

1.1 Express Terms - methods of incorporation

<p>Incorporation by signature</p>	<ul style="list-style-type: none"> ● Main rule: <i>L'Estrange v Graucob</i> → a party will be bound by their signature whether or not they have read the document (in absence of fraud/misrepresentation) ● <i>Toll v Alphapharm</i> - signature incorporated terms on subsequent leaflet as A was made aware of their existence despite not reading them. <p>Exceptions:</p> <ul style="list-style-type: none"> ● Fraud, misrepresentation, mistake → <i>Curtis v Chemical cleaning</i> - term excluded due to misrepresentation ● Non-contractual document; has another function e.g. receipt ● Unusual/Onerous → <i>Baltic Shipping Co v Dillon</i>: Unusual terms (e.g. Exclusion of personal injury) must be explicitly brought to attention → extra measures.
<p>Incorporation by notice</p>	<p>Time of incorporation - terms must be available to the party before contract is made:</p> <ul style="list-style-type: none"> ● <i>Oceanic Sun Line Special Shipping v Fay</i> → Ticket received later with new terms = too late. Subsequent terms cannot be incorporated into a contract unless they were clearly communicated to the passenger before the contract was made and effectively brought to their attention. <p>Actual knowledge or reasonable notice of the terms:</p> <ul style="list-style-type: none"> ● <i>Thornton v Shoe Lane Parking</i> → (parking ticket containing terms, also advertised on wall) Must give actual or reasonable notice. What's "reasonable" depends on context. <p>Unusual terms - Red Hand Rule:</p> <ul style="list-style-type: none"> ● The more onerous/unusual the term, the more effort needed to give notice - "print in red ink with a red hand pointing to it" - <i>Thornton v Shoe Lane Parking</i>.
<p>Incorporation by course of dealings</p>	<p>Terms may be incorporated from previous consistent dealings.</p> <p>Requirements:</p> <ul style="list-style-type: none"> - Uniform (consistent) course of conduct/terms – <i>McCutcheon v David MacBrayne</i>; and - Regular course of conduct: Must be frequent enough that parties must have intended (objectively) to contract on that basis – <i>Balmain New Ferry Co Ltd v Robertson</i>; and - Contractual document from previous transactions – not a mere invoice or receipt, for example – <i>Rinaldi & Patroni v Precision Mouldings</i>;

1.2 Parol Evidence rule

<p>Rule</p>	<p>When a contract is wholly in writing, extrinsic (oral or other) evidence cannot be used to add, vary, or contradict its terms (<i>SRA of NSW v Heath Outdoor</i>)</p> <p>1. Ambit of the contract → Extrinsic evidence cannot be used to add, vary, or contradict the terms of a written contract.</p> <p>2. Interpretation of terms → limited use of extrinsic evidence to clarify meaning of contractual terms.</p>
<p>Is the contract wholly written?</p>	<ul style="list-style-type: none"> ● If a contract appears complete on its face, it is often presumed (evidentiary basis) that the parties intended the document to contain all terms. ● Parties may rebut this presumption by showing that the contract is partly oral and partly written or there were collateral agreements, using extrinsic evidence + surrounding circumstances (<i>SRA of NSW V Heath Outdoor</i>)

1.3 Exceptions to the parol evidence rule

Collateral contracts	<p>PER does not exclude evidence of a collateral contract (<i>Heilbut Symons & Co v Buckleton</i> (1913))</p> <ul style="list-style-type: none"> ● Definition: A collateral contract is made when one party makes a promise, connected to but independent of a main contract, and as consideration for that promise they enter the main contract. <p>To establish a collateral contract, the statement must:</p> <ol style="list-style-type: none"> 1. Be made as a promise intended to induce entry into the main contract (<i>JJ Savage & Sons v Blakney</i>). 2. Be consistent with the terms of the main contract, following the rule in <i>Hoyt's v Spencer</i>. (consistency rule) → cannot contradict any elements of the main contract or the rights created by it.
Promissory Estoppel	<p>Where one party relies on a promise made by another, and it would be inequitable to allow the promisor to go back on it, even if the promise is not written in the contract.</p> <ul style="list-style-type: none"> ● <i>Saleh v Romanous</i> → Pre-contractual promissory estoppel imposes equitable restraints on the enforcement of contractual and other rights. (Clear promise + reliance → suffers loss) can override PER. ● <i>Australian Co-operative Food v Norco</i> → estoppel argument rejected where there was a complete written agreement, and the estoppel argument was inconsistent with express terms of contract.

