

Term	Definition
<b>Common Law</b>	Judge made law, meaning court decisions that establish legal principles. Once established, the legal principles set a precedent and can be applied to similar situations. This is also known as the <b>theory of precedence</b> .
<b>Alternative Dispute Resolution Clause</b>	Clause in a contract that requires the parties to resolve disputes by way of arbitration or mediation rather than through litigation.
<b>Bid Rigging</b>	Bid rigging is an offence under the Competition Act. It refers to collusion leading to the submission of fraudulent tenders or bids. Bid rigging is defined as in s. 47(1) of the Competition
<b>Bid Shopping</b>	Bid Shopping refers to the practice of negotiating prices after the close of tender, and has long been regarded as unethical. Bid Shopping has been defined by the court as "the practice of soliciting a bid from a contractor, with whom one has no intention of dealing, and then disclosing or using that in an attempt to drive prices down amongst contractors with whom one does intend to deal."
<b>Breach of Contract</b>	A contract is breached when one party fails to perform its obligations under the contract. When this happens, the innocent party is entitled to sue for damages.
<b>Capacity</b>	The parties must have the capacity (be capable) of entering into a contract. A contract with a minor is only enforceable by the minor or if it is a contract for necessary items such as clothing, food, lodging or transportation. For contracts with corporations, the subject matter of the contract must be within the power of the corporation.
<b>Code of Ethics</b>	The professional engineer's Code of Ethics is found in s.77 of Regulation 941. It provides a guideline for professional conduct of engineers and imposes duties on the practicing professional engineer, with respect to society, employers, clients, colleagues, (including employees and subordinates), the engineering profession, and himself/herself.
<b>Common Mistake</b>	If the parties to a contract were in agreement but recorded the agreement incorrectly

<p><b>Competence</b></p>	<p>the ability to do something successfully or efficiently. For both legal and ethical reasons, practitioners should not undertake assignments unless they honestly and reasonably believe that they are competent to carry out the work, or that they can become competent without undue delay, risk or expense to the client or employer, or that they will engage a competent professional engineer to carry out work that is beyond their expertise.</p>
<p><b>Consequential (Indirect) Damages</b></p>	<p>Damages resulting from a breach of contract that are indirect or consequential to the breach, for example, lost profits from shutdown because of poorly performed services or a fine levied by a government authority for failure to comply with statutory obligation, such as a building code.</p>
<p><b>Consideration</b></p>	<p>Something of value exchanged by contracting parties. May be payment of money by one party for the performance of a service by the other party. Use of a corporate seal on a document will satisfy the requirement for consideration for an enforceable contract. There are two types of seals: personal seal (red wafer) and mechanical seal (embossing stamp). For example, a construction company bidding on a project may seal the bid with the corporate seal as they are making an irrevocable offer and there must be consideration.</p>
<p><b>Contract</b></p>	<p>An enforceable agreement or exchange of promises, usually between two parties. It may be verbal or in writing. However, a contract in writing is preferable as it is easier to determine the terms of the contract should a dispute arise.          Certain kinds of contracts must be in writing. Legislation called the Statute of Frauds requires that contracts are in writing when they have to do with the sale of land, when they will be performed beyond one year and when they provide a guarantee.</p>

<p><b>Contract Interpretation</b></p>	<p>Where there is a dispute over the interpretation of a contract, the court can attempt to determine the most reasonable interpretation through evidence of witnesses, intent, and definitions. The court may take a <b>liberal approach</b> (take into account the intention of the parties) or a <b>strict approach</b> (focus on wording of the agreement).</p> <p>When interpreting a contract that is ambiguous, the courts will apply the <b>rule of contra proferentem</b>. This rule states that, where a contract is ambiguous, it will be construed or interpreted against the party that drafted the contract and in favour of the party that did not do the drafting.</p> <p>A written contract should contain all of the terms of the contract. An oral agreement on the side with additional terms or conditions is not part of the agreement. The law that precludes evidence of the omitted terms and condition is called the <b>parole evidence rule</b>.</p>
<p><b>Co-operatives</b></p>	<p>An organization organized by people with similar needs to provide themselves with goods or services, or to make joint use of their available resources. The business structure of a co-operative ensures that all members have an equal say (one vote per member) regardless of the number of shares held, membership is open and voluntary, there is limited interest on share capital and that surplus income is returned to members according to amount invested.</p>
<p><b>Corporation</b></p>	<p>A corporation is an entity that is entirely separate from its owners (the shareholders). The owners are therefore not personally liable for the debts and obligations of the business. A corporation can be formed at a federal or provincial level, and is identified by one of the following terms in its name: Limited, Ltd., Incorporated, Inc., Corporation, or Corp.</p>
<p><b>Delegation of Authority</b></p>	<p>Both the federal and provincial governments have the power to delegate authority to other bodies. For example, provincial governments provide for municipalities which have their own by-laws, codes, etc. Provincial governments delegate the regulation of engineering to specific bodies such as Professional Engineers Ontario.</p>

