

LLB1170: Exam Scaffold Checklist –

What are the express terms?

Incorporation of terms: are the terms, contained in the standard form, included in the parties' contract?

- By signature? → *L'Estrange v F. Grey* / *Toll v Alphapharm*
- By notice? → *Oceanic Sun Line Special Shipping Co v Fay* / *Thornton v Shoe Lane Parking*
- By course of dealing? → *Balmain New Ferry v Robertson*

Statements made during negotiations:

What relief can P seek if a pre-contractual statement made by D turns out to be false?

- Depends upon whether D's statement is held to be: a term of the contract, a representation inducing the contract or mere puff.
- Is this pre-contractual statement admissible?
 - Admissible if contract oral/partly oral
 - If written consider the PER = may avoid effect by establishing:
 - Contract not wholly in writing
 - Collateral contract → *Sheppard v Municipality of Ryde*; *Hoyts v Spencer*
 - Estoppel → *Saleh v Romanous*
- Is the pre-contractual statement promissory?
 - Promissory? Or merely representational? → *JJ Savage v Blakney*
 - Intention – intelligent bystander → *Equuscorp v Glengallan Investments*

What is the process by which the court construes/interprets a contract?

Two steps:

1. What extrinsic evidence is admissible in construing a contract?
 - Oral
 - Writing
 - If there is ambiguity – no actual intentions
2. What is the process?
 - Court aims to give effect to the parties' intentions, determined objectively → *Pacific v BNP Paribas*
 - Focus is on presumed intentions, subjective intentions irrelevant → *Brambles v Bathurst CC*
 - What would a reasonable person understand the language that the parties have expressed to mean → *Pacific v BNP Paribas*

Was the exclusion clause included in the terms?

- First consider legislative restrictions
- Look to notes

If not regulated by legislation...

Apply common law approach: 2 steps

1. Is the exclusion clause a term of the contract?

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M Carnoy



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