

CONTRACT TERMS

Contract terms can be divided into:

Express Terms

Implied Terms

EXPRESS TERMS

An express term is a term agreed on by the parties to the contract, however:

- i) oral agreements - the existence of any particular term is a matter of evidence.
- ii) written agreements - the terms in the agreement are the terms of the contract. The contract may also include terms by reference, that is a statement that a particular set of standard conditions apply and incorporates those conditions into the contract.
- iii) agreements partly in writing and partly oral - a problem as it is a fine matter as to whether an oral item is a term of the contract or not.

Generally it will be assumed, in commercial contracts that the written agreement is the contract to the exclusion of oral terms unless the party alleging the oral term can show it is so central to the agreement that it must be included.

SS Ardennes (Cargo Owners) v Ardennes (Owners) [1950] 2 All ER 517

The plaintiffs were growers of oranges in Spain, the defendants were shipowners. A cargo of oranges was shipped on the defendant's vessel, on the strength of an "oral promise" that the vessel would go directly to England to arrive by 01.12.47, but they went via Antwerp and didn't arrive until the 4th Dec. The Bill of Lading contained a clause allowing the carrier to proceed "by any route and whether directly or indirectly"

Held – It was an express oral warranty that overruled the terms in the Bill of Lading

Otherwise the item will be treated as a representation more of which later.

IMPLIED TERMS

An implied term is a term which is not expressly in the contract but is inserted by **statute**, **custom** or by the **courts**.

1. Statute

An Act of Parliament states that the term is included, for example:

a) The Sale of Goods Act 1979(as amended by the Sale & Supply of Goods Act 1994) implies terms as to satisfactory quality, fitness for purpose and ownership of the goods into contracts for the sale of goods.

b) The Marine Insurance Act 1906 implies a seaworthiness term into contracts for marine insurance.

Some of these terms may be excluded by specific provisions in the contract; some may not, either because of the Act itself or some other legislation (for example the Unfair Contract Terms Act 1977).

2. Custom

These terms are normally those within particular trades and are implied as it is assumed that those within the trade intend the customary term to be included unless they exclude it.

British Crane Hire Corp. Ltd. v Ipswich Plant Hire Ltd. [1975] QB 303

D hired a dragline crane from P on the strength of an agreement made by telephone, with the documentation to be sent on later. The conditions of trade in these documents included an undertaking that D would indemnify P for any damage. Before the documents had been signed, the crane (without fault by anyone) sank in marshy ground and P claimed on the indemnity.

Held - The Court of Appeal allowed the clause to stand as part of the contract; although it had not expressly been drawn to D's attention at the time of the verbal contract, and there was no common course of dealing between the parties, both were members of a trade association and commonly used their standard conditions (including a term such as this), and both would have assumed that some conditions were to be applied.

3. Courts

The courts will be very slow to imply terms into a contract that has not been inserted by the parties as they are taken to have known their own minds rather than the court.

The test is that of "business efficacy".

The Moorcock [1889] 14 PD 64

The defendants were the owners of a wharf, and agreed that it should be used by the Plaintiffs ship for loading cargo. The ship grounded and was damaged because of the condition of the river bed, which was not under the defendant's control.

Held - The court said the defendants were liable for this damage; it was an implied term that they had taken reasonable steps to ensure the river bed adjacent to their wharf was safe.

Davey v Cosmos Air Holdings [1989] Current Law 327

Davey & family booked a holiday in the Algarve. The brochure described in glowing terms all the mod-cons in the hotel. However, there was no proper sewage system, the sewage pipe fed directly into the bay in which the hotel was situated. Davey & family went swimming and were then seriously ill and sued Cosmos and won.

Held – There was an implied term that there would be no hazardous environment.

But a term will not be implied just because the contract would make better sense if it was there, only if it was obviously intended to be a part of the agreement.

Liverpool City Council v Irwin [1976] 2 WLR 562

When the landlords of a block of flats sought possession for non-payment of rent, a tenant counter-claimed that the council were in breach of an implied obligation to maintain the building properly. The tenant had withheld rent as a protest.

- The House of Lords Held: The term could not be implied, as a matter of fact or business efficacy. But it could be implied as a matter of Law, as there was a duty to take reasonable care and to keep in reasonable repair the common areas of the building.

So that which is necessary is included and no more will be implied in to the contract by the courts.