<b>Directors</b>	The directors supervise and manage the corporation on behalf of, and in the best interest of, the shareholders. Provided that they act in good faith, the directors have wide latitude and the courts will not interfere with, or review their decisions, to pursue the shareholders' interests as the directors see fit. This is known as the "business judgment". The directors usually control the selection and terms of engagement of senior management (officers) and employees, the business the corporation will be in, the corporation's business plan, budget and spending, the issuance or sale of shares, the incurring of debt and liabilities, the allocation of profits and declaration of dividends. A corporation must have at least one director. A majority of the directors must be Canadian residents. A shareholder may also be a director. Each director must be over 18, and not a bankrupt. The directors appoint the officers, and determine the scope of their authority and the tasks that have been delegated to them".
<b>Duress</b>	Intimidation by way of threatened or actual violence or imprisonment to persuade a party to enter into a contract. A contract entered into under duress voidable. Economic Duress may also be used. An example of economic duress is where a party attempts to renegotiate the terms of the contract, such as when a party will not finish a lump sum contract unless receives more compensation than initially agreed.
<b>Equitable Estoppel</b>	Where the terms of a contract are amended without the consideration that would make the amending promise enforceable and the parties continue with the contract under the new terms, one of the parties may be "stopped" from trying to go back to the original terms.
<b>Force Majeure Provision</b>	Contracts usually include a force majeure provision that provides that the contract will be at an end or the completion time will be extended in the event of war, riot, insurrection, flood, labour dispute or other events beyond the control of the parties.
<b>Fraudulent Misrepresentation</b>	A false statement made by a person who knows that it is false, or makes the statement recklessly not caring whether is true or false. The deceived person may be entitled to repudiate the contract and claim damages.
<b>General Partnership</b>	All partners share in the management of the partnership. Each is personally liable for the debts and obligations of the partnership and for the consequences of the actions of the other partners.

<b>Governing Law</b>	The law that governs the interpretation of a contract. The governing law is the law of the jurisdiction where the contract was accepted, unless the parties agree on a different jurisdiction.
<b>Gratuitous Promise</b>	a promise made without consideration. For example, where there is a change to the terms of a contract without additional consideration. An example is where the terms of an employment arrangement are changed by the employer. If there is no additional consideration (pay, additional benefits, etc) the amendment may not be enforceable.
<b>Impeachment (Impeaching)</b>	A formal accusation of wrongdoing against a public official.
<b>Incompetence</b>	<p>The inability to do something successfully or efficiently. The Discipline Committee may find a member of the Association or a holder of a temporary licence, a provisional licence or a limited licence to be incompetent if, in its opinion,</p> <ul style="list-style-type: none"> <li>• the member or holder has displayed in his or her professional responsibilities a lack of knowledge, skill or judgment or disregard for the welfare of the public of a nature or to an extent that demonstrates the member or holder is unfit to carry out the responsibilities of a professional engineer; or,</li> <li>• the member or holder is suffering from a physical or mental condition or disorder of a nature and extent making it desirable in the interests of the public or the member or holder that the member or holder no longer be permitted to engage in the practice of professional engineering or that his or her practice of professional engineering be restricted.</li> </ul>
<b>Innocent Misrepresentation</b>	A false statement made by someone who does not realize is false. The deceived person may repudiate contract within in reasonable time and may be entitled to damages.
<b>Intent</b>	Both parties must agree to the terms of the contract and intend to enter into the contract.
<b>Intentional Torts</b>	Include defamation (libel and slander – written and verbal statements that damage the reputation of another), nuisance (interference with another’s enjoyment of their property), and occupier’s liability (the owner of a property is liable for injury suffered to visitors).

<b>Joint Venture</b>	A commercial arrangement carried on jointly by and for the benefit of the participants. It can take the form of co-ownership of property, a partnership, a limited partnership or a corporation.
<b>Lawful Purpose</b>	
<b>Legislation</b>	Statutes passed by legislative bodies such as Parliament. Statues have precedence over common law.
<b>Legislative Authority</b>	Divided between federal and provincial legislatures. Each legislature may only pass laws over specified areas. For example, the Criminal Code and the Income Tax Act are federal statutes, while the Professional Engineers Act and the Employment Standards Act are Ontario provincial statutes.
<b>Limited Partnership</b>	In a limited partnership, the liability of the “general” partners is unlimited, while the liability of the “limited” partners is limited to the amount which that partner contributed to the partnership.
<b>Liquidated Damages (Penalty)</b>	penalty refer to a requirement in a contract that one party pay damages to the other in the event of a breach of the contract, for example if the contract is not finished on time. The damages must be reasonably estimated otherwise a court may not uphold the liquidated damages clause.
<b>Negligence</b>	An act or omission in the carrying out of the work of a practitioner that constitutes a failure to maintain the standards that a reasonable and prudent practitioner would maintain in the circumstances.
<b>Non-Governmental Organizations</b>	An organization that is neither a part of a government nor a conventional for-profit business. Usually set up by ordinary citizens, NGOs may be funded by governments, foundations, businesses, or private persons.
<b>Non-Profit Organizations</b>	Describes social clubs, professional groups, recreational & sporting clubs, fraternal organizations and trade groups. Profit is used to further achieve its purpose or mission, rather than being distributed to directors as income.

