

# Legal and Professional Issues

## Theme 3 Notes

### Contract Law

#### ➤ Nature of Contract

##### **Agreement:**

- Legally enforceable obligations.
- Capable parties.
- Produces rights and obligations.
- Freedom of contract is most important, however, statute or common law applies.

##### **Form of Contract:**

- Written, oral or action.
- Limited number of contracts need to be written.
- Although, wisdom dictates that contract of value be written.

##### **Essentials for Agreement:**

- Offer (made by an Offeror)
- Acceptance (made by Offeree)
- Intention to be legally bound
- Consideration

Offeror makes an offer to the offeree.

Offeree has the power to accept the offer and create a contract.

#### ➤ Agreement

Ad Idem: agreed on essential points

Existence of an Offer

- *Boyers & Co. v Duke* (1905)
- *Dooley v. T. L. Egan* (1938)

Quote and statement “subject to immediate acceptance” = Offer

Can be made to an:

- Individual
- Group
- World

**Boyers v. Duke (1905):**

Plaintiffs wrote to the defendant canvas makers. “Please give us your lowest quotation for 3,000 yards of canvas, 32,112 inches wide. Same as the enclosed sample or near and your shortest time for delivery.”

Defendant replied: Lowest price, 32,112 inches wide, is 4.5/8d. per yd, 36 inches measure. Delivery of 3,000 yards, in 5/6 weeks.

**Court Held:**

That this was not an offer but merely a quotation of terms upon which the plaintiffs might make an offer.

**Carlill v. Carbolic Smoke Ball Co (1893):**

The Carbolic Smoke Ball Company manufactured a patent medicine which was advertised as being able to prevent flu, among other ailments. The company ran advertisements in newspapers stating that anyone who bought and used the Smoke Ball correctly and still developed the flu would be entitled to a reward of 100 dollars. The advertisements also stated that ‘1,000 dollars was deposited in the bank, to show the company’s sincerity.’ Mrs Carlill saw the advertisement, bought and used the Smoke Ball and still developed the flu. She claimed her reward, but the company responded by stating that the advertisements were merely invitation to treat and were not meant to be legally binding offers.

**Court Held:**

That the advertisement was an offer to the world at large and was capable of acceptance by anyone who bought and used the product according to the instructions. The fact that the company had deposited money in a special account was seen as proof of legal intent.

**Invitation to Treat:**

Not an offer – e.g. advertisement

- Strawberries for sale
- Open for petrol

Items on display in shop window or shelf with or without price.

- Can you enforce incorrectly priced items?
- Seeks offers from you.

### **Partridge v Crittenden (1968):**

An advertisement was placed in a specialist magazine offering wild birds for sale. It was an offence to sell such birds, and when the advertiser sent one to a customer, he was charged with unlawfully offering such a bird for sale.

### **Court Held:**

That the advertisement was simply an invitation to treat. It was not sufficiently detailed to be an offer.

### ➤ **Offer Communication**

#### **Offer Communication:**

By writing, oral or implied from conduct

- Cereal box competitions
- Auction and shops
- Self service

Sometimes qualifications are applied

- E.g. Subject to exchange of contract

#### **Subject to Contract:**

- Some contracts around land/property.
- Party hold off final agreement to check title or awaiting sale of own property.
- Courts tend to support this statement unless strong evidence to the contrary.

### ➤ **Acceptance**

#### **Acceptance:**

Must be clearly communicated.

- Acceptance in principle?
- Acknowledgement of receipt of offer?

Without variation of terms.

**Counter Offer:**

Kills original offer.

By Conduct:

- Hand of item to shop assistant.
- Scanning or ringing up price.

In complex contract disputes:

- Courts examine all correspondence.

**Communication of Acceptance:**

General Rule: the offeror must be clearly informed of acceptance.

Affective once communicated.

Exceptions:

- Postal rule (not applicable to instantaneous)
- Unilateral contracts

**Felthouse v. Brindley (1862):**

After negotiations about the price, a potential buyer of a horse said to the seller 'If I hear no more about him, I consider the horse is mine.' The court held that this was not a proper form of acceptance. One party cannot make a contract simply because the other party does not reject it.

**Parkgate Investments v. Shandon Park Mills (1991) Ire:**

The defendant sought to enforce an initial agreement made with the plaintiff's solicitors. The court held that there was no contract as the purported acceptance was made to the solicitor and not communicated to the plaintiff.

