
LAWS1075 CONTRACTS NOTES

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CONTRACTS NOTES

IDENTIFYING THE EXPRESS TERMS

WRITTEN TERMS AND SIGNATURE

TERMS AND THE COMMUNICATION OF THE PARTIES

- In significant transactions → a written document stipulating the terms of the agreement is signed by both parties after negotiation of terms
- In other transactions that do not require written terms (by statute) → express terms may be found in any of the **communications** through which the contract was made
 - E.g. email, letters etc.
- Possible to have a contract that is partially oral and partially written → terms are as in the formal written contract
- Identifying terms of a contract
 - **Significance of a signed contractual document**
 - **Possibility of terms being incorporated into a contract through notice**
 - **The incorporation of terms through a course of dealings made during negotiations**
- Process of identifying the terms seeks to distinguish contractual terms from mere statements of opinion or negotiations
 - To give effect to the intentions of the parties

WRITTEN TERMS AND THE EFFECT OF SIGNATURE

L'Estrange v Graucob

"Person who signs a contractual document will be bound by the terms in that document regardless of whether he or she has read or understood those terms"

Facts:

- Plaintiff purchased a cigarette machine from the defendant and signed a "sales agreement"
- Machine was defective → claimed there was an implied warranty that the machine was reasonably fit for the purposes for which it was required

Judgment:

- Issue: "whether that clause formed part of the contract, and if it did, it clearly excluded any condition or warranty."
- "The plaintiff, having put her signature to the document and not having been induced to do so by any fraud or misrepresentation, cannot be heard to say that she is not bound by the terms of the document because she has not read them"
 - In **ticket cases** (which this is not) → necessary to prove the alleged party was aware or ought to have been aware of the terms and conditions
- Where a document is signed it is immaterial whether they have read the document
- Formal contract – presumption that parties intended to contain the terms
 - Signature for order = confirmation/conclusion of contract
- Appeal allowed (for defendant)

Contracts Summary

Identifying terms

- Significance of a signed contractual document
- Possibility of terms being incorporated into a contract though notice
- The incorporation of terms through a course of dealings made during negotiations

Effect of Signature

- **L'Estrange v Graucob**
 - "Person who signs a contractual document will be bound by the terms in that document regardless of whether he or she has read or understood those terms"
- **Toll (FGCT) Pty Ltd v Alphapharm**
 - Only bound if the other party has done what is reasonable necessary to give notice
- **Misrepresentation of terms – Curtis v Chemical Cleaning and Dyeing Co**
 - Where behaviour = misleads a party about the existence/extent of the exemption

Incorporation of terms from notice

- Whether the displayed or delivered terms were made available to the party to be bound by those terms before the contract was formed
- Whether reasonable steps were taken to bring those terms to the notice of the party to be bound
- **Ocean Sun Line Special Shipping v Fay**
 - Terms must be available in a timely manner before the contract is made

Knowledge or notice → ACTUAL KNOWLEDGE

- **Reasonable notice of contractual documents → Parker v South Eastern Railway Co**
 - Document = Reasonable person would expect to contain terms
 - (mere presentation = sufficient)
- **Non-contractual documents → Causer v Brown – dress case**
 - Where terms are not in an obvious/well-understood contractual document
 - Must take reasonable steps to bring those terms to the notice of the party to be bound
- **Reasonable notice → Interfoto Picture Library v Stiletto Visual Programs**
 - Consider: nature of the transaction, character of the parties to it → what notice is given
- **Thornton v Shoe Lane Parking**
 - Circumstances → availability etc. (case of parking conditions not visible from entrance)
- **Terms not readily available → Baltic Shipping v Dillon** → availability to passengers = not sufficient

Unusual Terms

- **Unusual terms** → greater efforts made → still follows above (**INTERFOTO, BALTIC SHIPPING**)
- **Notice** = fairly and reasonably bring the terms to the attention of the party to be bound
- **Prominence** of the notice displayed or delivered terms **must be proportionate**

