

## CONTRACTS

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## IDENTIFYING TERMS OF THE CONTRACT

### Legal effect of a signature

General rule: a party will be bound by the terms contained in a contractual document which she/he has signed, whether or not she/he has read the document - *L'Estrange v Graucob* [1934] 2 KB 294

- An order form is a contractual document
- Contract of sale – presumption that parties intended the document contain terms of their contract
- *Toll (FGCT) Pty Ltd v Alphapharm Pty Ltd* [2004] HCA 52 – Signature treated as a manifestation of assent to the conditions that the other party had been invited to read (even if he did not do so) or are clearly displayed (max. notice) before signing.
- Principle of objectivity by which the rights and liabilities of the parties to a contract are determined - *Pacific Carriers v BNP Paribas* (2004) 218 CLR 451
  - What each party by words and conduct would have led a reasonable person in the position of the other party to believe
- A man cannot escape the consequences of signing a document by saying and proving that he did not understand it - *Wilton v Farnworth* (1948) 76 CLR 646

Exception to general rule:

- where the signature was induced by misrepresentation or fraud or in some cases of mistake.
- where the document cannot reasonably be considered a contractual document.
- *Curtis v Chemical Cleaning & Dyeing Co* [1951] 1 KB 805 - Exemption clauses for liability can only be implemented by an express stipulation brought to the party affected and assented to as part of the contract
  - Any behaviour by words or conduct is sufficient to be a misrep if it misleads the other party about the existence or extent of the exemption (this case: told liability was exempt for specified risks but actually stated no liability for 'any damage' whatsoever).

### Incorporation of Terms by Notice

One party may allege that the contract contains terms that were not there before or at the time of the transaction - whether or not the other party will be bound depends on whether:

1. Timing - The terms were available to the party to be bound by those terms before the contract was made and (*Oceanic Sun Line Special Shipping Company v Fay* (1988) 165 CLR 197)
2. Knowledge or notice - Reasonable steps were taken to bring the terms to the notice of the party to be bound (*Thornton v Shoe Lane Parking* [1971] 2 QB 163)
  - or common/standard contractual document for the circumstances (*Parker v South Eastern Railway Co* (1877) 2 CPD 416)
    - Unusual terms - Where terms sought to be incorporated into the contract are unusual or unexpected in the context of the transaction, the party seeking to incorporate those terms must make extra efforts in giving notice of those terms (*Baltic Shipping Co v Dillon (The Mikhail Lermontov)* (1991) 22 NSWLR 1)

Incorporation by a course of dealings - Where parties have had a history of dealings, contractual terms introduced in earlier contracts may be incorporated into a subsequent contract

- The party to be bound has, by continuing to deal with the party seeking to impose contractual terms, evidenced a willingness to be bound by the terms. (*Balmain New Ferry v Robertson* (1906) 4 CLR 379)
- Requirement for regularity and uniformity and document relied upon in previous transactions must also reasonably be considered a contractual document rather than the appearance of a receipt or docket (*Rinaldi & Patroni v Precision Mouldings* (1986) WAR 131)

Statements made during negotiations - if a statement made during negotiation of a contract proves false, the party to whom it was made may seek some kind of legal remedy.

Subject to:

- Entire agreement clauses - parties may expressly clarify their intention for a contract to be wholly in writing – i.e. the written contract contains the entire agreement of the parties