**Household Fire Insurance v. Grant (1879):**

Grant offered to take out household insurance and the plaintiff company accepted his offer. The company posted the letter of acceptance, but it never arrived. Grant arranged insurance elsewhere. At the end of the year the plaintiff billed Grant for one year's insurance premium. The court held that Grant was liable to pay the plaintiff because a valid contract had been formed when the letter of acceptance was posted.

**Sanderson v. Cunningham (1919) Ire:**

The plaintiff sent a completed insurance proposal to the defendant insurance company in London. This was an offer by Sanderson. The defendant company sent him a policy, which he signed. When a dispute arose about the insurance, the plaintiff wanted to sue the defendant in Ireland but could only do so if the contract were concluded in Ireland. The court held that the contract was completed in London because that was where acceptance, i.e. the policy, had been posted.

➤ **Offer Termination****Acceptance:**

- **Withdrawn** – only prior to any acceptance.  
Revocation by post only on receipt.
- **Lapse of Offer** – period of time is a matter of fact
- **Rejection** – must be communicated  
Counter offer.

**Loring v. City of Boston (1844):**

A reward was advertised and claimed four years later. The court held that the offer had lapsed because of the time that had passed.

➤ **Inclusion of Additions Terms**

Not unilaterally – once an agreement has been reached.

Although a right may be included.

Likewise new term made be accepted by other party.

**Roscorla v. Thomas (1842):**

After the defendant had sold a horse to the plaintiff, he promised that the horse was ‘free from vice’. The horse bit the plaintiff who sued for breach of warranty. The court held that the defendant’s promise was not binding as the plaintiff had provided no consideration in return for it, and past consideration was not valid.

➤ **Intention to be Legally Bound**

Where absent: contract is unenforceable.

Courts distinguish between:

- Commercial: Where businesses are in agreement.  
Legally presumed to the contract unless rebutted.
- Social: Where an agreement is made.  
Not legally a contract unless rebutted.

**Simkins v. Pays (1955):**

Court held that a lottery ticket holder had to share his winnings with two other people who had regularly contributed. But they were not contributing on every occasion to the purchase of a group owned ticket.

➤ **Consideration**

**Consideration:**

One party gives or promises to give some advantage to the other party in return for the promise. This advantage moving from one party to the other is known in law as consideration.

A bare promise is not consideration.

Consideration is not required in a “deed under seal.”

**Rules of Consideration:**

Must be real or sufficient – of value no matter how small.

Courts will only examine this if fraud, misrepresentation, duress or undue influence is claimed.

- Need not be adequate.
- Must move from promisee.
- Must not be past.
- Must not be illegal.

**Accord and Satisfaction:**

Where a party waives a right, this must be supported by consideration from the other party.

Otherwise the original right can be enforced.

Where consideration is supplied.

- A new contract has been formed to replace the old.
- Accord and satisfaction.

➤ **Promissory Estoppel**

**Promissory Estoppel:**

Pinnel rule: part payment of a debt is not acceptable.

Equity: will sometimes intervene where one party has acted under the reasonable impression that a right will not be enforced.

- UCD student in *Kenny v. Kelly* 1988

➤ **Forms of a Contract**

**Forms of a Contract:**

General Rule: no particular form required by law.

Exceptions – Required under statute:

- Contracts unsupported by consideration
- Sale of land (also by deed)
- Bill of exchange
- Assignment of IP
- Transfer of shares
- HP agreements

**Statute of Frauds (1695):**

Need not be a particular memorandum.

- A collection of correspondence may suffice.
- So long as names/descriptions of the parties are contained within
- Property is identified.
- Price paid for property.
- Signature has been liberally interpreted to include letterhead.

Equity has also intervened: ‘part performance’ doctrine

- Where no written document exists and part performance has taken place.
- Will not allow statute of frauds to be used itself as an ‘engine for fraud’.

➤ **Contract Terms**

**Contract Terms:**

Refers to the contract content.

Set out the boundaries.

Define rights and obligations of the parties.

Can be expressed or implied:

- Expressed – Agreed between parties, e.g. price, qty.
- Implied – From statute, common law, business practice.

**Expressed Terms:**

Originated from statements made prior to an agreement.

Statements are divided:

- Representations: Not an expressed term.  
Used for inducement, e.g. a great little run around.
- Terms: Meant to be legally binding, e.g. 30k on the clock

**Term Construction:**

Courts use well defined rules to interpret.

