

COLLATERAL CONTRACTS

OUTLINE EXPLANATION

A promise which is not a term of the principal contract, could possibly be enforced as a collateral contract. Collateral means “by the side of”. This was an important innovation used to evade:

- (a) the parol evidence rule (e.g., *City & Westminster Properties v Mudd* [1959] Ch 129);
- (b) the formerly limited remedies for misrepresentation (e.g., *Esso Petroleum v Mardon* [1976] QB 801); and
- (c) privity of contract (e.g. *Shanklin Pier v Detel Products* [1951] 2 KB 854).

The concept of a collateral contract was clearly illustrated by Lord Moulton in *Heilbut, Symons & Co v Buckleton* [1913] AC 30:

‘It is evident, both on principle and on authority, that there may be a contract the consideration for which is the making of some other contract. “If you will make such and such a contract, I will give you one hundred pounds,” is in every sense of the word a complete legal contract. It is collateral to the main contract, but each has an independent existence, and they do not differ in respect of their possessing to the full the character and status of a contract.’

In *Evans v Andrea Merzario* [1976] 1 WLR 1078, Lord Denning MR, while explaining the use for a collateral contract after the Misrepresentation Act 1967 (which does not apply in respect of promises as to the future), stated:

‘When a person gives a promise or an assurance to another, intending that he should act on it by entering into a contract, and he does act on it by entering into the contract, we hold that it is binding ...

... The cases are numerous in which oral promises have been held binding in spite of written exempting conditions.’