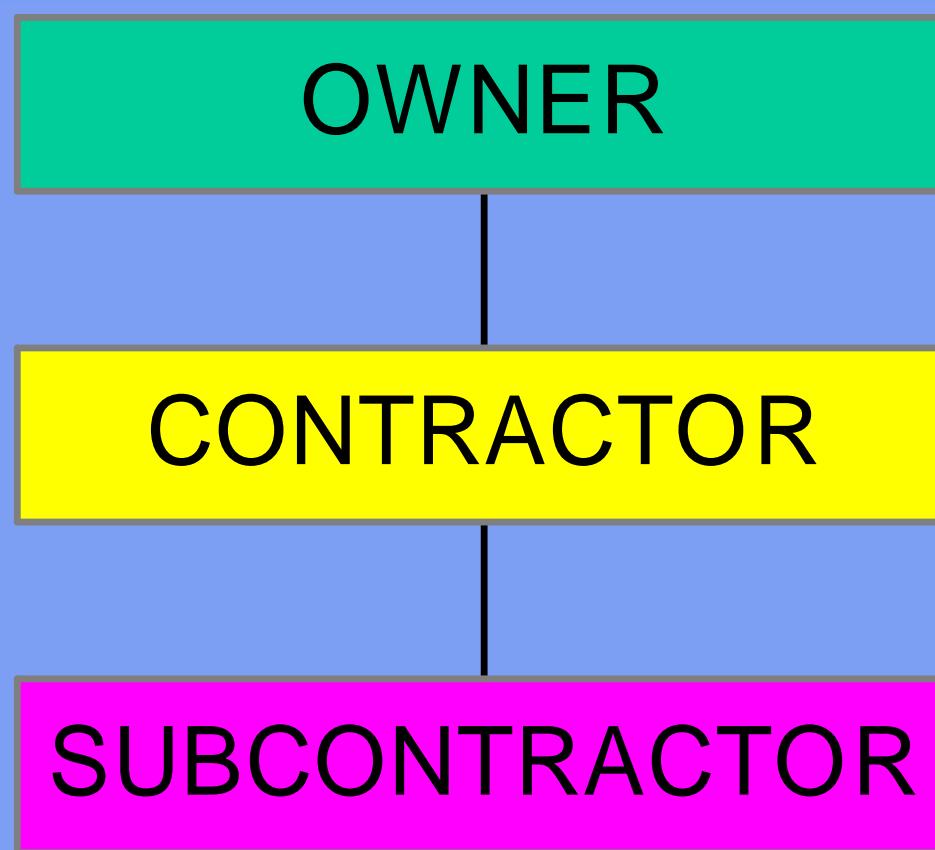
Contracts

Every contract is binding upon the parties until its terms are concluded, it is terminated or it is amended.

- A contract is amended if the parties agree.
- Generally, termination must be in accordance with the contract's terms or on reasonable notice.



Privity Of Contract



Remedies For Breach Of Contract

- Damages
- Specific Performance
- Injunctions



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Limiting Your Liability

- Exclusion Clauses
- Limits to Court Enforcement
 - Fraud
 - Fundamental Breach
 - Unconscionable to enforce
 - Scope of clause



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Obligations When Opposite Party Is In Breach

You will likely not be relieved of your obligations in the event of another's breach unless they are dependent on the other party's performance or unless the breach is serious or fundamental to the whole intended benefit of the contract.



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Torts



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What Is a Tort?

A private or civil wrong, other than a breach of contract, the remedy for which is an action for damages.



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Distinguishing a Tort From a Crime

TORT

- Plaintiff initiates
- Injury done to another person as a result of a breach of duty to that person
- Restitution through an award of damages

CRIME

- Crown initiates following a receipt of a complaint from any individual
- Wrong done to the community or the public
- Punishment, not restitution



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Accidental, Negligent & Intentional Conduct

Accidental
not foreseeable
unpreventable
strict liability

Negligent
foreseeable
risk of harm

Intentional
intent to cause harm
action substantially certain to harm



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Negligence



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Negligence

The area of tort law which has the most impact on professionals is the law of negligence.

The categories of negligence are never closed.



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Negligence

There are three essential elements that a plaintiff must prove in order to establish negligence:

- the defendant owed the plaintiff a duty of care;
- the defendant breached that duty of care;
- the defendant's breach caused the injury to the plaintiff.



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Duty of Care

1. Is there a sufficiently close relationship between the parties so that, in the reasonable contemplation of the defendant, carelessness on its part might cause damage to that person?



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Duty of Care

2. Are there any considerations which ought to negative or limit
 - (a) the scope of the duty and
 - (b) the class of persons to whom it is owed or (c) the damages to which a breach of it may rise?



Breach of Duty

You must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbour.



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Damage

Has the plaintiff suffered damaged
recognized by the tort of
negligence?

Is that damage actionable?



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Limits on Actionable Negligence

Causation: What would have been the outcome but for the actions of the defendant?

Remoteness: requires reasonable foreseeability of plaintiff as person who might suffer a loss and of actual damage caused



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Defences to Negligence

Contributory negligence



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Professional Negligence

Design professionals owe a duty to exercise the skill, care and diligence which may reasonably be expected of a person of ordinary competence, measured by the professional standard of the time.



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Duty to Warn

- If a design professional becomes aware of an error which may give rise to an issue of safety, there is a duty to warn others of this error.
- A failure to warn may give rise to legal liability.



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