L'Estrange v F Graucob Ltd [1934] 2 KB 394 – p384

Facts

- Woman bought a cigarette vending machine
- Signed a order form without reading
- Order contained an exclusionary clause which said that L'Estrange couldn't rely on an implied warranty
- The machine turned out to be defective – before consumer protection legislation

Appeal from the County Court

Not a tickets case – distinguished

Issue: did the clause form part of the contract?

RATIO: as long as contractual terms are signed in the 'absence of fraud, or… misrepresentation… it is wholly immaterial whether [s]he has read the document or not' – Scrutton LJ [402]

Toll (FGCT) Pty Ltd v Alphapharm Pty ltd (2004) 219 CLR 265 – p386

Facts

- 'Conditions of contract' said to contain overleaf but nothing attached
- The term set out in the back included a term which exempted F from liability for loss and a clause whereby RT agreed to indemnify for loss/liability of others

Appeal from the Supreme Court of NSW

Issue: what were the terms on which the contract was made? What was the nature of the legal relation created?

RATIO 1: 'The uncritical reception of inadmissible evidence, often in written from and prepared in advance if the hearing is strongly discouraged' [178]

Gardiner-Garden chose NOT to read the conditions before he signed – no mistake [179]

'What matters is what each party by words and conduct would have led a reasonable person in the position of the other party to believe.' – not the subjective beliefs and understandings of the parties [179]

- **RATIO 2:** References to common intentions of the parties must be understood as referring to the what a reasonable person would understand by the language in which the parties have expressed their agreement
    - Requires consideration of text… surrounding circumstances known to the parties, and the purpose and object of the transaction' [179]

Signing a contract a representation that read and approved the content or willing to be bound [181]

RATIO 3: Where there is no question of 'misrepresentation, duress, mistake or any other vitiating elements' there is no need for the other party to show that due notice was given of the contracts terms [184]

Curtis v Chemical Cleaning & Dyeing [1951] 1 KB 805 – p395

Appeal from Judge Blagden, sitting at Westminster County Court

Sufficient misrepresentation: any behaviour, by words or conduct, which misleads the other party about the existence or extent of the exemption – conveys a false impression [808]

- Knowingly – fraudulent misrepresentation [809]
- Unwittingly – innocent misrepresentation [809]

Either fraudulent or innocent is enough to deprive the creator of the benefit of the exemption
Obiter: if the assistant hadn't said ANYTHING then the document would simply be a voucher for the customer to produce when collecting the dress – it would not entitle the cleaners the benefit of the exception [809]
RATIO: 'if a party wishes to exempt himself from a liability which the common law imposes on him, he can only do it by an express stipulation brought home to the party affected, and assented to by him as part of the contract'

Oceanic Sun Line Special Shipping Company Inc v Fay (1988) 165 CLR 197 – p397
Appeal from the Supreme Court of NSW
RATIO 1: defendant given NO RIGHT to introduce new terms by printing them on the ticket
The ticket was a voucher/certificate of entitlement to be carried on terms already agreed – not terms that have yet to be agreed upon

- It's too late to incorporate the new terms to a contract already made

RATIO 2: If an exemption clause is contained within another document, yet the other party is not in fact aware when the contract is made that an exemption clause is intended to be a term of the contact, the carrier cannot rely on the clause unless they 'have done all that was reasonably necessary to bring the exemption clause to the passenger's notice' [229]

Thornton v Shoe Lane Parking Ltd [1971] 2 QB 163 – p400
Appeal from Mocatta J
RATIO: Customer not bound by the terms in a ticket issued by an automated machine because they come too late – the contract has already been made
Importance of the fact that the ticket was issued by an automated machine – distinguished from other ticket cases

- No chance for the customer to reject the offer

JJ Savage & Sons Pty Ltd v Blakney (1970) 119 CLR 435 – p429
Facts

- Boat bought by Blakney from JJS
- Prior to buying the boat B asked the manager of JJS for written information about the various engines

The statement made by the Manager was held to be an opinion (an expert opinion) and not sufficiently promissory in nature
3 categories of statements made during negotiations

- Required that what was said in the statement be included in the contract as a condition – not a collateral warranty
- Sought from the other party a promise – however expresses, whether as an assurance, guarantee, promise or otherwise – that the statement would be true as a prerequisite of him entering into the contract – gives rise to a collateral warranty

