

LIST OF TOPICS COVERED:

1. Privity
2. Himalaya Clause
3. Pre-Contractual Statement
4. Parole Evidence Rule
5. Collateral Contracts
6. Incorporation by Signature, Notice, By Course of Dealings
7. Exclusion Clauses
8. Construction of a Contract
9. Implication in Fact, by trade custom
10. Termination by agreement, by contractual term, by subsequent agreement
11. Variations
12. Termination for breach, delay, repudiation
13. Frustration
14. Misrepresentation
15. ACL
- 16. Mistake**
17. Duress
18. Undue Influence (Actual and Presumed)
19. Unconscionable Conduct
20. Third Party Undue Influences
21. Wives' Equity
22. Election
23. Claim for Payment

Privity

The issue is whether the privity rule applies, meaning the third party beneficiary cannot sue. The privity rule states that only parties to a contract can have rights and obligations under it. It is the idea that one can enforce a contract given they provided consideration and are a party to the contract (**Coulls v Bagots Executor and Trustee Co Ltd (1967)**). Identification of the parties to a contract must be determined by the objective test, relying upon the reasonable person standard (**Lederberger v Mediterranean Olives Financial Pty Ltd (2012)**).

In these circumstances, ...

Himalaya Clause

The issue is whether the sub-contractors are protected from liability for damaging transported goods. Under the Himalaya clause of the **New York Star Case**, the carrier and its sub-contractors, employees, etc, can be protected from liability for damaging transported goods. In the **New York Star Case**, there are four key elements which must be satisfied.

1. The contract made it clear that the carrier intended to protect the sub-contractors
2. the carrier (agent) contracted for the sub-contractors protection as well as their own.
3. The authority of the carrier to act for the sub-contractors in this respect was made.
4. There was consideration moving from the sub-contractor of the agent.

In these circumstances...

Pre-Contractual Statement

The issue is whether the pre-contractual statement '...' is a term of the contract. A pre-contractual statement must be brought to the attention of the other party before the contract forms (**Oceanic Sun Line**). Determining whether a statement is a term requires an objective assessment, asking what an intelligent bystander would reasonably infer from the conduct of the parties (**Oscar Chess, Hospital Products**). As Lord Justice Denning in the case of **Oscar Chess**, we must consider 'the totality of the evidence'.

The sooner the lapse of time between the pre-contractual statement and the signing of the contract, the greater the chance the pre-contractual statement was a contractual term (**Intrepeneur Pub Co (GL) v East Crown Ltd [2002] 2 Lloyd's Rep 611**). Clear words, such as "I guarantee" or "I warrant it" is likely to be a term (**Oscar Chess**). Additionally, the **expertise** of representor may indicate a pre-contractual statement is intended as a term, whereby someone, in a position to guarantee the truth of a statement, is more likely to intend contractual liability for it (**Oscar Chess; Dick**