

CERTAINTY

TOPIC	CASE
<p>Commercial agreements are presumed to create legal relations (Banque Brussels Lambert SA v Australian National Industries (1989))</p> <p>Agreements made in a domestic or social context are presumed to not create legal relations (Todd v Nicol [1957])</p>	<p>Banque Brussels Lambert SA v Australian National Industries (1989) REGERS CJ: 'honest and sensible approach.' In the commercial world, the creation of a meaningless instrument or document is unthinkable.</p> <p>Todd v Nicol [1957] Defendant asked deceased husbands sister and child to live with her (Scotland to Australia.) Relationship soured and defendant asked plaintiff to leave. MAYO J: there is no explicit reference to intention as there was expenses and troubles of the plaintiff to move to Australia. Arrangements intended to be binding. However, implied term stated they would live harmoniously, which was broken, so the plaintiff lost, even though there was a contract.</p>
<p>Certainty Important to distinguish between obscurity and lack of meaning. (Council of the Upper Hunter County District v Australian Chilling and Freezing Co Ltd (1968))</p> <p>Language has to be capable of some meaning that shows intention (Meehan v Jones (1982))</p> <p>Contract with more than one meaning is not void for uncertainty providing it is capable of some meaning. To determine the meaning of a contractual term, one relies on the construction of the term and by reference to external standards as a way of ascertaining the</p>	<p>Council of the upper Hunter County District v Australian Chilling and Freezing Council entered into a contract to supply ACF with electricity. There was a clause that allowed council to increase the charges; ACF alleged the clause was void for uncertainty. BARWICK: contract is not automatically void for uncertainty because it may be constructed in more than one way. "As long as it is capable of a meaning, it will bear that meaning."</p>

<p>intention of the parties (Council of the Upper Hunter County District v Australian Chilling and Freezing Co Ltd (1968))</p>	
<p>Implying objective standards Courts will not in effect draft a contract where the parties have failed to stipulate the terms. However, if the language of a clause lacks meaning, then the contract might still be enforced if the meaningless clause can be served without affecting the substance of what was agreed (Whitlock v Brew)</p> <p>Incompleteness An incomplete agreement is one where essential terms have been omitted (Hall v Busst (1960))</p> <p>Agreements to agree Parties who want to get the contract signed but can't agree on certain points might be tempted to include a clause stating that they agree to agree on certain points</p>	<p>Whitlock v Brew Plaintiff entered a contract to purchase land from the defendant. A condition provided the part of the land was to be used for the sale of Shell products. Defendant rescinded the contract and forfeited the deposit. TAYLOR, MENZIES and OWEN JJ: The clause is not sufficient to cover the period of the lease or rent. Is the contract divisible- depends on the intention of parties. One must determine intention as disclosed by the contract</p> <p>Hall v Busst It was decided that the option couldn't be enforceable unless the purchase price payable on the exercise of the option is sufficiently certain. MENZIES J: by reasons of uncertainty, they could not constitute a completed agreement</p>
<p>Agreements to negotiate/agreements to agree ALLISOP J: proper approach when considering agreements to negotiate in good faith as follows: an agreement to agree is incomplete if lacking essential terms. The task of the court is to give effect to business contracts where there is a meaning capable of being ascribed to a word or phrase or terms or contract-ambiguity not being vagueness. Good faith is not a</p>	<p>United Groups Rail Services Ltd v Rail Corporation NSW Duty of good faith is enforceable in certain circumstances- parties act honestly, parties must regard to the legitimate interest of other party, neither party must act in a manner, which is arbitrary, capricious or intended to cause harm. ALLISOP J: parties promised to undertake negotiations in a genuine and good faith manner.</p>

<p>concept foreign to the common law, the law merchant or businessmen and women. (United Group Rail Services Ltd v Rail Corporation NSW (2009))</p>	
<p>Illusory Promises An offer and acceptance may not conclude a contract if the terms are uncertain, the agreement is incomplete or contractual promise is illusory.</p> <p>will only invalidate a contract where the courts cannot reasonably ascertain what the parties intended. The language has to be capable of at least some meaning whereby the court can attribute a particular contractual intention to the parties (Meehan v Jones)</p> <p>In cases where it is difficult to distinguish whether a term is illusory or uncertain, promise is unenforceable (Biotechnology Australia Ltd v Pace (1988))</p>	<p>Meehan v Jones Vendor claimed the contract is void for uncertainty. "A contract is illusory when one of the parties is given discretion as to whether to perform the contract, but no where one of the parties has a discretion in relation to the fulfillment of a condition on which the contract depends."</p> <p>Godecke v Kirwan WALSH J: requirement should be limited to permitting the insertion of covenants and conditions not inconsistent with those contained in the offer and such additional conditions needed to be reasonable and objective.</p> <p>Placer Development v Commonwealth Illusory promises: "...words showing that the promisor is to have a discretion or option as to whether he will carry out that which purports to be the promise, the result is that there is no contract.</p> <p>Biotechnology Australia v Pace Plaintiff entered into an employment contract with biotechnology, which provided he would have the option to participate in the company's senior staff equity sharing scheme. There was no scheme in place. MCHUGH JA- consideration is illusory if its payment or fulfillment depends upon an unfettered discretion vested in the promisor.</p>