

The background features abstract, overlapping geometric shapes in various shades of blue, ranging from light sky blue to deep navy blue. These shapes are primarily located on the left and right sides of the frame, creating a modern, dynamic feel.

The contents of a contract 1: Express and implied terms

Learning objectives

By the end of this session you should be able to:

- ▶ Understand how terms are incorporated into a contract
- ▶ Understand the classification of different provisions of a contract, and the implication of categorisation.

We will be considering:

The nature of a **contractual term**, and how it differs from mere puffs and representations;

The incorporation of **express** terms into contracts;

The ways in which terms may be **implied** into contracts;

The relative **importance** of different types of term.

Basic terminology

MERE PUFFS: extravagant claims made for the thing being sold “This tastes sensational!”

REPRESENTATIONS: pre-contractual statements intended to persuade the other party to enter into the contract.

TERMS- Express or Implied statements incorporated into the contract

Distinguishing between representations and terms



When trying to decide whether a statement is a term or a representation, the court will consider four things:

1. The importance attached to the statement;
2. Whether the statement has been reduced to WRITING;
3. The timing of the statement; and
4. Whether the parties involved in the negotiations had any SPECIAL KNOWLEDGE OR SKILLS

EXPRESS TERMS in contracts

1. IMPORTANCE OF STATEMENT

- ▶ If it can be shown that the person to whom the statement was made would not have entered into the contract had the statement not been made, then it is more likely that the statement will be considered a term.
- ▶ [Bannerman v White \[1861\]](#) - There would have been no contract without the false statement being made.



2. Putting a statement in writing

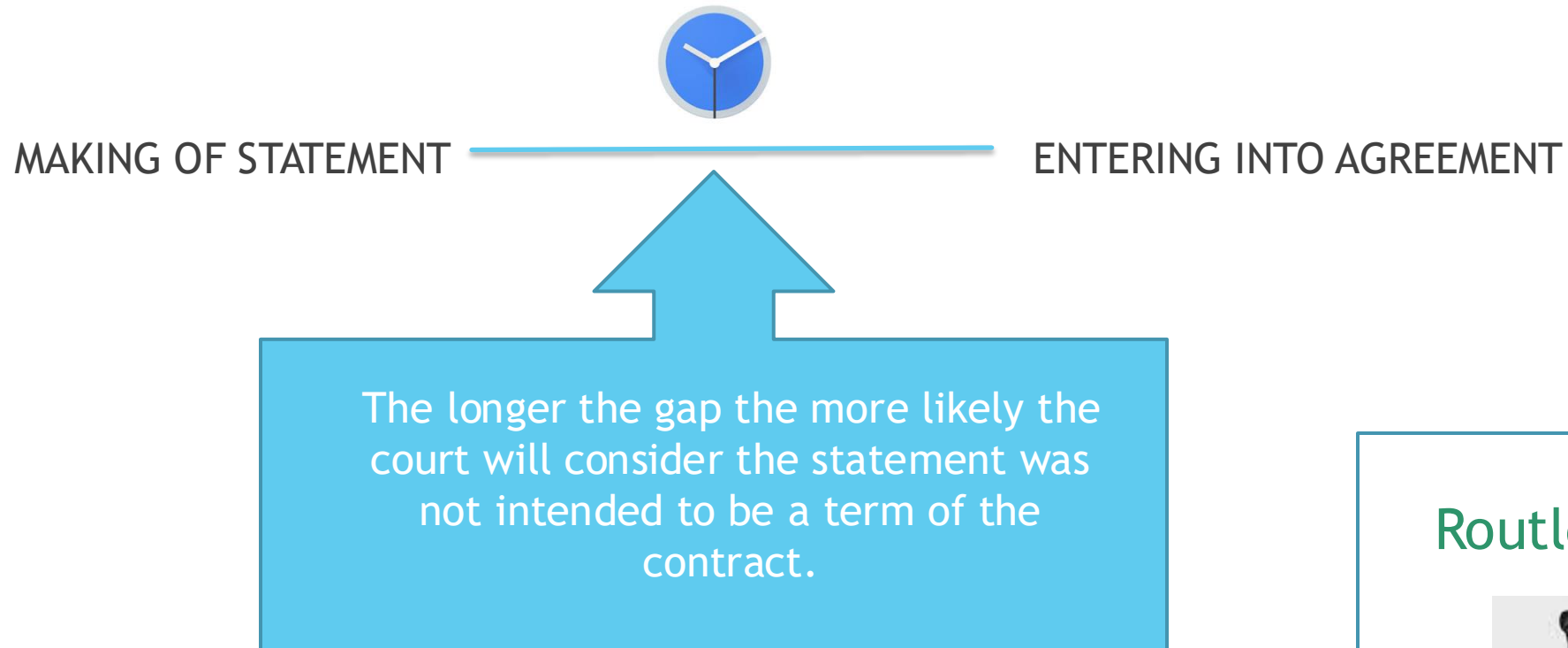
If a statement was made during contractual negotiations has not been included within any written contract = Courts will usually assume this is merely a representation.