Written terms are taken in their ordinary meaning, without looking further.

Legal terms are given their legal meaning.

Oral terms are a “question of fact.”

Where terms contradict one another – the intention of the parties will prevail.

**Parol Evidence:**

General Rule: Oral evidence cannot be used to amend a written document.

Special Cases: Exceptions apply where a written document is confused and would lead to a unjust outcome.

e.g. to clarify a written statement “all the oaks”

Or where the written document is not the entire agreement, e.g. Claton Love v. B&I.



### **Contra Proferentum Rule:**

Used to redress the balance between parties.

Stronger party imposes standard terms on the weaker.

Standard Term contracts – where a term(s) is confused or may have several interpretations.

Court will interpret/construe the term(s) against the party imposing it.

### **Implied Terms:**

Often contracts include some obvious expressed terms leaving others to the remaining terms to be implied.

Courts will infer terms:

- to include terms which the parties would have included have they put their minds to it.
- imply as a matter of law due to the nature of contract

### **e.g. Dundalk Shop Centre v. Roof Spray Ltd.:**

Defendant would use reasonable care and skill when installing.

### **e.g. Education Co of Ire v. Fitzpatrick (1961):**

Likewise to protect constitutional rights – ‘disassociation’

### **Terms Implied by Law:**

Sales of Goods Acts 1893-1980

European Communities (Unfair terms in consumer contracts) Regulations 1995

Consumer Credit Act 1995

Minimum notice and Terms of Employment Act 1973

Holiday (Employees) Act 1973

### ➤ **Remedies in Contract**

### **Remedies in contract:**

#### **Damages:**

- Designed to compensate the wronged party
- Not liable to compensate for total loss

**Hadley v. Baxendale (1854):**

- Only to the extent that would be reasonable in the contemplation of the parties at the time the contract was made

**McGrath v. Kiely:**

- Surgeon's poor accident report
- Only meant to put the parties in the position they would have been had the contract been completed.

**Un-liquidated:**

- Decided by the court

**Nominal Damages:**

- Made for breach with no actual damage

**Exemplary Damages:**

- Greater than the pecuniary loss suffered

**Liquidated Damages:**

- Parties in a contract genuine pre-assessment of loss that would result from a breach.
- Differs from a penalty which cannot be enforced.

**Quantum Meruit:**

- Party sues to claim un-liquidated sum for amount completed.
- Differs from damages as it is re-numeration for work done and not compensation.

**Specific Performance:**

- Discretionary order of the court.
- To enforce due performance.
- Generally, not granted where damages will adequately remedy.

**Injunction:**

- Order from the court.
- Directing a party to do or refrain from doing some action
- e.g. committing a breach

- Use commonly in restraint of trade cases

**Rescission:**

- Right to one party to set aside a contract and be returned to pre-contractual position
- Property must be returned, possession given up and account taken of profit and deterioration.
- Damages are not recoverable.
- May be claimed in cases of mistake, undue influence, fraudulent misrep, and unconscionable bargain.

**Rectification:**

- Where written terms do not adequately reflect what was orally agreed.
- Court is concerned with defects in recording not in contract making.

➤ **Discharge of Contract**

**Discharge of Contract:**

- Every contractual obligation give rise to a corresponding right.
- When all obligations & rights are extinguished > Contract is discharged.
- Discharge can be achieved by:
  - Performance
  - Substantial performance
  - Partial performance
  - Tender of discharge
  - Agreement
  - Notice
  - Operation of the law
  - Frustration
  - Breach

**Performance:**

- Completely and exactly in accordance with the terms.
- Vast majority of contracts are discharged this way.
- When this occurs the contract is entire, a matter of construction in each case.

**Coughlan v. Mooney (1905):**

- Builder failed to complete a house on time
- Work completed by another builder

- Claimed for work done
- Court dismissed claim

### **Cutter v. Powell (1795):**

A sailor was hired for a voyage and was to be paid in a lump sum upon arrival in Liverpool. The sailor died during the voyage, and his wife claimed on a quantum meruit basis for the period he had worked, under an exception to privity of contract. The court held that because he had failed to finish the voyage, he was not entitled to any payment. By contrast, if the sailor's contract had provided that he was to be paid by the month, that would be a divisible contract, and his wife would have been entitled to any wages outstanding at his death.

