Terms of Contract:

Identification & Incorporation Of Terms	Express Terms, PER Limb 1

Define: To be classified as an express term, a statement must be promissory in nature and must be successfully incorporated into the contract. **Promissory vs Non-promissory: Objective Test:** Would a reasonable person do that?
Categories of Statements: 1. Irrelevant statement - do not affect the agreement **2. Puffs:** Exaggerations, hyperbole, so ridiculous that no reasonable person would take them **3. Representations:** statements of fact or opinion that are simply descriptive or merely representational, lacking promissory intent **4. Terms of a Contract:** intended to be contractual undertakings.
Factors of Intent: A statement is more likely to be a term if it is highly important, made close to the time of contract formation, uses clear and precise language, is made by a party with special skill or knowledge, or is included in a subsequent written document.
Remedies: If a term is breached, the remedy is contractual damages or termination. If a representation is false, the contract may be rescinded at common law or set aside under Section 18 of the Australian Consumer Law (ACL) for misleading conduct.

Methods of Incorporation:

By Signature: Under the "signature rule," signing a document binds a party to its terms regardless of whether they read or understood them. This includes electronic signatures under the Electronic Transactions Act. **Exceptions:** exist for vitiating factors like misrepresentation or if the document appears non-contractual.
By Reasonable Notice: Often used for unsigned documents or signs. **(1) Timing:** Notice must be given before or at the time of formation (Olley v Marlborough Court). **(2) Reasonableness:** Terms must be reasonably brought to the party's attention and be in a document that objectively appears contractual. Onerous terms (requirements significantly outweigh the benefits gained) require "very clear and explicit" notice.
By Course of Dealing: Terms may be incorporated through a consistent past pattern of repetitive contracting on the same terms. Business contract together regularly.
Pre-contractual Oral Statements: These are incorporated unless the Parol Evidence Rule prevents it.

Parol Evidence Rule: First Limb

Define: It affects both the incorporation of express terms and construction of express terms. This rule applies when courts won't accept an outside written document itself to identify what the terms of the contract are (Will not look at Extraneous evidence). Extraneous evidence can be oral (what was said or done) or written (drafted docs, emails, notes, invoices).
Partly Oral/Partly Written Contracts: If it is proven that the parties intended for some terms to be oral and others to be written, the PER does not apply. ***PER only applies if the parties intended the contract to be wholly in writing.***
Provisional Admission: In modern Australian law, extraneous evidence can be admitted on a provisional basis to determine whether the parties actually intended the written document to be the entire agreement.
Circumvention of PER: (Exception): (1) Condition Precedent, (2) Rectification **(3) Collateral Contracts:** This occurs when one party makes a promissory statement (e.g., an assurance about the quality of drains) to induce the other to enter the main contract . For this to work, the statement must be promissory, it must induce the contract, and it must not contradict the main contract's terms. (**4) Estoppel:** Prevents a party from departing from a promise they made, even if it wasn't in the written contract. (5) Misleading
Collateral Contracts Elements: (1) Must be a promissory Statement (JJ Savage & Sons). (2) The statement must induce the other party to enter the main contract. (3) Terms of collateral can't contradict main contract. (4) All other elements of formation must be met.
Entire Agreement Clauses: To overcome PER, parties include 'entire agreement' and 'merger' clauses. Aim to prevent parties relying on extraneous evidence to prove other express terms should be incorp. The construction of the clause decides if they work or don't.

Electronic Transactions Act 2000 (NSW): s 9 (s 9(1)(a)): For an electronic signature to be valid, a method must be used that identifies the person and indicates their intention (assent) regarding the information communicated. In the context of contract law, this allows the signature rule—the principle that a person is bound by terms they sign, to extend to digital interactions **(s 9(1)(b)):** The method used must be appropriately reliable for the specific purpose of the transaction **Context Dependent:** The sources state that what is considered "appropriate for the purpose" differs depending on the specific nature and circumstances of the transaction. **Fulfillment of Function:** Alternatively, the requirement is met if the method is proven to have actually fulfilled the functions of identifying the person and indicating their intent **(s 9(1)(c)):** The person receiving the signature must consent to the requirement being met through that specific electronic method

Express Terms; Factors that Make Statement Promissory	**JJ Savage & Sons Pty Ltd v Blakney (1970):** For a statement to be identified as a contractual term it must be promissory in nature rather than just an expression of opinion, an estimate, or a "mere" representation. It is not enough that a statement induced a party to enter the contract; the person making the statement must have intended to guarantee its truth as a promise. **Ellul & Ellul v Oakes (1972):** ^ Follows the JJ savage Approach. The more important a statement, the more likely its a term. The time passes between the statement being made and the contract being formed, the more time elapsed means more likely it was a representation. **Oscar Chess Ltd v Williams [1957]:** Distinguishing between an actionable express term (warranty) and a mere innocent misrepresentation. Under this principle, the court applies an objective test based on the parties' relative knowledge, expertise, and the context of the statement.
Express Terms: Intent	**Dick Bentley Productions Ltd v Harold Smith (Motors) Ltd (1965):** Whether an oral statement becomes an express term of the contract depends on the objective intention of the parties. If an intelligent bystander would reasonably infer that the statement was intended to be a binding promise, it is considered a term.
Incorporation By Signature	**L'Estrange v Graucob [1934]**: Application of the Signature Rule **Equuscorp Pty Ltd v Glengallan Investments Pty Ltd (2004):** Reinforced Signature Rule. solidified the rule that signing a written contract conclusively binds the executing party to its terms. **Toll (FGCT) Pty Ltd v Alphapharm Pty Ltd (2004):** It removes the burden from the other party to prove they gave notice of the terms. If the document is signed, the fact that the signatory did not read it does not require the other party to show that "due notice was given of its terms". This distinguishes signed contracts from unsigned documents (like tickets or signs), where the "reasonable notice rule" requires terms to be specifically brought to a party's attention. **Fitness First v Chong [2008]:** ^ Due Notice has to be given to be