Incorporation of terms by a course of dealings

- Contractual terms introduced in earlier transactions may be incorporated into a subsequent contract
- **Balmain New Ferry v Robertson**
 - Plaintiff aware of entry arrangements → company under no obligation to make exemptions
- **REGULARITY AND UNIFORMITY** → **DJ Hill and Co v Walter H Wright Pty Ltd**
 - Must concern 'contractual documents' – **Rinaldi & Patroni v Precision Mouldings**

Statements made during negotiations → may become basis of oral contract

Entire Agreement Clauses

- Ensure pre-contractual statements are not treated as contractual terms
 - **Inntrepreneur Pub v East Crown**

Parol Evidence Rule

- **Goss v Lord Nugent** → (Aus case – **SRA v Heath Outdoor**)
 - Prevents extrinsic evidence being given to add to, vary or contradict the terms of a written contract
 - Limits evidence → only be given to explain meaning of terms where **AMBIGUOUS**
- Presumed that parties who record their contract in writing → embody the whole agreement
- **Collateral contract** → **NO APPLICATION** → **Hoyt's v Spencer**

Statement = term of a contract

- **Importance of the statement** → **Equuscorp v Glengallan Investments**
 - Where a statement was important to one party entering the contract → but not if it contradicts
- **Words used** → **JJ Savage & Sons v Blakney**
 - Words suggest promissory intent as opposed to mere opinion/hypothesis
- **Relative expertise of the parties** → Relative expertise of the parties → **Dick Bentley Productions v Harold Smith**
 - Statement made by a party with expertise = more likely to be promissory, especially where material
- **Collateral contract** → consideration for that promise, the other party agrees to enter into the main contract

Construing Express Terms

- Consider – natural meaning, other provisions, overall purpose, facts/circumstance, commercial common sense
- **Surrounding Circumstances** → **Investors Compensation Scheme v West Bromwich Building Society**
 - Ascertain meaning which the document would convey to a reasonable person
 - Common sense
 - Excludes previous negotiations – policy reasons
- **Electricity Generation Corporation v Woodside Energy** → reasonable businessperson

Implied Terms

Codelfa v SRA → courts slow to imply a term → must be necessary (e.g. give business efficacy) → “goes without saying”

Terms implied by fact

- **BP Refinery**
 - Parties presumed intentions
 - Conditions: reasonable and equitable, business efficacy, clear expression, does not contradict any express term → so obvious it goes without saying
- **Byrne & Frew v Australian Airlines** → term = necessary incident of a definable contractual relationship

Terms implied in law

- Reasonable fitness/merchantable quality, payment and delivery of goods, seaworthiness, furnished house, etc.
- **Test of Necessity** → **University of Western Australia v Gray**
 - Must be of considerable significance → character/complexity as to make it inappropriate to impose the obligation in question

Terms implied by Custom

- Where the custom is **well known and acquiesced in** → reasonable presumption to import term into contract
- **Con-Stan Industries of Aust v Norwich Winterthur Ins**
 - Not where contrary to express terms, may be bound notwithstanding lack of knowledge
 - Necessary to establish a **clear course of conduct**

Rescission

Elements - COMMON LAW

- **Misrepresentation**
 - FACT → **Smith v Land & House Property Corp** (not an opinion) – **Fitzpatrick v Michel** (honest opinion)
 - **Public Trustee v Taylor** (not law)
 - NOT mere puff, future
 - Positive statement → no relief for failure to disclose
- **Material**
- **Intention** to induce into the contract
 - Innocent & Negligent
 - Ordinary remedy = rescission
 - Fraudulent
 - Deliberate deception
 - Remedy = in addition tort of deceit OR damages without rescission - expectation damages
- **Effect of inducement**
 - Even though there is intention - there may not be inducement
 - Recklessness or fraud --> deceiving