

LAWS1075:
CONTRACTS FINAL NOTES

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Contract Exam Quick Guide

Identifying express terms

1. A party will be bound by the terms of a contract they have signed, whether or not they have read the document; *L'Estrange v Graucob*
2. Only for unusual or exclusion clauses does one party have to do what is reasonably sufficient to give notice of the terms to the other party; *Toll (FGCT) v Alphapharm*
3. A party is not bound by the terms of a document which they have signed where their signature was induced by misrepresentation, fraud, mistake, the document isn't a contractual document; *Curtis v Chemical Cleaning & Dyeing Co*
4. For delivered or displayed terms to form part of a contract, they must be:
 - a. made available to the party to be bound at a time before the contract was made; *Oceanic Sun Line Speal Shipping Company v Fay* AND
 - b. they have reasonable notice of the terms (depending on the type, nature and circumstances of the contract) *Thornton v Shoe Lane Parking*
5. When parties have a history of dealings, contractual terms introduced in earlier contracts may be incorporated into subsequent contracts; *Balmain New Ferry v Robertson*

Parol Evidence Rule

1. When 2 parties have expressed a contract in writing to which they assent as a complete and accurate integration of the contract, evidence of earlier negotiations is not admitted. Firstly, the existence of writing which appears to represent a written contract is an evidentiary foundation for a conclusion that the agreement is wholly in writing. The parol evidence rule does not apply when deciding whether the contract is wholly in writing. If the plaintiff claims that the agreement is partly oral, the court will examine the extrinsic evidence; *State Rail Authority of NSW v Heath Outdoor*
2. Collateral contracts are an exception to the parol evidence rule (when one party makes a promise connected to but independent of the main contract – as consideration for that promise, the other party agrees to enter into the main contract); *Heilbut Symons & Co v Buckleton*
3. It is harder to prove a collateral contract when the subject matter is the same/ it is something you expect to find in the main contract; *Hoyt's v Spencer*
4. An oral statement is a term of the contract when it is 'promissory' and objectively intended to be part of their contractual agreement. Relevant factors include the significance of a written contract, language used, relevant expertise of the parties, the importance of the statement, the timing of the statement and the form of the written contract; *JJ Savage & Sons v Blakney*

Construction

- Parol evidence rule restricts extrinsic evidence – meaning of the terms of the contract will be ascertained from the words the parties have used
- Evidence of surrounding circumstances is admissible to assist the interpretation of the contract if the language is ambiguous or susceptible to more than one meaning; *Codelfa Construction Pty Ltd v State Rail Authority of NSW*
- Courts consider the meaning that a reasonable person would give to the contract; *Pacific Carriers v BNP Paribas*
- Exclusion clauses are to be interpreted according to its natural and ordinary meaning, read in light of the contract as a whole. It may be interpreted against the interest of the party trying to rely on it; *Darlington Futures v Delco Aust*

Implied Terms

1. To imply terms by fact, it must be:
 - a. reasonable and equitable
 - b. necessary to give business efficacy
 - c. so obvious that it goes without saying
 - d. capable of clear expression
 - e. not contradict any express terms; *BP Refinery*
2. Terms implied by law; *ACL*
3. To imply terms by custom:
 - a. It need not be universally accepted, but there must be evidence that the custom is so well-known and acquiesced in that everyone making a contract in that situation can reasonably be presumed to have imported that term into the contract.
 - b. A term will not be implied into a contract on the basis of custom where it is contrary to the express terms
 - c. A person may be bound by a custom notwithstanding the fact that they had no knowledge of it; *Con-Stan Industries of Aust Pty Ltd v Norwich Winterthur Ins (Aust) Ltd*

Misrepresentation

1. A misrepresentation must be:
 - a. A statement of existing or past fact
 - b. Statements of opinion can involve statements of fact if facts are not equally known to both sides and one uses facts to justify their opinion; *Smith v Land & Housing Property Corp*
 - c. A positive misrepresentation (not silence)
 - d. However, there is a duty of disclosure to correct oneself; *Davies v London & Provincial Marine Insurance Co*
 - e. Representee must 'rely' on misrepresentation, must show the causal link between misrepresentation and entering the contract

Rescission

1. Rescission/ setting aside the contract is available for mistaken, misrepresentation, duress, undue influence, unconscionable dealing
2. Rescission is available where it is possible to precisely restore parties to their original position, or substantial rescission is possible; *Alati v Kruger*
3. Monetary compensation available when you cannot return goods (destroyed); *Brown v Smitt*
4. Cannot get rescission for innocent misrepresentations; *Watt v Westhoven*
5. Affirmed contract cannot be rescinded; *Coastal Estates v Melevende*

(Continued in full version)