### **Substantial Performance:**

The requirement that a contract be completely and exactly performed can lead to harsh injustice.

One party benefit at the full expense of the other.

Courts have developed equitable doctrine of substantial performance, i.e. where there is performance as complete as a reasonable person would expect.

Only available where the party genuinely dispute whether the completed terms meet the standard.

### **Kincora Builders v. Cronin (1973):**

- Builder knowingly refused to insulate an attic
- Could not avail of doctrine

Held: to have abandoned the contract

### **Partial Performance:**

- One party is unable/unwilling to make more than partial performance.
- Normally not discharged.
- Except where that contract is divisible into parts, some of which can be discharged.
- Parts discharged can be paid for.
- Also, where one party prevents the other from completing their obligations then they can see payment for work done.
- Finally, if partial performance is accepted by the parties then the contract is discharged.

### **Tender of Discharge:**

- When one party unsuccessfully attempts to perform – this is a tender.
- Where the tender consists of an attempt to perform the contract, the refusal to accept will discharge the contract.

### **Discharge by Agreement:**

- Application of the common sense rule that a contract can be terminated in the same manner it began.
- In executory contracts, a simple waiver will discharge it.
- Consideration is the exchange of promises not to enforce it.
- In an executed contract, a discharge must be supported by consideration or deed.
- Discharge can also be made by a new contract on the same subject matter.

### **Discharge by Notice:**

- Used in multi transaction contracts.
- Usually a notice of termination term is included if not included the courts may imply a reasonable notice clause.

### **Discharge by Operation of the Law:**

- Law discharges a contract when it merges into a higher obligation – oral one swallowed by a subsequent written one.
- Contract for personal service is discharge by death.
- Discharge by statute of limitations 1957.
  - Action for breach must be commenced < 6yrs.
  - Recovery of land < 12yrs.

### **Discharge by Frustration:**

- Where a contract from the outset is impossible to perform – it is void.
- Where it starts as possible but later becomes impossible – then it is frustrated.
  - Neither party must have caused or been previously aware of the frustrating event.
  - *McGuill v. Aer Lingus Teo* (1983)
- A contract can be frustrated because its performance would lead to an illegality.

### **Discharge by Breach:**

One party:

- fails to perform obligations

- or repudiates expressly or implicitly

Only discharge if the innocent party treats the breach as repudiation.

### **Anticipatory Breach:**

- By the time fixed for performance.
- One party indicated its intention not to perform.
- This will entitle the innocent party to damages from the time of the anticipatory breach.

### **Fundamental Breach:**

- Where the breach is sufficiently serious to a party to repudiate.

### ➤ **Restraint of Trade**

#### **Restraint of Trade:**

- Restricts a party from freely exercising a trade, calling or profession.
- Prima facie – void due uncompetitive nature.
- Under common law rules for some contracts.
  - e.g. employment, sales of business.
- Can be enforced where:
  - It is reasonable between the parties.
  - Consistent with the public good.

#### **Employment:**

- Employer can circumscribe certain activities of a former employee.
- Competing interests between:
  - Employer who wants to protect business interests.
  - Employee has right to earn livelihood from his skills in chosen fields.
- Courts must strike the balance.
  - Using the test of reasonableness.

#### **Types of Restrictions:**

A combination of:

- Activities
- Geography
- Time duration

Courts may sever unreasonable clause(s) leaving the remaining contract intact.

**Oates v. Romano (1950):**

- Not carry on like business within 1 mile radius of Dublin shop for 3 yrs.
- **Held:** void, as it prevented assistant working in Dublin.

**Skerry v. Moles (1908):**

- Belfast shorthand teacher agreed not to work in Belfast, Dublin or Cork for 3 yrs.
- **Held:** unreasonable, sever Dublin and Cork.

Unfair dismissal or without due cause.

- Even a reasonable clause will not be enforced.  
**Coleborne v. Kearns (1912)** – started competing motorbike business.

**On Sale of Business:**

- Purchaser can restrict seller from engaging in similar enterprise in future.
- Courts often accept this as proprietary interest in the ‘goodwill’ may be worthy of protection.
- Though the test of reasonableness still applies.

**John Orr Ltd v. Orr:**

- Seller continued to work for the company.
- Agreed not to compete with company or parent buyer for 1 yr.
- On resigning, immediately est. company in England.