1.4 Express terms made by statements

Principle	<p>To be an express term, a statement must be promissory in nature and intended to be part of the contract. → Assessed objectively: Would a reasonable person regard the statement as a contractual promise?</p> <ul style="list-style-type: none"> ● If promissory, breach = contractual remedy. ● If merely a representation, relief lies in misrepresentation law.
Significance of written contract	<p><i>Equuscorp v Glengallan Investments</i> →</p> <ul style="list-style-type: none"> ● Oral statements cannot override clear, inconsistent written terms ● Sophisticated parties are expected to include all important terms in the written contract.
Language used	<p><i>JJ Savage & Sons v Blakney</i> →</p> <ul style="list-style-type: none"> ● Language must indicate a clear, definite promise, not just an opinion or estimate ● “Estimate speed” was too vague to amount to a promise.
Relevant expertise of the parties	<p><i>Oscar Chess v Williams</i> →</p> <ul style="list-style-type: none"> ● Statement about the car model was not a term; the seller lacked expertise. ● Depends which party had special knowledge or skill, i.e. in a better position to know the truth. <p><i>Dick Bentley Productions v Harold Smith (Motors)</i> →</p> <ul style="list-style-type: none"> ● Defendant had the relevant expertise to find out the true mileage which had been misrepresented
Importance of the statement	<p><i>Dick Bentley</i> → mileage of the car was integral to the deal.</p>
<p>Timing of the statement and the form of the contract → i.e. sufficient time prior to contract formation and whether the contract is wholly written (<i>Hoyt's v Spencer</i>).</p>	

1.5 Construction of express terms

Test	Reasonable person having all the background knowledge (<i>Chartbrook Ltd v Persimmon Homes</i>)
Elements:	<p>Outlined in <i>Arnold v Britton</i> [2015]</p> <ol style="list-style-type: none"> 1. The natural and ordinary meaning of the clause; 2. Any other relevant provisions of the contract; 3. The overall purpose of the clause and contract; 4. The facts and circumstances known or assumed by the parties at the time contract executed 5. Commercial common sense; 6. but disregarding subjective evidence of any party's intention.
Extrinsic evidence	<ul style="list-style-type: none"> ● General Rule: Extrinsic evidence is inadmissible when constructing a contract - parties intentions must be determined based on words in contract (<i>L Schuler AG v Wickman machine</i>) ● Exceptions: ancient documents, surrounding circumstances (explain technical terms/subject matter), latent ambiguities (evidence may be admitted to resolve ambiguities; not mere difficulties) ● Codelfa Rule + affirmed in <i>Royal Botanic Gardens</i> → evidence of surrounding circumstance is only admissible if the contract's language is ambiguous or has multiple meanings. <ul style="list-style-type: none"> ○ Contrary - <i>Electricity Generation Corporation v Woodside Energy</i> → Courts will assume that contracting parties intended a commercial result and interpret the contract accordingly to avoid commercial nonsense/inconvenience. Presumed that parties did not intend their contract to operate in an unreasonable way. ● NSW: <i>Cherry v Steele-Park</i> - surrounding circumstances allowed without requiring 'ambiguity'.
The process of construction	<p><i>Royal Botanic Gardens</i> (dispute regarding the construction of contract terms with a public body) -</p> <ul style="list-style-type: none"> - The construction of a contract is an objective process, focusing on what a reasonable person would understand the terms to mean, considering the text, context, and purpose of the contract - You look at the whole of the contract and the commercial purpose it was intended to serve.
Objective approach	<p><i>Pacific Carriers v BNP Paribas</i> →</p> <p>Commercial contracts are to be construed objectively, based on what a reasonable person in the position of the parties would understand the terms to mean, rather than the subjective intent of the parties.</p>
Purposive construction	<p><i>Ecosse Property Holdings</i> → Courts look at the objective purpose of the contract.</p> <ul style="list-style-type: none"> - Construction of the lease was guided by the objective purpose of the agreement which was to mimic a contract of sale. Didn't make sense for the lessor to still pay rates, taxes etc.
Exclusion clauses	<p>To rely on an exclusion clause, the party protected by the clause must demonstrate that:</p> <ol style="list-style-type: none"> 1. The exclusion clause was incorporated into the contract; and 2. As a matter of construction, the clause applies to exclude liability in relation to the issue in dispute 3. Not void under ACL (Consumer guarantees or UTCL) <p>Other points</p> <ul style="list-style-type: none"> ● Contra proferentem rule: ambiguous clauses are construed against the drafter. ● If too broadly drafted, it may undermine the whole contract, which courts will try to void. (<i>MacRobertson Miller Airlines Services</i>) ● <i>Darlington Futures v Delco</i> → Courts will interpret exclusion clauses based on their natural meaning in the context of the whole contract.