Say the contract is part written and part oral - they may alternatively consider that this oral statement was intended to be a term of the contract.

Example *Birch v Paramount Estates Ltd [1956]*- a statement was made to potential house buyers that the house that they would purchase would “be as good as the show house”.



3. Timing



Routledge v McKay [1954]



4. Special knowledge or skills

When the person making the statement has specialist knowledge or skills, the courts are more likely to consider that statement to be a TERM of the contract.

- ▶ Oscar Chess Ltd v Williams [1957]
- ▶ Dick Bentley Productions Ltd v Harold Smith (Motors) Ltd [1965]



Express terms

- ▶ Determined by considering what the parties said or wrote when they made the contract.
- ▶ To establish whether the term is an 'express' one, the court will usually look at whether the claimant has had NOTICE of it.
- ▶ Notice: need to look at
 1. Where there is a written document that has been signed;
 2. One party attempts to incorporate terms into an oral contract

EXCLUSION CLAUSES: This term attempts to restrict or exclude a parties liability in the event of breach of contract.



1. SIGNED WRITTEN DOCUMENTS CONTAINING CONTRACTUAL TERMS

► *L'Estrange v F Graucob Ltd [1934]*

Where a party signs a written document containing contractual terms, the written details usually become part of the contract (regardless of whether they have been read by the signatories).

Exceptions:

Where the signature was a result of a mistake or misrepresentation.

For example, in Curtis v Chemical Cleaning and Dyeing Co Ltd [1951]



2. INCORPORATION OF WRITTEN TERMS INTO ORAL CONTRACTS

Written terms can also be incorporated into an oral, or verbal contract in 3 ways:

1. Through notice
2. Through a consistent course of dealing
3. Through a common understanding of the parties

2.1 Incorporation through notice

**Not Responsible
For Lost
Or
Stolen Articles**

- ▶ Give the other party ACTUAL NOTICE of the term
- ▶ Must be brought to attention AT THE TIME OF MAKING THE CONTRACT:

Olley v Marlborough Court Hotel

- ▶ Even if the claimant did not actually know about the term before or at the time of making the contract, it could still be a term if REASONABLE NOTICE can be shown to have been given.- *Parker v South Eastern Railway Company* [1877]

Has reasonable notice been given?

Factors the courts will consider include:

1) THE TIMING OF THE DOCUMENT:

A term cannot be part of the contract unless notice of it was given at the time of making the contract. (*Olley v Marlborough Court hotel*)

2) TYPE OF DOCUMENT:

The document in which the clause is contained must be one that is expected to contain contractual terms. (*Chapelton v Barry Urban District Council 1940*)



3) TYPE OF CLAUSE:

The more unusual or onerous (burdensome) the clause, the more notice will be expected from the person wanting to rely on it.

Interfoto Picture Library Ltd v Stiletto Visual Programmes Ltd [1988]

2.2 Consistent course of dealing

- ▶ Sometimes a term may be incorporated into a contract because the parties have previously dealt with each other on those terms.

E.G If A and B have made the same contract on the same terms several times before, the court may find that the parties have established a sufficiently consistent course of dealing for the term to be incorporated into their next agreement (even if they do not receive actual or reasonable notice of the terms).

J Spurling Ltd v Bradshaw [1956]

Habas Sinai Ve Tibbi Isthisal Endustri AS v Sometal SAL [2010]

Transformers & Rectifiers Ltd v Needs Ltd [2015]: 3 or 4 periods over a short period may suffice.

2.3 Incorporation through a common understanding of the parties

Even in situations where there is a lack of notice and no consistent course of dealing can be found, written terms can still be incorporated into an oral contract

WHERE TO DO SO WOULD REFLECT THE COMMON UNDERSTANDING OF THE PARTIES.

British Crane Hire Corp Ltd v Ipswich Plant Hire [1975]

IMPLIED TERMS

What are implied terms?

Implied terms are read into an agreement from another source.

They form part of the contract because the court/statute has read them into a contract.

Terms are implied in the following ways:

- By statute;
- By custom; and
- By the courts

Consumer Rights Act 2015 (CRA 2015): replacing the relevant sections of the following earlier Acts:

- Sale of Goods Act 1979
- Supply of Goods and Services Act (1982)

1. Business-to-consumer contracts

CRA [2015] applies to all contracts made on or after 1 October 2015 between a “trader” and “consumer”.



