



# TRG law

law simplified

## TERMINATION

*A Comparison of Rights to Terminate Contracts*

TERMINATION OPTIONS:	RESCISSION	REPUDIATORY BREACH	EXPRESS CONTRACTUAL RIGHT
<b>ALSO KNOWN AS:</b>	<ul style="list-style-type: none"> <li>• 'Rescission from the beginning'</li> <li>• 'Rescission <i>ab initio</i>'</li> <li>• Cancellation</li> </ul>	<ul style="list-style-type: none"> <li>• 'Fundamental' or 'serious breach'</li> <li>• 'Breach of condition'</li> <li>• 'Anticipatory breach' – refusal to perform in advance of performance being due</li> <li>• 'Renunciatory breach' – wrongfully terminating</li> </ul>	
<b> GROUNDS:</b>	<ul style="list-style-type: none"> <li>• Misrepresentation - an untrue statement of fact or law which induces a party to enter the contract causing that party loss</li> <li>• 'Matters concerning entry into the contract'</li> </ul>	<ul style="list-style-type: none"> <li>• Breach 'going to the root of the contract'</li> <li>• 'Depriving other party of substantially the whole benefit of the contract'</li> <li>• Right exists at common law independent of wording of contract</li> </ul>	<p>Entirely dependent upon contract wording:</p> <ul style="list-style-type: none"> <li>• 'material breach capable of being remedied'</li> <li>• 'material breach not capable of being remedied' – examples fairly rare such as breach of confidentiality or trust</li> </ul> <p>NB 'material breach' is less than 'repudiatory breach' – 'serious in the wide sense of having a serious effect on the benefit which the innocent party would otherwise derive from performance of the contract in accordance with its terms'</p> <ul style="list-style-type: none"> <li>• 'substantial breaches' (?)</li> <li>• 'material breach of any term' (?)</li> <li>• 'breach of any material term' (?)</li> <li>• NB Not <u>any breach</u> whatsoever</li> </ul>



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<b>EFFECTS:</b>	<ul style="list-style-type: none"> <li>Parties returned to position as if contract had never been entered into</li> <li>Purchase price repaid</li> <li>Property returned</li> <li>Damages claim for any additional losses (contractual limitations on and exclusions from liability inapplicable)</li> </ul>	<ul style="list-style-type: none"> <li>Parties released from future obligations to perform (subject to contractual provisions to the contrary)</li> <li>Accrued rights and liabilities of parties remain</li> <li>Damages claim for losses (subject to limitations on and exclusions from liability)</li> </ul>	<ul style="list-style-type: none"> <li>Parties released from future obligations to perform (subject to contractual provisions to the contrary)</li> <li>Accrued rights and liabilities of parties remain</li> <li>Damages claim for losses (subject to limitations on and exclusions from liability)</li> </ul>
<b>RIGHT TO TERMINATE MAY BE LOST IF:</b>	<ul style="list-style-type: none"> <li>Contract 'affirmed' either:               <ul style="list-style-type: none"> <li>◇ expressly, by conduct incompatible with rescission (eg party acts as though it intends the contract to remain in place); or</li> <li>◇ as a result of undue delay</li> </ul> </li> <li>Not possible to return parties to their pre-contract position</li> <li>Innocent third party has acquired rights</li> </ul>	<ul style="list-style-type: none"> <li>Contract 'affirmed' either expressly, by conduct incompatible with termination or as a result of undue delay (waiver)</li> </ul> <p>NB traditional 'delay does not constitute waiver' - clause will not protect if court considers there has been undue delay in the circumstances</p> <ul style="list-style-type: none"> <li>Contract expressly excludes other common law rights or remedies</li> </ul>	<ul style="list-style-type: none"> <li>Contract 'affirmed' either expressly, by conduct incompatible with termination or as a result of undue delay (waiver)</li> </ul> <p>NB traditional 'delay does not constitute waiver' - clause will not protect if court considers there has been undue delay in the circumstances</p>

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