



## 5 matters that affect the validity of a construction contract

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The following matters if proven will render a construction contract invalid:

### Error

This occurs where the contract says one thing, but one or both parties thought it said another. An error may take the form of a common error where parties have made the same mistake about an essential of the contract.

However, where the error is unilateral having been made by one party to the contract then the contract is voidable only if such error was either induced by the other party or the other party knew the true state of affairs and deliberately took advantage of the error.

### Misrepresentation

Where a misrepresentation by the employer or his agent induces the contractor to enter into the contract, the contractor will be entitled to avoid the contract,

provided the misrepresentation relates to the essentials. The contractor must prove that he was induced to enter into the contract by the misrepresentation. However, if the contractor proceeds to carry out the contract after he has become aware of the misrepresentation, he will be barred from seeking recourse.

### Illegality

This affects the validity of a contract if, at the time of entering into the contract, it is illegal to do so, or to perform it, or it was entered into for an illegal purpose. This applies to contracts the execution of which must contravene statutory requirements such as a contract to build a building higher than the height permitted by law.

### Uncertainty

In principle, a building contract will be unenforceable if it is too uncertain. For instance, if the works to be done are insufficiently specified or if the contract refers to plans which do not exist. Uncertainty may also arise from contract documents being fundamentally inconsistent or if the words used are so ambiguous as to render interpretation impossible.

### Where parties are at cross purpose

This occurs if the parties are at cross purposes about the essentials of the contract rather than in consensus. This is the case where there are two incompatible definitions of the works. For example, if one party undertakes to supply equipment, and the other party believed he was undertaking for performance of construction work, there is no contract between them.

At AIP Advocates, we have lawyers who will guide you on legal matters arising from construction contracts while ensuring your interests are protected.

Do reach out to us on the contacts below for assistance:

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