

**ACT 25**  
**CONTRACTS ACT, 1960**

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**ACT 25**  
**CONTRACTS ACT, 1960(1)**

**AN ACT to amend the law of contracts and to replace certain imperial enactments.**

*Frustration of Contracts*

**1. Adjustment of rights and liabilities**

(1) Where a contract to which sections 1 to 4 apply has become impossible of performance or been otherwise frustrated, and the parties to that contract have for that reason been discharged from the further performance of the contract, this section shall, subject to sections 2 and 3, have effect in relation to that contract.

(2) Subject to subsection (3), the sums of money paid or payable to a party in pursuance of the contract before the time when the parties were discharged under subsection (1) shall, in the case of sums of money so paid, be recoverable from that party, and in the case of sums of money so payable, cease to be so payable.

(3) Where a party has incurred expenses before the time of discharge in, or for the purpose of, the performance of the contract, the Court may allow that party to recover or to retain out of a sum of money received by that party under the contract, the amount, not exceeding the expenses so incurred or the total sum of money payable to that party under the contract, that the Court may consider just having regard to the circumstances of the case.

(4) In estimating, for the purposes of subsections (1), (2) and (3), the amount of the expenses incurred by a party to the contract, the Court may, without prejudice to the generality of those subsections, include the sums of money that appear to be reasonable in respect of overhead expenses and in respect of the work or services performed personally by that party.

(5) In considering whether a sum of money ought to be recovered or retained under this section by a party to the contract, the Court shall not take into account sums of money which have, by reason of the contract, become payable to that party under a contract of insurance, unless there was an obligation to insure imposed by an express term of the frustrated contract or by or under an enactment.

**2. Severance of frustrated contracts**

Where it appears to the Court that a part of a contract to which sections 1 to 3 apply can properly be severed from the remainder of the contract, being a part wholly performed before the time of discharge, or so performed except for the payment in respect of that part of the contract of sums of money which are or can be ascertained under the contract, the Court shall treat that part of the contract as if it were a separate contract and had not been frustrated and shall treat section 1 as only applicable to the remainder of that contract.

**3. Contracting out**

Where a contract to which sections 1 and 2 apply contains a provision which, on the true constructions of the contract, is intended to have effect in the event of circumstances arising which operate, or would but for that provision operate, to frustrate the contract, or is intended to have effect whether those

circumstances arise or not, the Court shall give effect to that provision and shall only give effect to sections 1 and 2 to the extent that appears to the Court to be consistent with that provision.

#### **4. Application of sections 1 to 3**

(1) Sections 1 to 3 apply to contracts made before or after the commencement of this Act, in respect of which the time of discharge is after the commencement of this Act.

(2) Sections 1 to 3 do not apply

(a) to a charterparty, except a time charterparty or a charterparty by way of demise, or to a contract, other than a charterparty, for the carriage of goods by sea, or

(b) to a contract of insurance.

(3) For the purposes of sections 1 to 3, “**the time of discharge**” means the time when the parties were discharged under subsection (1) of section 1.

#### *Third Party Rights*

#### **5. Provision in contract for benefit of third party**

(1) A provision in a contract made after the commencement of this Act which purports to confer a benefit on a person who is not a party to the contract, whether as a designated person or as a member of a class of persons, may, subject to this section and sections 6 and 7, be enforced or relied on by that person as though that person were a party to the contract.

(2) Subsection (1) does not apply to

(a) a provision in a contract designed for the purpose of resale price maintenance, that is to say, a provision whereby a party agrees to pay money or otherwise render some valuable consideration to a person who is not a party to the contract in the event of the first-mentioned party selling or otherwise disposing of the goods, the subject matter of the contract, at prices lower than those determined by or under the contract; or

(b) a provision in a contract purporting to exclude or restrict a liability of a person who is not a party to the contract.

#### **6. Rights of third party**

Where under section 5 a person who is not a party to a contract is entitled to enforce or rely on a provision in the contract,

(a) a variation or rescission of the contract shall not prejudice that person’s right to enforce or rely on the provision if that party has acted to the prejudice of that party in reliance on the variation or rescission, unless that party consents to the variation or rescission; and

(b) subject to paragraph (a), a party against whom the provision is sought to be enforced or relied on is entitled to rely on or to plead by way of defence, set-off, counterclaim or otherwise a matter relating to the contract which that party could have so relied on or pleaded if the provision were sought to be enforced or relied on by the other party to the contract.

#### **7. Assignment of legal rights**

(1) Subject to the relevant rule of law, and subject to a contrary intention appearing from a transaction

giving rise to legal rights, a person may, after the commencement of this Act, assign a legal right to another person as specified in this Act.

(2) An assignment, whether given for consideration or not, of a vested legal right, transfers the right and interest in the assignment to the assignee and extinguishes the right and interest in the assignment of the assignor if

- (a) it is absolute and not by way of charge only, and
- (b) it is in writing and is signed by the assignor or the agent of the assignor, and
- (c) written notice of the assignment is given to the debtor or any other person against whom the right is enforceable.

(3) A purported assignment of a conditional right operates as a promise to assign the right if and when the condition occurs.