**Held:** Only reasonable not to compete with own original company.

Severed clause in relation to, not competing with parent.

**Skerry’s College (Ireland) Ltd v. Moles (1907):**

The defendant was a shorthand teacher in Belfast. A clause in his employment contract restricted him from teaching shorthand within seven miles of Dublin, Cork or Belfast. The court held that this was not reasonable between the parties, as Moles had only worked in Belfast.

**House of Spring Garden Ltd v. Point Blank Ltd (1985):**

The defendant sold the plaintiffs bullet proof vests under a licensing agreement. The defendant then manufactured his own vest which breached the plaintiffs’ copyright and a

restraint of trade in the licensing agreement. The court held that the confidential copyrighted information was a legitimate interest which the plaintiffs could validly protect.

### **Eddie Macken v. O'Reilly (1978) Ire:**

The plaintiff objected to a rule of the Equestrian Federation of Ireland which required Irish competitors at international show jumping events to use only Irish bred horses. The Court held that such a restriction was reasonable from the community point of view because of the jobs in the horse breeding industry which depended on this rule. (The decision would not be made today because it is contrary to the concept of free competition under EU law).

### ➤ **Competition Law**

#### **Competition Law:**

Competition Act 1991:

- Prohibits anti-competitive agreements/practice.
- Prohibits abuse of dominant position.

Supervised by the Competition Authority (CA)

CA can issue licences where:

1. It improves the production or distribution of goods or services or promotes technical or economic progress.
2. It allows consumers a fair share in the benefits.
3. Does not impose terms which are not indispensable from attainment of the agreement objectives.
4. Must not afford an undertaking the possibility of eliminating competition in respect of a substantial part of the goods or services in question.

#### **Abuse of Dominant Position:**

Dominance means:

- A position of economic strength.
- Enabling it to prevent effective competition.
- By being afforded the power to behave to an appreciable extent independently of its competitors, customer and ultimately the consumer.

Examples include:

- Imposing unfair purchasing/selling prices.
- Imposing unfair trading conditions.



- Applying dissimilar conditions to equivalent transactions with other trading parties thus placing them at a competitive disadvantage

**Masterfoods v. HB Ice Cream (1993):**

- **Held:** HB was dominant in the impulse buy ice cream market.
- As it had 70% of market for several decades.
- However, it did not abuse this dominance by insisting that retailer only store its ice cream in HB supplied fridges.

➤ **Invalid Contracts**

Mistake – Void

Duress – Voidable

Undue Influence – Voidable

Misrepresentation – Voidable

Statute requirement not met – Unenforceable

Illegal – Offending common law or statute

**Mistake:**

In General: mistakes will not affect a contract.

Exception: fundamental mistake of fact.

- Which destroys the nature of the contract.
- Known as operative mistake, can either be:
  - Common
  - Mutual
  - Unilateral

**Common:**

- Party labour under the same mis-understanding.
- e.g. parties agreed to sale of a boat between themselves.
- Either does not know that the boat has been destroyed by fire.

**Mutual:**

- Parties negotiate at cross purposes.
- Different mistake for each Clayton Love v. B&I.

- Refrigerated v. Atmospheric temperature.
- Court will rectify one way or another where possible.

### **Unilateral:**

- One party makes a mistake and the other party knows this seen to be taking advantage.
- Courts will rectify or grant rescission as appropriate.

### **Nolan v. Graves**

- Auction of premises
- Dispute between parties on price
- Court identified the purchaser as taking advantage
- Rectified to the higher price

### **Cundy v. Lindsay (1878):**

A swindler called Blenkarn of Wood Street ordered goods from the defendants and signed his name to look like Blenkiron & Co, a well known firm on Wood Street. The goods were sent on credit and resold to an innocent third party. The court held that the sellers intended to sell only to the well known firm, as they would not have accepted a postal order from an unfamiliar client. As a result the contract between the seller and swindler was void. The seller was, therefore, able to recover the goods from the innocent third party.

### **Nolan v. Graves & Hamilton (1946) Ire:**

The plaintiff bought a row of houses at auction for 5,000 dollars. The auctioneer mistakenly wrote the price up as 4,500 dollars. The court held that the plaintiff could not buy at the lower price, and the contract was rectified to fix the mistake.

### **Mistake as to Nature of Document:**

General Rule: bound by signed document

However, exception:

- If document is signed which represents something fundamentally different nature.
- Non est factum will apply.

