

Contracts Exam Summary

Incorporation

To determine if a term is incorporated in a contract, it must be determined if it has been incorporated:

- (1) By Signature
- (2) By Notice
- (3) By Course of Dealings
- (4) As a statement made during negotiations

By Signature

Per **L'Estrange v Graucob [1934]**, a party is bound to terms **'when a document containing contractual terms is signed... in the absence of fraud, or misrepresentation'**. It also stipulates that **'it is wholly immaterial whether he has read the document or not'**. *[Applying this...]*

However, per **Toll (FGCT) Pty Ltd v Alphapharm Pty Ltd (2004)**, **'If there is a claim of misrepresentation... it may be material to know whether a person who has signed it was given sufficient notice of its content'**. The rule for misrepresentation is derived from **Curtis v Chemical Cleaning and Dyeing Co [1951]**, which states that **'any behaviour, by words or conduct, is sufficient to be a misrepresentation if it is such as to mislead the other party about the existence or extent of the exemption'**. *[In the present facts...]*

By Notice

It may be relevant to consider the incorporation of terms which have been displayed or delivered before or at the time of transaction by notice. Per **Oceanic Sun Line Special Shipping Co Inc v Fay (1988)**, a court must consider:

- (1) Whether the displayed terms were made available to the other party to be bound by the agreement prior to the formation of the contract
- (2) Whether reasonable steps were taken to bring the terms to the notice of the party to be bound.

To resolve this test, it is important to consider **Thornton v Shoe Lane Parking Pty Ltd [1971]**, which states that **'the customer is bound by those terms as long as they are sufficiently brought to his notice beforehand, but not otherwise'**. The court held that a notice at the entrance of a carpark and fine print on a ticket received after payment did not constitute incorporation by notice as **'it would have been practically impossible for him to withdraw from his intended entry upon the premises'**. *[Given this...]*

By course of dealings

When there is a history of dealings between the parties, terms introduced in earlier transactions may be incorporated in a subsequent contract. The rule for this is derived from **Balmain New Ferry Co v Robertson (1906)**, which held that a passenger who knew the system or used the ferry frequently was bound by the terms of entry that the fare must be paid regardless of whether passengers had travelled or not. *[Applying this...]*