(4) An assignment, whether given for consideration or not, is valid although it does not comply with all or any of the requirements of subsection (2); but

- (a) a right so assigned shall not be enforced or relied on against the debtor or any other party against whom the right is enforceable, unless the assignor is a party to the proceedings in which it is sought to be enforced or relied on, or unless the Court is satisfied that it would be impossible or impracticable so to join the assignor; and
- (b) the assignment shall not prejudice the debtor or any other person against whom the right is enforceable unless the debtor or the other person has written notice of the assignment.

(5) Where there are two or more assignments in respect of the same debt or right, a later assignee has priority over an earlier assignee if the debtor or other person liable had not received written notice of the earlier assignment at the time when the later assignment was made.

(6) A debtor or any other person against whom a right is enforceable is entitled as against a person to whom the debt or the other right is assigned, to rely on or plead by way of defence, set-off, counterclaim or otherwise, a matter relating to the right which the debtor or that other person could have relied on or pleaded against the assignor at the time when the written notice of the assignment was received by the debtor or that other person.

### *Consideration and Formalities*

#### **8. Contracts which are valid despite lack of consideration**

(1) A promise to keep an offer open for acceptance for a specified time is not invalid as a contract by reason only of the absence of a consideration for that promise.

(2) A promise to waive the payment of a debt or part of a debt or the performance of a contractual or legal obligation is not invalid as a contract by reason only of the absence of a consideration for that promise.

#### **9. Law as to consideration**

The performance of an act or the promise to perform an act may be a sufficient consideration for another promise although the performance of that act may already be enjoined by a legal duty, whether enforceable by the other party or not.

## **10. Consideration need not move from promisee**

A promise is not invalid as a contract by reason only that the consideration for the promisee is supplied by a person other than the promisee.

## **11. Contracts need not be in writing except in certain cases**

Subject to this Act, and to any other enactment, a contract whether made before or after the commencement of this Act, is not void or unenforceable by reason only that it is not in writing or that there is no memorandum or note of the contract in writing.

## **12. Contracts of corporation**

A contract or any other transaction entered into on behalf of a corporation may be made, varied or discharged by the corporation's duly authorised representative in the manner in which it would be required if the corporation were an individual of full age and capacity.

## **13. Application of sections 8 to 12**

Sections 8 to 12 apply, subject to section 11, to transactions taking place after the commencement of this Act.

### *Contracts of Guarantee*

## **14. Guarantees to be in writing**

(1) An agreement made before or after the commencement of this Act, by which a person guarantees the due payment of a debt or the due performance of any other obligation by a third party, is void unless it is in writing and is signed by the guarantor or is entered into in a form recognised by customary law.

(2) A promise or representation made after the commencement of this Act, relating to the character or credit of a third person with the intent that the third person may obtain credit, money or goods, from the person to whom the promise or representation is made, is void unless it is in writing and is signed by the party to be charged with the promise or representation or the agent of that party.

(3) For the purposes of this section and of sections 15 and 16, “**guarantor**” means a person who guarantees the due payment of a debt or the due performance of any other obligation by a third party.

## **15. Revocation of continuing guarantee by change in partnership**

(1) A continuing guarantee given to a third person in respect of the transactions of a partnership is, in the absence of an agreement to the contrary, revoked as to future transactions by a change in the constitution of the partnership.

(2) A continuing guarantee given to a partnership is not, in the absence of an agreement to the contrary, revoked by a change in the constitution of the partnership.

## **16. Rights of guarantor against debtor**

(1) A guarantor, or any other person who is liable together with another for a debt or legal duty, who pays the debt or performs the duty, is entitled to have assigned to that guarantor or that other person a security held by the creditor and to stand in the place of the creditor and use the remedies available to the

creditor in respect of the debt or duty.

(2) Subsection (1) does not entitle the guarantor or the other person liable together with another to recover from the co-guarantor or the other person liable together with the guarantor more than the due proportion of the debt of the guarantor.

*Consequential*

**17. Contracts of the Republic**

This Act applies to contracts and transactions entered into on behalf of the Republic as it applies to other contracts and transactions.

**18. Repeals**

*Spent.2(2)*

**19. Statutes ceasing to apply**

*Spent.3(3)*

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**Schedule**  
**STATUTES CEASING TO APPLY**

[Section 19]

<i>Session and Chapter</i>	<i>Subject Matter</i>	<i>Extent of Cesser</i>
29 Chas. 2, c. 3 (1677)	Statute of Frauds	Sections 4 (except in so far as it relates to any contract or sale of lands) and 17 (which relates to contracts for the sale of goods to the value of £10 and upwards, sometimes known as section 16).
9 Geo. 4, c. 14 (1828)	Statute of Frauds Amendment	Section 7.
19 and 20 Vict., c. 97 (1856)	Mercantile Law Amendment	Sections 3, 4 and 5.
30 and 31 Vict., c. 144 (1867)	Policies of Assurance	The whole Act.

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## Endnotes

### 1 (Popup - Footnote)

1. The Act was assented to on 22nd December, 1960.

### 2 (Popup - Footnote)

2. This section provided for the repeal of:  
“Section 6 (3) of the Motor Vehicles (Third Party Insurance) Act, [1958 \(No. 42\)](#).”

### 3 (Popup - Footnote)

3. This section provided for the repeal of certain Statutes as per [the Schedule](#):  
“Each Statute indicated in [the Schedule](#) to this Act shall, to the extent indicated in the third column of [the Schedule](#), cease to apply in Ghana.”