### **Mistake of Law:**

General Rule: 'Ignorantia juris neminem excusat'

Money paid under a mistake of law, without more cannot be recovered.

Exception:

- Where the other party create the mistake
- And this leads to an over-payment
- Then this overpayment can be recovered

**Misrepresentation:**

Caveat Emptor:

- Generally, a party to a contract is not duty bound to reveal all
- For the seller: Silence can be golden

Exceptions:

1. Contracts of Uberrima fides
2. Misrepresentation:
  - One party make a positive misleading statement which the other party then acts upon (induced by) – maybe

Voidable:

- Also, when a material fact is suppressed

➤ **Proper Law of Contract**

- Parties are entitled to nominate proper law of contract.
- If not the court will decide.
- Generally contracts formed in Ireland are subject to Irish law.
- Should the party expressly state Irish law then.
  - Court will entertain action regardless of location of contract.

➤ **Capacity**

**Capacity:**

Minors - < 18 yrs not married

Law:

- Protects minors from inexperience
- Protects Adult who deal with minors

Contracts classified:

- binding
- voidable
- or void

Other Categories:

- Lunatic and Drunkards
  - Can avoid contracts
  - Provided they can show that the other party was aware
- Sovereign Immunity:
  - Immunity from action – principle of international law

**Government of Canada v. EAT (1992):**

- SC dismissed claim for unfair dismissal by an employee of the Canadian Embassy.
  - However, immunity will no longer apply where a diplomat makes a claim against a subject of the state.
- Royal prerogative was tested by *Byrne v. Ireland* (1973)

➤ **Classification of Terms**

A term can be either a condition, warranty or innominate term. Each provides remedies for an aggrieved party in the event of a failure of one party in to fulfil their obligations of the contract, although the extent of the remedies vary upon the type of contractual term.

**Condition:**

A condition is essentially the basis for a contract. It provides for the obligations of each party to an agreement. The simplest way to think of a condition in contract law is found in the terms “If... then”. “If” one party fulfils an obligation as contained in the agreement, “then” the other party to the agreement must fulfil their obligation to that party.

E.g. a condition in a contract for a sale of goods might include the terms that the successful completion of a contract relies upon an agreed upon delivery date of the goods. In order to fulfil the terms of that contract, the seller will only receive compensation for their goods if the buyer receives those goods by that set date.

If the seller should fail to meet that deadline, then the seller can be held in breach of the contract. The injured party can treat this failure of the seller to meet their obligations as “repudiatory”, meaning the injured party has two options:

1. Terminate the contract (acceptance of the repudiation) and walk away from any obligations they may owe the seller or
2. Treat the contract as continuing (affirmation of the contract)

It's important to note that in either case, the injured party can sue for damages, no matter the reason for the breach or how little the loss to the party may be.

### **Warranty:**

A term in a contract that is more like a promise by one party. A major difference from a condition is that if a party fails to live up to warranty, the aggrieved party can sue for damages, but the failure does not provide cause for termination of the contract.

If the other party considers the warranty by one party important enough, then it could be classified as a condition. Generally, however, a warranty is usually only a statement of facts. They can be expressed or implied and can exist for the lifetime of the contract or be contractual only for a limited time.

### **Innominate Term:**

A term that cannot be defined as either a condition or warranty. In the case where a party seeks recourse for a failure of the other party to fulfil the obligations of innominate term, it will be up to the courts to determine a remedy.

If the court determines that a breach has occurred, the remedy for the breach will depend on how the injured party is affected at the time breach happens. If the breach is deemed substantial, then the innominate term will be viewed more like a condition, and in addition to claiming damages, the injured party may terminate the contract. If the court views the breach to be more in line with a failure to fulfil a warranty, the injured party may claim damages, but does not have the ability to terminate the contract.

### **Nature of Terms:**

**Condition:** A term which is clearly. Vital to the main purpose of the contract. If breached, the main purpose of the contract will be affected.

**Innominate Terms:** These are terms that can either be a condition or warranty depending on how important the term is to the parties concern. The more important the term then it is considered a condition.

**Warranty:** A term is a warranty if is clearly less vital to main purpose of the contract. Its breach may cause loss to the injured party but will not affect the main purpose of the contract.

### ➤ **Exemption Clauses**

#### **Exemption Clauses:**

- Terms which limit or exclude one party's obligation or liability in contract or Tort.

