

CONTRACTS SCAFFOLD

Examinable Contents/Topics

- 1. Terms of the contract**
 - a. Express terms
 - b. Extrinsic evidence
 - c. Implied terms
 - d. Interpretation/ Construction / Classification
 - e. Exclusion clauses

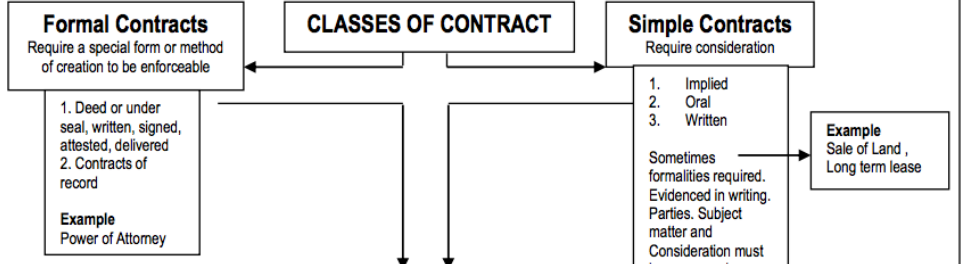
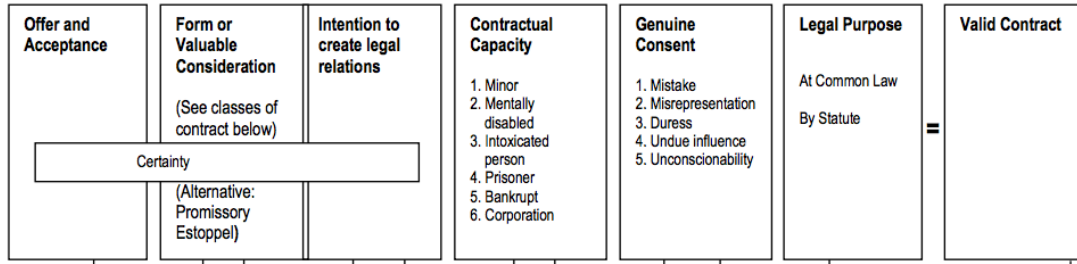
- 2. Enforceability**
 - a. Formalities/Part performance
 - b. Statutory illegality
 - c. Common law illegality / Public policy
 - d. Consequences of illegality

- 3. Proper consent**
 - a. Misrepresentation (innocent/fraudulent)
 - b. Duress
 - c. Undue influence
 - d. Unconscionable conduct
 - d. Unconscionable conduct
 - e. Third party impropriety
 - f. Rescission
 - g. Non est factum

- 4. Discharge / Termination of contract**
 - a. Breach and repudiation
 - b. Performance / Actions for payment
 - c. Agreement
 - d. Frustration

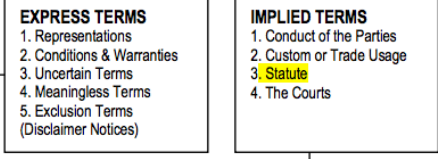
A CONTRACT IS AN AGREEMENT BETWEEN TWO OR MORE PARTIES IN WHICH LEGAL OBLIGATIONS ARE CREATED WHICH ARE ENFORCEABLE BY LAW

Traditional approach: There are many different theories: See Lecture 1



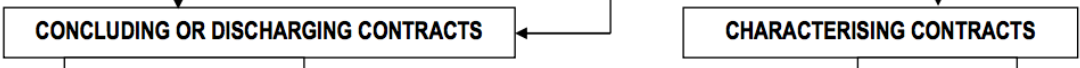
EQUITY
REMEDIES
COMMERCIAL LAW

TERMS OF CONTRACTS



Parties to the Contract

Assignment
Doctrine of Privity



REMEDIES FOR BREACH OF CONTRACT

1. Damages
2. Termination
3. Specific Performance
4. Injunction
5. Action under Statute
6. Restitution

BREACH OF THE CONTRACT

1. Total Breach
2. Partial Breach
3. Renunciation

Introduction

- Identify issues only.
- No need to identify things not in issue.
- What type of remedy available.

Construing Terms

Pre-Contractual Statements

- o *Puffs*: No reasonable person would believe it to be true. Sales puff. Exaggeration.
- o *Representations*: Intended to induce not guarantee BUT can become a term if the statement maker's intention was to guarantee the truth of the statement. → Apply objective test as to what conclusion a reasonable person in the position of the representee would have reached (*Oscar Chess v Williams*).
- o *Terms*: Can a statement made in negotiation become a term? Need to apply objective test and look at the intention of the parties. *Codelfa*

Pre-Contractual Statements v Contractual Terms

Hospital Products v United States Surgical Corp → Whole of circumstances approach: look at the whole circumstance of the negotiation and contract entry performance. Totality of relationship.

- **Language of the Statement** → Statement must be promissory and not representational (*JJ Savage and Sons v Blakney*).
- **Time of Statement** → The closer in time between making the statement and entry into the agreement, the more likely it is to be construed as a term (*Harling v Eddy*).
- **Content/Importance of Statement** → If the content of the statement is important to the contract, then it may be more likely that the parties intended it to be a term (*Couchman v Hill*).
- **Statement Made by a Party with Knowledge and Expertise** → If an expert makes a statement and a non-expert enters into the contract, it will be more likely to be held a term (*Dick Bentley Products v Harold Smith (Motors)*).
- **Existence of a Written Memo** → If a statement is not included in the parties' written contract, then it is unlikely that it was intended to become a term of the agreement (*Routledge v McKay*).
- **Comprehensiveness of Written Memo** (Parol Evidence Rule) → A party is bound to a document they sign (*L'Estrange v Graucob*).

Express

Elements

(*Parker v South Eastern Railway*):

- Is the document contractual in nature?

- Did the party disputing the term know of the term or was reasonable notice given that the document contained the term?
- Was notice of the statement given at or before entry into the contract?

Parol Evidence/Signature Rules

- Parol evidence rule – which inhibits the admissibility of extrinsic evidence which vary or contradict the express terms of a written contract (*Goss v Lord Nugent*)
- Signature Rule (a person is bound by their signature) - *Toll (FGCT) Pty Ltd v Alphapharm Pty Ltd*; *L'Estrange v F Graucob*

Implied

- *BP Refinery* → **formal contract** → necessity, effective operation, not contradict express, obvious, clear expression.
- *Hawkins v Clayton* [1988]; *Byrne v Australian Airlines Ltd* [1995] → **Informal contract**, term must be necessary for the reasonable or effective operation of the contract in the circumstances.
- *Byrne v Australian Airlines Ltd*; *BP Refinery* → The term must be so obvious that 'it goes without saying.'
- Rights of parties diminished?
- Unfettered discretion?
- Necessary to facilitate business efficacy?
- Went without saying? *Hawkins, Byrne*
- Common knowledge
- Obviousness → Both would have agreed on the Dress Term if it had been suggested to them by a third party during their negotiations – *Shirlaw*
- *Codelfa* Objective Test → purpose of contract → what a reasonable bystander in the position of the other would be led to believe.

Implied Term by Custom

- *Con-Stan Industries; Belize* → The term must be so 'well known and acquiesced in' that 'everyone making a contract in that situation can reasonably be presumed to have imported that term.'
- *Constan Industries*: it must be uniform, certain, reasonable and not contradict express terms.
- Notorious existence.

Ambiguity Gateway

- *Codelfa* – if any ambiguity in terms → objective approach.
- Objective of transaction, what a reasonable person in the position of either was led to believe.

Exclusion Clauses