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## I. Topic 1 – Express Terms, Construction & Implied Terms

### Express terms: Chapter 12

#### Written terms and signature

<i>L'Estrange v Graucob</i> [1934] 2 KB 394 [pp290-91 text]	<ul style="list-style-type: none"> <li>- When a written contract is signed, the person signing is bound by any conditions regardless of whether they have read them or not (<i>L'Estrange v Graucob</i> Rule)</li> <li>- <b>Exceptions:</b> when signature induced by misrepresentation or fraud or is on a non-contractual document</li> </ul>
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#### Misrepresentation: (non est factum)

<i>Curtis v Chemical Cleaning and Dyeing Co</i> [1951] 1 KB 805 [pp291-92 text]	<ul style="list-style-type: none"> <li>- Shop assistant in dry cleaner asked customer (Curtis) to sign docket when leaving wedding dress</li> <li>- When Curtis asked why they needed to sign the document, she was told that it was because they would be no liability for damages to the beads and sequins on the dress</li> <li>- The clause excluded liability for all damages</li> <li>- When the dress was damaged and Curtis sought damages the company attempted to rely on the clause excluding all liability</li> </ul> <p><b>Court Held:</b></p> <ul style="list-style-type: none"> <li>- The defendant could not rely on the exclusion clause because the breadth of it had been misrepresented to the Plaintiff</li> </ul>
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#### Non-Contractual Documents and Unusual Terms:

<i>Toll (FGCT) Pty Ltd v Alphapharm Pty Ltd</i> (2004) 219 CLR 165 [p292 text]	<ul style="list-style-type: none"> <li>- Alphapharm claimed that the exclusion clause was not contained in a contractual document (the credit form) and that the term was relating to transport therefore it was an unusual term to include in a credit application</li> </ul> <p><b>Court held:</b></p> <p><u>Unusual Terms</u></p> <ul style="list-style-type: none"> <li>- The document invited the person who was signing to read the terms and conditions = sufficient notice</li> <li>- The term was not unusual – provide for basis of ongoing agreement for transport so necessary to include all terms</li> <li>- Any exception to the default signature rule would have to involve some level of concealment of the unusual term</li> </ul> <p><u>Non-Contractual document</u></p> <ul style="list-style-type: none"> <li>- Contractual effect of signature will be negated when one party were to mislead the other of the significance of signing</li> </ul>
<i>Curtis v Chemical Cleaning and Dyeing Co</i> [1951] 1 KB 805 [p293 text]	<p>Non-contractual document</p> <ul style="list-style-type: none"> <li>- Even if the assistant did not misrepresent the extent of the exclusion clause Curtis may have only understood the document to be a receipt to be presented when collecting the dress and NOT a contract containing terms and conditions</li> </ul>

## Incorporation of Terms by Notice

Where contracts are not concluded in writing a party may incorporate terms by notice, for terms to be incorporated this way there are three requirements

1. The terms are made available before the contract is formed
2. The party to be bound must have actual knowledge or have been given reasonable notice
3. Where the terms are unusual or unexpected the other party must make extra efforts in giving notice of those specific terms

### Timing:

<i>Oceanic Sun Line Special Shipping v Fay</i> (1988) 165 CLR 197 [pp295-96 text]	<ul style="list-style-type: none"> <li>- Customer purchased ticket on a cruise of the Greek islands in NSW and was given an exchange note to exchange for the ticket on arrival in Greece, the passenger was injured during the cruise due to the negligence of the cruise company</li> <li>- The ticket contained a clause that the exclusive jurisdiction was to be the courts of Greece</li> </ul> <p><b>Court held:</b></p> <ul style="list-style-type: none"> <li>- Contract was made a time exchange note was handed over when the cruise was booked, therefore any conditions could not be added to the contract by the ticket</li> </ul>
<i>eBay International AG v Creative Festival Entertainment Pty Ltd</i> (2006) 170 FCR 450 [p296 text]	<ul style="list-style-type: none"> <li>- Term contained on festival ticket not included on Ticketmaster website at time of purchase by customers</li> <li>- Because purchase of ticket is contract formation the term cannot be incorporated</li> </ul>

### Knowledge:

A person who knows that a display or delivered document contains contractual terms will be bound by those terms even if they have not read them [p296 12.45 text]

### Notice:

Contractual document:	<ul style="list-style-type: none"> <li>- If a party receives a document that they should reasonably know is a contractual document, they will be bound by any conditions contained in that document</li> </ul>
Example:	
<i>Parker v South Eastern Railway</i> (1877) 2 CPD 416 [p296 12.55 text]	<ul style="list-style-type: none"> <li>- Reasonably expected that a person should know what a Bill of lading is, absurd to think that every time a person delivers a bill of lading they should explain its contents</li> <li>- A person who has no knowledge of this must bear the consequences of his own exceptional ignorance</li> </ul>
Non-contractual document:	<ul style="list-style-type: none"> <li>- Must take reasonable steps to bring those terms to the notice of the party to be bound</li> </ul>
Example:	
<i>Causer v Brown</i> [1952] VLR 1 [p297 text]	<ul style="list-style-type: none"> <li>- Damage to dress by dry cleaner, they sought to rely on exclusion clause contained on the docket given to the customer</li> </ul> <p><b>Court held:</b></p> <ul style="list-style-type: none"> <li>- One would reasonably expect that the docket was to be produced upon collection of the goods and not understood to contain conditions exempting the dry cleaner from their common-law liability</li> </ul>