- To be effective, party must show:
  - term is incorporated
  - covers the loss/damage suffered

### **Incorporation:**

- By signature:
  - Party bound by signing regardless of reading.
- By notice:
  - Where it is printed on documents exchanged.
  - On signage in the environs of the contract.
  - Validity will depend on the type of document.
  - Not on receipts e.g. back of theatre tickets.
  - But where document is used to retrieve goods, e.g. dry cleaning docket.
- Must show reasonable steps were taken to give notice not actual notice, e.g. railway tickets refer to clauses on TT.
- Must be on notice prior or at the time of contracting.
- Not after, *Ollie v. Marlborough Hotel*; *Thorton v. Shoe Lane parking*.

### **Effectiveness:**

Must cover the damage/loss incurred.

### **Alexander v. Irish National Stud:**

- Clause excluded damage due to accident – failed
- Horse killed due to negligence of Stud
- Negligence outside the realms of ‘accidents’

### **Regan v. Irish Automobile Club:**

- Clause “liability due to accident, however so cause, resulting in damage or personal injury”.
- Statement “however so caused” widen accident to include negligence.
- Will not hold when there is a fundamental breach.

### **Clayton Love v. B&I:**

- Cargo not carried at correct temperature.
- Therefore exemption clause ineffective.
- Statute also prohibit certain clauses.
- Sales of Goods & supply of services Act 1980.

### **L’Estrange v. Graucob (1934):**

The plaintiff bought a slot machine from the defendant for use in her premises, having signed a document headed ‘sales agreement’ which excluded any implied conditions or warranties.

The Sale of Goods Act 1893 did not apply to the transaction. The plaintiff gave evidence that she had not read the document before signing it. The court held that the plaintiff was bound by the terms of the agreement and that it was irrelevant that she had not read the document before signing it or that her attention was not drawn to the exemption clause.

**Curtis v. Chemical Cleaning and Dyeing Co. (1951):**

The plaintiff left her wedding dress to be cleaned by the defendant and was asked to sign a receipt that excluded liability on the cleaners' part. When the plaintiff questioned this, she was told that it applied to the delicate beading and sequins, which would be cleaned at her own risk. The plaintiff agreed to this. On collection of the dress, the beads and sequins were intact, but the skirt had been badly stained. The defendant argued that the exclusion clause covered such a situation. The court held that Mrs Curtis had been misled into signing the receipt, and thus it was not binding on her.

**Thornton v. Shoe Lane Parking (1971):**

The plaintiff parked his car in a multi-storey car park. Outside the car park was a notice displaying the charges and also stating. All cars parked at owner's risk. From an automatic vending machine Mr Thornton was given a ticket which stated, in small print, that the issue was subject to the conditions displayed in detail on pillars in the car park and at the paying office at the exit. On collection of his car, Mr Thornton was badly injured in an accident. The court held that the contract was formed when Mr Thornton put his money into the machine (the 'parking' sign was an offer and the money was the acceptance) and the terms contained on the ticket were not part of the contract, coming after the contract was concluded.

**Hollier v. Rambler Motors (1972):**

The plaintiff had left his car to be repaired by the defendant on three or four occasions over a number of years and had been given a receipt that limited the garage's liability. On the occasion in question, he was given no receipt. When the car was damaged while in the possession of the garage, the garage attempted to limit its liability on the basis that the plaintiff should have been aware of the exemption clause based on his prior course of dealings with the garage. The court held that there was no course of dealings, as a series of isolated transactions could not be held to be such.

**Clayton Love v. B&I Transport (1970) Ire:**

The defendant contracted to ship the plaintiff's frozen scampi from Dublin to Liverpool. The scampi defrosted after being loaded at atmospheric temperatures. One of the two exemption clauses in the contract was wide enough to cover the defendant's negligence. The Supreme Court held that despite the parties' intentions, there could not be an exclusion clause wide enough to cover a breach of the parties' key obligations under the contract.

**Photo Production v. Securicor Transport Ltd (1980):**

In this case, the defendant company was hired to provide security for the plaintiff's factory, and the contract excluded liability for acts or omissions of the defendant's employees. One evening, a Securicor employee started a fire that destroyed the plaintiff's factory. The English House of Lords decided that an exemption clause may be wide enough to cover a fundamental breach of contract, so the exemption clause was valid.