1 Identifying the express terms

1.1 Terms and the communications of the parties

- The terms of a contract determine what the parties have agreed to do by way of performance of their contract so they must be identified/interpreted by a court
- Straightforward – where terms are contained in a written and signed contractual document
- Can also be found in unsigned documents, signs, notices, web pages, hypertext links, emails or statements made during negotiations
- Courts seek to give effect to the intentions of the parties
- Contract law generally favours an objective approach in assessment the parties' intentions – the intention which reasonable persons would have had if placed in the situation of the parties

1.2 Written terms and the effect of signature

A party will be bound by the terms contained in a contractual document which she or he has signed, whether or not she or he has read the document

L'Estrange v Graucob

Material Facts: The plaintiff was buying a cigarette vending machine from the Defendant and signed a form titled 'sales agreement', filled in by the defendant's salesperson containing the terms of sale. The machine did not work when delivered. A clause read 'the agreement contains all the terms and conditions under which I agree to purchase the machine and any express or implied condition, statement or warranty not stated is hereby excluded'

Legal Issue: Whether there was an implied warranty (and whether it was breached) that the machine was reasonably fit for purposes which it was required?

Ratio: Signing a document means a party is legally bound because it represents the party's examination and agreement to the document and it is immaterial whether or not they have signed. It is proof of assent, even if you didn't examine it – when you signed you said whether read or unread I agree to the terms – take a chance. Protecting the integrity of contracts – contracts could be relied upon (floodgates; I didn't sign with intention, I was encouraged, wasn't properly explained). Therefore, as the clause specifies that there are no further terms except for what is written, there is no warranty clause.

Commentary: Does this facilitate unfair contracts? Can slip in terms that no one can understand?
SM enterprises – don't have resourcing of large multinationals

Toll (FGCT) v Alphapharm

Material Facts: the respondent was a sub-distributor of a flu vaccine and had a contract with a carrier, the appellant. The appellant was to collect, deliver and store from various places. The appellant gave a cover letter with a quote, also stating its services are subject to the conditions on the other side of the consignment note, there was no consignment note. A representative of the distributor signed a credit application form which included conditions of contract (having not read the conditions)
Clause 5: customer entered contract on its own behalf and as an agent for its associates
Clause 6: the respondent would not be held responsible for loss or damage to the goods
During transportation, the vaccine was frozen and rendered valueless.
Letter of credit – application to the bank to provide funding
The document referred to the letter of credit

Legal Issue: Whether the conditions attached to the application of credit were part of the contract because they were not read? Whether a person who signs a contractual document without reading it is bound by its terms if the other party has done what is reasonably sufficient to give notice of those terms?

Ratio: A signature has a legal effect of reading and accepting a contract, regardless of whether the party actually did so. This commitment enables 3rd parties to assume the legal efficacy of the instrument. Only

for unusual or exclusion clauses is the rule ‘a person who signs a contractual document without reading it is bound by its terms only if the other party has done what is reasonably sufficient to give notice of those terms’. Also in this case, the appellant could not have done more to give notice of the terms than by asking the respondent to sign a document below a request that he read the conditions before signing. Opportunity to be aware.

- Documents of contract = compendium of other documents (letter of credit) forming the corpus of the contract.
- Germination of a course of conduct – but for the signature I would not have done this act
- Notice to 3rd parties – banks, insurance
- If you have actual knowledge (or reasonable inference that you have opportunity for actual knowledge) it eliminates the necessity for the other party to give notice.

1.3 Circumstances in which the effect of signature may be avoided

A party is not bound by the terms of a document which he or she has signed where the signature was induced by misrepresentation, fraud or some cases of mistake because the document cannot reasonably be considered a contractual document (e.g. another function like receipt)

Curtis v Chemical Cleaning & Dyeing Co

Material Facts: After cleaning a dress, the defendant asked the plaintiff to sign a receipt, when asked why she needed to sign, the defendant told her that he wanted to exclude liability for damages for beads and sequins. Actually, the document included a wider exclusion that the company was not liable for any damage whatsoever. The dress returned with unexplainable stains.

Legal Issue: Whether the plaintiff was bound by the terms which she signed on? Or whether the effect of a signature could be avoided because it was procured by mistake?

Ratio:

- The effect of a signature is that if a party signs a written document known to be a contract which governs the relations between them, their signature is evident of their assent to the whole contract, including exempting clauses, unless the signature is shown to be obtained by fraud or misrepresentation.
- Misrepresentation is behavior which misleads the other party about the existence or extent of the exemption.
- If it conveys a false impression that is created knowingly, it is fraudulent, if it is created unwittingly it is an innocent representation – but either is sufficient to dis-entitle the creator of it the benefit of the exemption.
- Receipt = voucher rather than contractual, document evidencing possession

Commentary

No signature

- Online
- Multiple signatures
- Duress, unconscionable behavior
- Signatures cease to be valid tenure
- Tap and go