	bounding.
Exception of Signature Rule: Misrepresentation	**Curtis v Chemical Cleaning & Dyeing Co:** Party signed doc named receipt at a dry cleaning place, sued for damages for ruined dress. The signature rule didn't apply, because of misrepresentation, the exclusion clause was not incorporated as part of the contract.
Incorp.Reasonable Notice: Timing Requirement	**Olley v Marlborough Court [1949]:** Notice of unsigned terms needs to be given before or at the time of contract, terms made aware after the contract is formed is ineffective. Timing is key. **Oceanic Sun Line Special Shipping Company Inc v Fay (1988):** Exclusion clauses were contracted on a ticket in Australia for cruise in Greek islands, some time before the issue in Greece. They were not incorporated.
Incorp. by Reasonable Notice: Reasonableness	**Parker v South Eastern Railway Co (1877):** Established courts to assess whether the nature of the document provided, is smtg a reasonable person would expect it to contain binding contractual obligations. **Causer v Browne [1952]:** Non- contractual Documents: even if a statement excludes liability is placed on the back or front of a ticket that is given to a person would expect the ticket to be merely a voucher providing evidence of payment rather than a contractual document. **Thornton v Shoe Lane Parking (1971): Offer and Acceptance:** In transactions involving a machine, the offer is made when the machine is presented ready to interact with a customer. The acceptance occurs when the customer takes the final step to initiate the transaction, such as inserting money, swiping a credit card, or pushing a button. **Standard of Notice:** Terms generally must be reasonably brought to a party's attention, standard notice is not enough for terms that are "very wide and destructive of rights". **"Explicit" Requirement:** For such onerous terms to be binding, the party relying on them must draw the other party's attention to them in a "very clear and explicit way.
Incorp. by Course of Dealing	**James Elliot Construction Ltd v Irish Asphalt Ltd [2014]:** **Henry Kendall & Sons v William Lilico & Sons Pty Ltd [1969]:** allows a court to find that terms used in past transactions between parties are incorporated into a new contract, even if those terms were not mentioned during the recent one. **Hays Personnel Services v Motorline Pty Ltd [2008]:** ^ reaffirmed **La Rosa v Nudrill Pty Ltd [2013]:** Nature of the Document: Invoices, receipts, or delivery dockets provided after a job serves merely as a request for payment. To rely on past dealings, the course of conduct must be uniform, regular, and consistent across previous transactions.
Parol Evidence Rule	**State Rail Authority of NSW v Heath Outdoor (1986):** can be admitted on a provisional basis to determine the parties' actual intentions regarding the form of their contract. Provides that a court can look at outside evidence to decide if the agreement was intended to be entirely contained in the written document or if it was meant to be partly written and partly oral. **Masterton Homes v Palm Assets:** Campbell JA Principles: **Presumption of Completeness:** If a document appears to be a complete contract, it provides an evidentiary basis to infer it contains all express terms. **Proving Additional Terms:** A party can rebut this presumption by proving the agreement was actually partly written and partly oral, allowing for additional verbal terms. **Application of the PER:** The Parol Evidence Rule only applies to contracts intended to be wholly in writing; therefore, extraneous evidence is provisionally admissible to determine the parties' actual intent before the rule can operate.
Collateral Contract Elements:	**De Lassalle v Guildford [1901**]: Established elements **Hoyt's Pty Ltd v Spencer: Consistency Requirement:** Terms of Collateral Contract can't contradict Main Contract.
Entire Agreement Clauses: Collateral	**Innetrepreneur Pub v East Crown Ltd [2000]:** English Authority: Entire agreement clause prevented CC from arising. **McMahon v National Foods Milk Ltd (2009):** Australia Authority Held that entire agreement clause did NOT prevent a CC.
Entire Agreement Clauses: Estoppel:	**Chint Australiasia v Cosmoluce [2008]:** the case held that an entire agreement clause could preclude equitable estoppel from arising: However this is not the prevailing view in Australia. **Franklins Pty Ltd v Metcash Trading Ltd (2009), Yarrabee Chicken Company Pty Ltd v Steggles [2010], Saleh v Romanous (2010):** support the modern view that these clauses do not block estoppel claims

Construction Of Contract Terms:	**Implied Terms**

Define: Terms that are not expressly agreed upon by parties. Terms that lack written or spoken words. The **FIVE** situations in which courts recognise implied terms: **(1)** On the Facts of the Case **(2)** By Operation of Law - Common law **(3)** By Custom & Usage **(4)** By Course of Dealings (past principle) between parties **(5)** By operation of law- Legislation.
Courts are reluctant to imply terms, especially in the case of comprehensive written agreements, but will do so if certain req. Are met.

Terms Implied on the facts:

Courts will look to give effect to the presumed intention of the parties **(objective test)**.
These terms are implied to give effect to the presumed intention of the parties based on the specific circumstances of their agreement. For a term to be implied on the facts, it must satisfy all five criteria established in the BP case.
(1)Reasonable and Equitable: The term must be fair to both parties and balance their "benefits and burdens" **(2) Business Efficacy:** The term must be necessary to make the contract work; it will not be implied if the contract is capable of "sensible operation" without it