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## Chapter 1 : Editions of Handbook on the Construction and Interpretation of the Laws by Henry Campbell B

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What are the terms of a contract? In short, this is: Accordingly, courts have adopted an objective approach to the construction of contracts; subjective intentions, understandings and expectations are disregarded as irrelevant. Incorporation of actual terms A court will consider a term to be incorporated into a contract if it determines that the parties objectively intended to include the term at the time the contract was formulated. For example, if a written offer refers to attached terms that are not actually attached to the final contract, this may be sufficient for a court to consider that the parties objectively intended to infer those terms. Issues about whether or not a term has been incorporated into a contract often come up in the following circumstances: Pre-contractual statements Before entering into a contract, various statements may be made by one party that encourage or induce the other party to enter into the contract. If these statements are not explicitly written into the contract, a dispute may arise about whether any of these pre-contractual statements should be considered to be a term of the contract. Generally, the terms expressly recorded in a contract supersede or override any prior oral statement that was not included or referred to in the contract. However, if from the surrounding circumstances of the case, the pre-contractual statement could reasonably have been understood by the parties to be promissory, then a court may consider such a statement to be a condition i. Courts have generally held that where a statement is reasonably likely to induce, and in fact induces, a party to enter into a contract, it is presumed to be a term of the contract. This is particularly the case where the party who makes the statement has more knowledge, information or skill than the other party. For example, a purchaser buys land after viewing a form from the vendor that indicates that the land is sewered. A court has held that a reasonable person would consider that the vendor was providing a warranty that the land was sewered and therefore constituted a term of the contract , even though the form was not expressly referred to or formally incorporated into the contract see *Ellul v Oakes* 3 SASR Signed documents The general rule is that a party is bound by all the terms in a contract if they have signed it. The exceptions to this general rule are legal, equitable or statutory relief e. Unsigned documents If a party wishes to rely on a term that has not been signed by the other party, the general rule is that such a term can only be incorporated into the contract if reasonable notice is given to the other party. For example, if an airline wants to rely on terms contained on a printed ticket, such terms could only be incorporated into any contract if the passenger has been given adequate notice of the terms; for example, by being given the ticket well before the flight, and not just at check-in. However, they are only implied to the extent that they are consistent with the actual terms of the contract. Accordingly, courts generally determine what the actual terms of the contract are before considering whether any terms are implied. There are three different types of implied terms: Whether or not any terms are implied can be resolved by adopting an objective approach to the construction of the contract. Interpretation of terms Parties can often be in dispute about the meaning of terms and what the terms of a contract require either party to do. As set out above, the courts have adopted an objective approach to interpreting contractual terms and determine the meaning of terms by referring to what a reasonable person would understand the terms to mean, by: For example, A genuinely believes that a clause requires B to transfer ownership of farming equipment to them immediately. A court will disregard such evidence and determine the meaning of the clause based on what a reasonable person would understand the clause to mean, taking into account the factors listed above. For example, where A promises B to do something in consideration of B entering into the main contract, or where A gives an undertaking to B in consideration of B entering into a contract with C. Generally, a court will not find that a collateral contract has been made unless its terms are consistent with the main written contract. If a court finds that a collateral contract has been made, then evidence of its terms will be admissible and may be relevant to interpreting the terms of the main contract. Terms may be conditions or warranties

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Contracts always contain different types of terms said or written, some more important than others. Conditions are so important that without them, a reasonable person would consider that one or other of the parties would not have entered into the contract. Where the breached term is a warranty, the wronged party can only seek monetary damages for any loss suffered; they can not terminate the contract. The contract remains binding on both parties. In determining whether a term is a condition or a warranty, the court will use the objective approach to interpreting contracts and will consider the language used by the parties, the surrounding circumstances, and the object and purpose of the transaction. The law of contract has been significantly affected by many Acts of parliament e. These Acts provide for minimum standards of trade behaviour and the standard of quality that the consumer ought to be able to expect. For discussion of these extra standards, see Consumer protection laws and Consumer guarantees. Terms limiting or excluding liability A contract can include a term that limits or excludes one of the parties from responsibility for something that may go wrong in the performance of the contract. Such a clause is called an exclusion clause or an exemption clause. For example, a contract between a builder and a homeowner for a house extension might include a term that excludes any liability for damage done to the lawn by the builder during the build. Courts have generally taken the view that exclusion clauses can be unfair and have subjected them to special scrutiny. Courts employ the objective approach to the construction of exemption clauses; however, the onus is on the party relying on the exemption clause to establish that the term has been incorporated into the contract and should be interpreted to cover the liability event that it wants excluded. Accordingly, when a contract is a document signed by the parties, they are generally bound by any express exclusion clause contained within it, regardless of whether the affected party had any notice of the clause. Where a contract is an unsigned document e. This includes considering whether reasonable notice was given to the party who would be disadvantaged by the exclusion clause before the formation of the contract. The driver may then be entitled to sue despite the exclusion clause in the conditions. Courts have held that exclusion clauses are to be interpreted like any other clause. The only exception to this is where the exclusion clause is ambiguous and gives rise to more than one meaning; in this case, a court will generally choose the meaning that goes against the party seeking to rely on the exclusion clause. Further, if the natural and ordinary meaning of an exclusion clause is that a party is absolved from all liability for failing to perform their obligations under the contract, then a court may decide that no contract actually exists. Exclusion clauses may also be excluded on the basis that they constitute misleading or unconscionable conduct or are contrary to public policy. For example, exemption clauses that limit liability for fraud, or breach of trust involving bad faith are invalid. Courts have generally found that unless clear words are used, exclusion clauses generally do not exclude liability for acts that were not authorised or permitted under the contract. Exclusion clauses may also be subject to statutory controls under the ACL that limit or void exclusion clauses because they are, for example, unfair or contrary to consumer guarantees see Consumer protection laws and Consumer guarantees. Penalty provisions Some contracts contain terms that list the amount payable as damages if a particular term is breached. Subsequently, Paciocco initiated proceedings alleging the fees amounted to penalties.

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