

Express Terms

- Terms expressly agreed between the parties
- *National Bank of Australasia Ltd v Mason* (1975) HCA 56; 133 CLR 191 (10 December 1975)
 - Express term had no commas
- Problems arising from words, grammar and punctuation and whether evidence of the parties' intention can be utilised
 - Example: "*Punctuation matters: especially bilingually* (2008) 82 ALJ 515"
 - Defendant's version
 - The agreement shall continue in force for a period of five years from the date it is made, and thereafter for successive five year terms, unless and until terminated by one year prior notice in writing by either party
 - Plaintiff's version
 - The agreement shall continue in force for a period of five years from the date it is made, and thereafter for successive five year terms unless and until terminated by one year prior notice in writing by either party
 - Does this contract run for five year extensions (no), or can it be terminated early until one year's notice (yes)
 - A Canadian court with two official versions (English and French) upheld the Defendant's version, with the second comma and so the Defendant was not locked in for five years before it was able to cancel the agreement by giving one year's notice
- In the context of trying to find or determine the terms of a contract, *where the parties have reduced their contract to writing*, the general common law rule is that a party will be presumptively bound by the terms contained in a contractual document they have signed: express as "the rule in *L'Estrange v Graucob*"
 - The original decision was made at first instance before a County Court single judge and was appealed to the 'Divisional Court'
 - Facts:
 - Miss Harriet Mary L'Estrange operated a café in Northern Wales.
 - Two travelling salesman representing Mr Graucob persuaded Miss L'Estrange to buy a cigarette vending machine. She signed a document entitled 'Sales Agreement' which stated:
 - "*Please forward me as soon as possible: One Six Column Junior Ilam Automatic Machine... which I agree to purchase from you on the terms stated below...*"
 - And an exclusion clause as follows:

- This agreement contains all the terms and conditions under which I agree to purchase the machine specified above, and any express or implied condition, statement, or warranty statutory or otherwise not stated herein is hereby scheduled”
 - Small print at bottom of order form
- Did not read sales agreement
- Payment was to be by instalments
- Shortly after delivery the machine jammed and stopped working, despite attempts to get it working
- Refused to make any further payments and commenced an action in the County Court to get back the instalments she had already paid
- Her case was that the machine was ‘not fit for purpose’
- Mr Graucob’s case was any terms of the contract (Warranties) were expressly excluded by the contract she signed
- TJ held not entitled to rely on exclusion clause
- TJ found that the salesman had not done enough to give her notice of the terms
- Mr Graucob appealed
- Leading decision on Appeal is that of Lord Justice Scrutton – on all accounts a very difficult person but undoubtedly one of the most brilliant commercial law judges of his time
- Two important passages:
 - The present case is not a ticket case (P384)
 - His honour distinguishes ‘ticket cases’ and continues... ‘the parties may...’ (p385)
- Lord Justice Maugham, was clearly uncomfortable with the result but had no option but to accept the fundamental principle of being bound by signature to the contractual terms of a written contract
 - “The rule may not operate equitably in all cases, but it is unquestionably binding in law...” (P385)