- **S2(2):** Trader: *is a person acting for the purposes relating to that person's trade, business, craft or profession, whether acting personally or through another person acting in the trader's name or on the trader's behalf*
- **S2(3)** Consumer: *is an individual acting for purposes that are wholly or mainly outside that individuals trade, business, craft or profession.*

1.1 Goods contracts

Chapter 2 CRA 2015: covers goods contracts

S2(8) 'Goods': any tangible moveable items

There are a number of terms implied into business-to-consumer goods contracts by CRA 2015, including that the goods will be:

1. Of satisfactory quality
2. Fit for their particular purpose
3. As described

Goods contracts: s9 satisfactory quality

Q: What is meant by the term 'satisfactory quality'?

s.9(2) CRA 2015: *This means that the goods must meet the standard that a reasonable person would regard as satisfactory, taking account of any description of the goods, the price or other consideration for the goods (if relevant), and all other relevant circumstances.*



***Bramhill v
Edwards [2004]***

Goods contracts: s9 satisfactory quality

S9 (3) specifies that:

The quality of goods includes their state and condition; and the following aspects of the quality of goods:

- a) Fitness for all the purposes for which goods of that kind are commonly supplied,
- b) Appearance and finish
- c) Freedom from minor defects
- d) Safety, and
- e) Durability

Example of an old case which is still applicable today is ***Grant v Australian Knitting Mills*** [1936]

What happened in this case?



Goods contracts: s10- fitness for purpose

Where the consumer makes known to the trader any particular purpose for which the goods are required, the goods will be fit for that purpose.

- Applies only if consumer has relied on traders judgement
- Where the product has only one purpose the courts assumes that the trader knew what this was *Priest v Last [1903]*
- An example of a situation where the buyer has an unusual or particular purpose for the goods *Griffiths v Peter Conway Ltd [1939]*



TASK: Emma's day

Would the car that Emma purchased amount to a breach of s9, s,10 or both? Why?



Goods for purpose: s11- description

“Cod con: shoppers mislead by cheaper alternatives”

Shoppers are being overcharged for cheaper fish being sold off as cod, according to new research. Some 7% of cod was mislabelled in the UK and 28% in Ireland.

Less expensive species, including Pollack and whiting, are labelled and sold as cod and threatened species of cod, was also being sold as ‘sustainably sourced’ in one supermarket.



Goods for purpose: s11- description

S11(1) CRA 2015- When goods are sold by description, there is an implied term that they will match the description.

S11(3) CRA provides that 'a supply of goods is not prevented from being a supply by description just because the goods are exposed for supply, and they are selected by the buyers.'

Beale v Taylor [1967]:
'white herald convertible 1961'



1.2 Services contracts

S48 CRA 2015 - implies terms into contracts **FOR A TRADER** to supply a service to a consumer.

Three of the key terms implied into these contracts by CRA 2015 are as follows:

(1) Under **s.49**: a trader will perform the service with **reasonable care and skill**

- *Davey v Cosmos Air Holidays [1989]*

- *Wong Mee Wan v Kwan Kin Travel Services Ltd*



1.2 Services contracts

2) **s51 CRA:** Any consumer must pay a reasonable price for the service (and no more).

3) **s52 CRA:** The trader must perform the service within a reasonable time

TASK

In relation to Emma's highlights that she had done at the hairdressing salon, could you argue that CRA has been breached? If so, how?



2. Business-to-business contracts

Sale of Goods Act 1979

Whilst CRA 2015 covers a range of contracts under which goods are supplied, **SGA 1979** only applies to a contract for the sale of goods, which is defined under s2(1) SGA 1979 as *a contract by which the seller transfers or agrees to transfer the property in goods to the buyer for a money consideration, called the price.*

Contracts for the sale of goods

Implied term:	Business-to-consumer contracts:	Business-to-business contracts
Satisfactory quality	S9 CRA 2015	S14(2) SGA 1979
Fitness for the purpose	S10 CRA 2015	S14(3) SGA 1979
Description	S11 CRA 2015	S13 SGA 1979

Ss13 and 14 of the SGA 1979 are all classified by the Act as 'conditions' and they impose strict liability.

- WHY DOES THIS MATTER?

Sale of Goods and Services Act 1982

Sale of Goods and Services Act 1982	Type of business-to-business contract	Condition	Innominate term
3 Where there is a supply of goods by description there is an implied term that the goods will correspond with that description.	Work and materials	✓	
4(2) Where goods are supplied in the course of a business, it is an implied term that the goods will be of satisfactory quality.	Work and materials	✓	
4(5) Where goods are supplied in the course of a business, and the buyer makes known to the supplier his purpose for the goods (either expressly or impliedly) and reasonably relies on the supplier's skill/knowledge, there is an implied term that the goods will be fit for that purpose.	Work and materials	✓	
13 Where work or a service is done in the course of a business there is an implied term that it will be carried out with reasonable care and skill.	Work and materials and service contracts		✓
14 Where work or a service is done in the course of a business and no time for performance has been agreed, it is implied that the work will be done within a reasonable time.	Work and materials and service contracts		✓

3. Terms implied by custom

When terms are implied into a contract as a result of local or trade usage.

Questions that will be asked when considering whether such a term should be implied are:

- Whether the term has been in use for a sufficient length of time;
- Whether it is reasonable to imply such a term;
- Whether the term is inconsistent with an express term;
- That such a term is actually used in practice; and
- That the implication of such a term is acceptable to the court.

*Hutton v
Warren
[1836]*

4. Terms implied by the courts

This can happen in 2 ways:

- Implied by law
- Implied in fact

Implied by law - case law has established that these terms always appear in these types of contract.

Liverpool City Council v Irwin [1976]



SUMMARY