- Be content to form their own judgement relying upon the opinion of the other party, finding their reputation and expertise a high regard

Oscar Chess Ltd v Williams [1957] 1 WLR 370 – p431
'The intention of the parties can only be deduced from the totality of the evidence.' – ie. objective test of intent

- If an 'intelligent bystander' would reasonably infer that a warranty was intended, then it will suffice

OC could sue the person who originally registered the car

State Rail Authority of NSW v Heath Outdoor Pty Ltd (1976) 7 NSWLR 170 – p414
Facts

- HO knew that it was a standard contract and that Mr Giles couldn't change it
    - Still chose to sign the contract, thereby effectively accepting Clause 6

Clause 6: Exclusion of liability clause which allowed the State Authority to an 'unfettered right to terminate the contract' [192]
RATIO 1: The parol evidence rule has no operation until 'it is first determined that the terms of the agreement are wholly contained in writing.' [191]
RATIO 2: A written contract is nothing more than an 'evidentiary foundation' for the conclusion that an agreement is wholly in writing [191]
RATIO 3: The main contract can be consideration for a collateral contract only when the terms of the collateral contract do not reduce or alter the rights created by the main contract [192]

Equuscorp Pty Ltd v Glengallan Investments Pty Ltd [2004] HCA 55; (2004) 218 CLR 471 – p428
Facts

- Investors in a limited liability scheme

The oral agreement alleged by the investors contradicted the written terms
Parties that execute a written document are bound by it, unless:

- The parol evidence rule applies
- The limited operation of the defence of *non est factum* (signed by mistake) applies; or
- The equitable remedy of rectification applies [483]

If an (alleged) earlier oral contract contradicts the written document then the earlier consensus is 'discharged' and the agreement recorded in writing is executed [484]

Hoyt's Pty Ltd v Spencer (1919) 27 CLR 133 – p419
Fact

- A clause in the contract allowed the landlord to end the lease whenever they wanted if they gave enough notice
- The tenant alleged that in consideration for taking the lease the landlord promised that he wouldn't terminate the lease before the end – alleging a collateral contract

RATIO 1: the collateral contract cannot alter the contractual relations established by the main contract [146] – the collateral contract cannot infringe on the main contract

Trial judge Ferguson J (dissented) – the parties have the right to make any contract (as long as they are not breaking the law)

Branir Pty Ltd v Owston Nominees (No 2) Pty Ltd (2001) 117 FCR 424 – p17 (SM)
Unnecessary to consider express entire agreement clauses in matters of estoppel

- But even when considered doesn't matter – estoppel wins

RATIO: express entire agreement clauses themselves 'gives rise to an estoppel by convention which excludes any antecedent evidence which might otherwise have had an effect' except in the case of fraud

Manning Motel Pty Limited v DH MB Pty Limited [2013] NSWSC 1582 – p20 (SM)
RATIO: 'No logical necessity for a third party collateral contract to be consistent with a principal contract with a stranger to it

Codelfa Construction Pty Ltd v State Rail Authority of New South Wales (1982) 149 CLR 337 – p519
Mason J

- Parol Evidence Rule
    - The 'broad purpose' of the parol evidence rule is to exclude extrinsic evidence (except as to surrounding circumstances), including direct statements of intention (except in cases of latent ambiguity) antecedent negotiations, to subtract from, add to, vary or contradict the language of a written instrument (*Goss v Lord Nugent*) – at 347
    - 'True rule' – extrinsic evidence cannot be admitted until there is ambiguity (gateway requirement)
    - Extrinsic evidence is admissible 'if the language is ambiguous or susceptible of more than one meaning. But it is not admissible to contract the language of the contract when it has a plain meaning.'
    - 'Obviously the prior negotiations will tend to establish objective background facts which were known to both parties and the subject matter of the contract. To the extent to which they have this tendency they are admissible.' – at 352
- Implied Term
    - Interpretation is an 'exercise in interpretation' – just not an 'orthodox' one – at 345
    - An implied term is 'not a term that they [the parties] have actually agreed upon… [it] gives effect to their presumed intention.' – at 346
    - Can't just be 'reasonable' for the term to be implied, it must be 'clearly necessary' – at 346
        - The implied term cannot go against express terms
    - 'The actual intention of the parties cannot constitute the basis of an implied term' – at 353
    - To say that something 'was a matter of common contemplation between the parties is not enough in itself to justify the implication of a term.' – at 354