

Revision Summary Chapter 7

The terms of the contract

- When distinguishing between terms and representations, the courts will try to ascertain the parties' objective intentions. Relevant factors include the timing of the statement, the importance of the statement, the respective knowledge of the parties, and whether the representor invited the representee to verify the statement.
- Express terms are those terms that have been specifically agreed upon by the parties.
- The parol evidence rule states that evidence cannot be submitted that would seek to add to, or vary, the terms of a contract, but this rule only establishes a presumption that can be rebutted, and the courts have established a number of exceptions and qualifications.
- Terms may be implied into a contract by the court, statute, or by custom.
- The courts will imply terms in fact to give effect to the unexpressed intention of the parties. Implied terms in law are not based on the party's intentions.
- The courts will only apply a term in law if the contract in question falls within a number of commonly occurring contracts, and the implication of the term is 'necessary'. The courts have, however, taken a generous view regarding what is necessary.
- Terms may be implied based on trade usage, previous dealings between the parties, and local customs.
- The courts take an objective approach when interpreting contracts and interpret words based on how a reasonable person would understand them, taking into account relevant background information.