

Contract 3 – Contents and Interpretation

Overview:

- Terms of the contract
 - Express terms
 - Parol evidence rule and exceptions
 - Good faith
 - Implied terms
- Classification of terms
- Exclusion clauses

Term or Representation:

Express Terms: what was expressly stated or written down (need to look at the written document or if oral contact, need to evidence what the parties said)

- *Oral statements made during negotiations of contract;*
 - Distinguish between
 - Statements made to induce entry into the contract (representations)
 - Statements meant to be obligations under the contract (terms)
- Important as
 - Damages cannot be awarded for statement that is an innocent misrepresentation including the contract
 - Because representations outside the contract are not obligations under the contract so cannot sue for breach of contract
 - *However, may be actionable outside the law of contract:*
 - Tort: negligent or fraudulent misrepresentation
 - Statute: misleading or deceptive conduct
 - Statute: false representations about goods or services
 - Damages can be awarded for breach of a term of the contract
- Precontractual statements may or may not be terms – depends on *intention* of the parties
- Objective test: would a ‘reasonable’ person consider that the statement was intended to become part of the contractual obligation?

Factors:

1. Importance of statement
 2. Time between statement and contract
 3. Special knowledge/skill or access to truth of one party
 4. Inclusion of statement in any subsequent document
- Objective test of intention + special knowledge of one of the parties
 - Description of subject matter; statement of belief (representation or promise that it is true (term)
 - Innocent misrepresentation is not a term
 - If party making the statement has more knowledge or expertise about the subject matter than the other party (so can ascertain the accuracy of the statement – statement is probably a term

Parol Evidence Rule and Exceptions:

“Where a contract is reduced into writing, where the contract appears in the writing to be entire, it is presumed that the writing contains all the terms of it and evidence will not be admitted of any previous or contemporaneous oral agreement which would have the effect of adding to or varying it in any way”

Mercantile Bank of Sydney v Taylor (1891) 12 LR (NSW) 252 at 262 per Innes J.

Exceptions:

- Where evidence of previous negotiations will be allowed to assist with the interpretation and content of the contract
 - When ambiguity or uncertainty of meaning of words used
 - Whether or not terms can be implied into the contract e.g. Based on custom/trade use
 - Evidence of common mistake made when reducing the contract into writing
 - Evidence of oral agreement to vary or suspend the written agreement
 - Evidence that the contract is not ‘entire’ i.e. Partly written and partly oral
 - Evidence of a prior collateral contract
- Exception to determine identity of parties

Partly Oral / Partly Written Contract:

- As parol evidence rule applies only to written contracts agreed to be complete and entire, the rule will not apply to contracts that are partly written