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1. Incorporation

Incorporation of terms by signature

L'Estrange v F Graucob Ltd [1934]; CCM [12.15]–[12.20]

Issues	Signature, exclusion clause
Court	Divisional Court (UK)
Material facts	<ul style="list-style-type: none"> L purchased a cigarette machine from F L signed a form headed 'Sales Agreement' which included the printed terms of sale and the following clause: <i>The 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 excluded.</i> When the machine was delivered it did not work properly L brought an action for damages of excludable statutory warranties that the machine was reasonably fit for the purpose for which it was acquired and was of merchantable quality F argued that, pursuant to the clause outlined above, F could not rely on the implied warranty in question Issue: did the clause form part of the contract if L had not been aware of its existence?
Legal History	<ul style="list-style-type: none"> Trial = judgment for the plaintiff (L). There had been a breach of the implied warranty and when she signed the form, the plaintiff had no knowledge of that clause. The type was unreasonably small and the defendant did not do what was reasonably sufficient to give the plaintiff notice of the conditions. F appealed.
Outcome	<ul style="list-style-type: none"> Appeal allowed. L is bound by the terms of the contract, including the exclusion clause
Judgment	<p>Scruton LJ:</p> <ul style="list-style-type: none"> When a document containing contractual terms is signed, the party signing it is bound, and it is wholly immaterial whether he has read the document or not As no fraud or misrepresentation has been found, L is bound by the terms of the document
Obiter	<p>Maugham LJ:</p> <ul style="list-style-type: none"> In the case of a formal contract between seller and buyer, there is a presumption which puts it beyond doubt that the parties intended that the document should contain the terms of their contract
Principles	<ul style="list-style-type: none"> When a document containing contractual terms is signed, then in the absence of fraud or misrepresentation, the party signing it is bound, and it is wholly immaterial whether he has read the document or not

Issue	Incorporation by signature
Court	HCA
Material facts	<ul style="list-style-type: none"> • A was a sub-distributor of an influenza vaccine • RT (acting on its own behalf and as A's agent), was responsible for organising collection & storage • RT engaged T to transport and store the vaccine <ul style="list-style-type: none"> ○ T provided a quotation for transportation and storage under cover of letter ○ this letter stated that cartage was subject to the conditions on the reverse side of the consignment note however no consignment note was attached • The letter also requested that RT complete and sign an 'Application for Credit' <ul style="list-style-type: none"> ○ the front of the 'Application for Credit' included the statement 'please read 'Conditions of Contract' (overleaf) prior to signing' • RT representative signed the "Application for Credit" without reading the terms • the terms set out on the back of the "Application for Credit" exempted T from liability for loss and contained a clause whereby RT agreed to indemnify T for loss or liability to others • RT engaged T to deliver the drug (under a separate contract) • Two shipments of vaccines were destroyed while in T's possession
Arguments	<ul style="list-style-type: none"> • A denied that it was bound by the exclusion clause, arguing that the conditions of the reverse side of the 'Application for Credit' were not part of the contract – they were unusual and more should have been done to draw them to A's attention
Legal history	<ul style="list-style-type: none"> • Trial & appeal = judgment for A. It was necessary for T to establish that what it had done was what was reasonably sufficient to give R notice of the conditions, and this had not been done
Outcome	<ul style="list-style-type: none"> • Appeal allowed; the terms on the Application for Credit were incorporated
Judgment	<p>The Court (Gleeson CJ, Gummow, Hayne, Callinan & Heydon JJ):</p> <ul style="list-style-type: none"> • No requirement of notice when you have a document that would be understood to contain contractual terms and that document is signed. <ul style="list-style-type: none"> ○ "Please read conditions of contract" indicates that it is a document that contains contractual terms. • Cited L'Estrange: it is irrelevant whether the party signing the document has read it or not <ul style="list-style-type: none"> ○ It was reasonable for T to treat RT's signature as manifestation of assent to the conditions as RT's had been invited to read before signing • No issues with fraud or misrepresentation
Obiter	<ul style="list-style-type: none"> • Even if reasonable notice was required, it had been provided by Toll. What more could they have done?
Principles	<ul style="list-style-type: none"> • 1. Is the document signed? <ul style="list-style-type: none"> ○ No → was there reasonable notice given? • 2. Would a reasonable person understand that the document contained contractual terms? <ul style="list-style-type: none"> ○ Need to ask exactly what facts led to the conclusion that there was a contract • 3. Has there been a misrepresentation?

Issue	Incorporation by signature
Court	UKCA
Material facts	<ul style="list-style-type: none"> • C took a white satin dress to CCD for cleaning • C was asked to sign a piece of paper headed 'receipt' • C was told that her signature was required because CCD would not accept liability for certain specified risks, including the risk of damage by or to beads and sequins • C then signed the 'receipt', which in fact contained an exemption clause limiting liability for all types of damage • CCD returned the dress with a stain on it • CCD denied negligence and relied on the exemption clause contained in the signed receipt
Outcome	<ul style="list-style-type: none"> • Appeal dismissed; The drycleaners are liable for damage as the exemption clause was not incorporated due to misrepresentation
Judgment	<p>Denning LJ:</p> <ul style="list-style-type: none"> • If a person wishes to exempt himself from a liability, he can only do so by an express stipulation notified to the party affected, and assented to by him as part of the contract <ul style="list-style-type: none"> ○ The other party's signature is evidence of his assent to the whole contract, including the exemption clauses, unless the signature is shown to be obtained by fraud or misrepresentation (<i>L'Estrange</i>) • What is a misrepresentation? <ul style="list-style-type: none"> ○ Any behaviour capable of misleading the other party about the existence or extent of the exemption ○ It is enough if it conveys a false impression ○ If the false impression is created knowingly, it is a fraudulent misrepresentation • The receipt was a contract <ul style="list-style-type: none"> ○ The assistant told the customer that she had to sign in order to accept any responsibility for damage to beads and sequins ○ A reasonable person in C's position would have appreciated that there are contractual terms when they told her that her signature showed agreement to terms of liability ○ "Receipt" suggests that there was no contract BUT the statement that was made meant that a reasonable person should have appreciated that the document contained terms • But the exemption clause does not protect the cleaners from liability <ul style="list-style-type: none"> ○ There was a fraudulent misrepresentation, by failing to draw attention to the width of the exemption clause (which excluded liability for <i>any</i> damage at all) ○ Therefore disentitles the cleaners from relying on the exemption except in regard to beads and sequins
Principles	<ul style="list-style-type: none"> • The heading 'Receipt' = usually not considered to be contractual in nature, but the assistant's statement gave notice to the customer that there were contractual terms on the receipt • The signed contract, including the exemption clause, would have ordinarily protected the cleaners from liability, but because the statement was misrepresented the width of the exemption, it did not exempt the cleaners from liability in this case