<p><b>Offer and Acceptance</b></p>	<p>In order to be a valid contract, there must be an offer and an acceptance of that offer. The offer is a promise made by one party to another. The offer may be withdrawn before acceptance (unless wording of the offer says otherwise). Unless the wording of the offer says otherwise, an offer will lapse after a reasonable amount of time. Acceptance of an offer must be communicated to the offeror, otherwise the offer can be withdrawn (revoked). An offer is accepted when the acceptance is received or mailed (Postal Rule). Revocation or withdrawal of an offer is effective when the revocation is received.</p>
<p><b>Ontario Court of Appeal</b></p>	<p>Where an appeal of Superior Court decisions are made. An appeal from a Court of Appeal Decision is made to the Supreme Court of Canada.</p>
<p><b>Partnership</b></p>	<p>A relationship in which two or more persons (whether individuals or corporations) carry on business together with a view to making a profit. Similar to a sole proprietorship, the partners carry on business themselves directly; the partnership is not a legal entity separate from its partners. A partnership agreement establishes the terms of the business and protects the partners in the event of disagreement or dissolution of the business. In Ontario, a partnership must be registered with the Ministry of Government Services.</p>
<p><b>Plaintiff</b></p>	<p>A person who brings a case against another in a court of law.</p>
<p><b>Principles of Tort Law</b></p>	<p>The test to determine whether or not a defendant is liable in tort depends on three conditions:</p> <ul style="list-style-type: none"> <li>- The defendant owed the plaintiff a duty of care</li> <li>- The defendant breached that duty by his or her conduct, and</li> <li>- The defendant's conduct caused the injury to the plaintiff.</li> </ul>
<p><b>Product Liability</b></p>	
<p><b>Public</b></p>	<p>The public is anyone other than a professional engineer or a professional engineer's employer. A professional engineer is <b>providing professional engineering services to the public</b> when the work is done for the benefit of an individual, corporation, government or other entity that is not the engineer's employer.</p>
<p><b>Pursuant</b></p>	<p>In accordance with (a law or a legal document or resolution).</p>

<b>Regulations</b>	<p>Rules that clarify the Act. The Act has two regulations:  Regulation 941/90 covers administrative requirements and professional conduct of engineers, including the following:</p> <ul style="list-style-type: none"> <li>• Prescribes the process to be followed when electing professional engineers to Council</li> <li>• Prescribes a Code of Ethics</li> <li>• Defines negligence and professional misconduct</li> <li>• Addresses the requirement for professional engineers to report unsafe situations and unethical practices, and</li> <li>• States that all professional engineers shall have a seal and describes its use.</li> </ul>
<b>Repudiation</b>	<p>When one party indicates that it has no intention of performing its contractual obligations, it is said to have “repudiated” the contract. The intention to repudiate can be communicated in writing, verbally or by conduct. The innocent party can either ignore the breach or take the position that the contract has been discharged by repudiation and claim damages.</p>
<b>Secret Commission</b>	<p>a bribe or kickback. Under the Criminal Code a conviction for taking a secret commission may result in imprisonment.</p>
<b>Shareholder</b>	<p>The Owners of the corporation. Shareholders do not own the assets of the corporation; they own shares in the corporation. The corporation owns its own assets. The shareholders do not run the corporation. The shareholders elect the directors of the corporation and the directors run the corporation.</p>
<b>Small Claims Court</b>	<p>Deals with matters under \$25,000</p>
<b>Sole Proprietorship</b>	<p>The <b>simplest way to carry on business</b>. A sole proprietorship exists when an individual carries on business for his or her own benefit without using any other form of business organization or involving any other individuals other than as employees. There are no set-up fees and no separate income reporting requirements for sole proprietorships. The owner or proprietor is fully liable for all of the debts and obligations of the business, and declares the business income or losses on his or her personal income tax. In Ontario, when a sole proprietor carries on business under a name other than their own, they must register the name with the Ontario Ministry of Government Services.</p>
<b>Superior Court of Justice</b>	<p>Deals with matters over \$25,000</p>

<b>Tort</b>	A private or civil wrong or injury involving negligence that may arise independently of contract. The wrongdoer (the party causing the injury) is called the tortfeasor. Where there is more than one wrongdoer, they are called concurrent tortfeasors. Purpose of tort law is to compensate the injured party, not to punish the tortfeasor (wrongdoer).
<b>Tort Law</b>	The law related to a wrong or injury done by one person to another. It is the basis for lawsuits for personal injury, financial loss, defamation of character, etc.
<b>Undue Influence</b>	Occurs where one party dominates the free will of another to coerce them into an unfair agreement. Under these circumstances, the dominated party is entitled to be relieved of their contractual obligations.
<b>Unilateral Mistake</b>	When unilateral mistake (a mistake by one party) has been made, the courts considered the situation in a number of decisions where there is an error in a bid submitted for a construction project.
<b>Unintentional Torts (as Negligence)</b>	Where one party causes damage to another by negligent actions, such as injury from an automobile accident and injury or economic loss from the negligent performance of professional services.