

Business Law: CIMA Year One

Contract Terms

A contract is a collection of terms. If one party does not fulfil these terms, the other party can sue for breach of contract; however, we first need to establish which terms have been breached.

Terms in a contract can come in a number of forms.

Express Terms

If a term is specifically expressed by one of the parties, it is an express term. Recall, statements made while the contract is under discussion can become either terms or representations.

Implied Terms

Terms may be implied into a contract in a number of ways.

Trade custom

If terms have been clearly defined in the past (in previous contracts), they will be assumed to apply unless stated otherwise.

Business efficacy

Consider an independent bystander witnessing the formation of the contract. This bystander suggests an amendment, but both parties state that it is not necessary. This amendment would be implied into the contract when the courts are considering it. In other words, these implied terms are those which are so obvious as to not need clarification. In *The Moorcock* (1889), it was implied that a berth supplied would be suitable for the ship it was intended for.

Statutes and legislation

A number of acts of parliament imply terms into contracts, most notably for the sales of goods and services.

The Sale of Goods Act 1979 (amended in 1994) implies five terms to every relevant contract:

- Section 12 implies that the seller has the right to sell goods: the idea of selling is to transfer ownership (title, or property), not possession. If O has a car and a thief steals it, then that thief does not have ownership. If the thief sells the car to B, and B sells it to C, then O can sue C to get the car back (an act of conversion – converting title from one part to another). C can then sue B, since B has no right to sell the car.

- Section 13 implies that the goods should correspond with any description applied to them.
- Section 15 implies that the bulk of goods will correspond with any sample.
- Section 14.2 implies that, where the sale is made in the course of business, the goods shall be of satisfactory quality.
- Section 14.3 implies that, again where the sale is made in the course of business, the goods must be reasonably fit for the required purpose if the seller is made aware of this.

The Sale and Supply of Goods to Consumers Regulations 2002 add in a number of ways to the Sale of Goods Act. Under these regulations, the buyer is entitled to take into account any claims made by the seller, the producer or their representative (even in advertisements to other consumers). Furthermore, if the goods fail to conform to the description or the contract, the buyer may require a repair or replacement (in some cases, up to six months after delivery). This time factor is flexible; for example, in *Clegg v Olle Andersson* (2003) the buyer rejected a yacht two years after communications were concluded.

Similar terms are implied into contracts involving hire purchase, and hire of goods. These terms cannot be excluded when goods are supplied to a consumer, and can only be excluded when supplied to a business if it is reasonable to do so.

The Sale of Goods and Services Act 1982 applies mainly to services, but includes goods supplied during the course of the contract (for example, a painter's materials).

- Section 13 implies that a service will be carried out with reasonable care and skill.
- Section 14 implies that, if not otherwise express, the service will be carried out in a reasonable time.
- Section 15 implies that, if not otherwise express, the service will be carried out at a reasonable price.

Status of Terms

There are three classes of terms: conditions, warranties and innominate.

A condition is the most important. If a condition is breached, the wronged party can repudiate and claim damages. A breached condition gives an automatic right to reject. Any implied terms from legislation or statute are conditions.

A warranty is less important. If a warranty is breached, the wronged party can only sue for damages, and cannot repudiate.

An innominate clause is one where it is unsure whether it is a condition or a warranty. At the time of the contract, it is difficult to know the intention of parties. The courts will look at the

ratio of the breach to the contract as a whole, to determine the importance. They will consider the effect of the breach, and whether it affected the heart of the contract.