

CHAPTER 6 TERMS OF A CONTRACT

After studying this chapter students should be able to:

EXPLAIN THE DIFFERENCE BETWEEN A TERM OF A CONTRACT AND A REPRESENTATION

- A representation is a pre-contractual statement.
- Whether a statement is a term or a representation depends on the intention of the parties.

APPRECIATE THE NECESSITY FOR CERTAINTY OF CONTRACTUAL TERMS AND EXPLAIN THE DIFFERENCE BETWEEN EXPRESS AND IMPLIED TERMS

- Terms of a contract must not be too vague or incomplete, and if they are, the agreement will usually not be a binding contract.
- Terms can be express, or implied into contracts by statute, trade custom, or the courts.

DISTINGUISH BETWEEN CONDITIONS, WARRANTIES, AND INNOMINATE TERMS AND EXPLAIN THE DIFFERENT LEGAL CONSEQUENCES THAT RESULT FROM BREACH OF THEM

- Conditions are fundamental terms of a contract. If a condition is broken, the innocent party can treat the contract as discharged and claim damages, or can continue with the contract and claim damages.
- Warranties are minor terms of the contract. If a warranty is broken, damages can be claimed.
- Innominate terms are ones where the seriousness of the breach can only be ascertained after it has occurred.

DESCRIBE THE NATURE OF EXCLUSION/LIMITATION CLAUSES AND EXPLAIN THE METHODS USED BY THE COURTS TO RESTRICT THE USE OF SUCH CLAUSES

- Exemption clauses are contractual terms which attempt to exclude or limit one party's liability to the other party.
- An exemption clause must be incorporated into the contract.
- Where an exemption clause is contained in an unsigned notice, then reasonable steps must be taken to bring the clause to the attention of the other party.
- Once a contract is completed, it is too late to add an exemption clause, unless there have been consistent previous dealings between the parties.
- If there is any doubt as to the meaning of an exemption clause, then the courts will construe it against the party seeking to rely on it.

EXPLAIN THE EFFECTS OF THE UNFAIR CONTRACT TERMS ACT 1977 AND CONSUMER RIGHTS ACT 2015, ON EXEMPTION CLAUSES

- Exemption clauses in B2B contracts must comply with the Unfair Contract Terms Act 1977. The Consumer Rights Act 2015 governs all terms in consumer contracts, including exemption clauses.
- A person acting in the course of a business cannot exclude liability for negligently causing death or personal injury. In B2B contracts liability for other loss or damage through negligence can be excluded, but only as far

as it meets the requirement of reasonableness. In consumer contracts, liability for other loss or damage through negligence can be excluded provided the term is fair.

- The CRA 2015 applies to terms in a contract made between a trader and consumer.
- A term which is deemed to be unfair according to the criteria laid down in the CRA 2015 is not binding on the consumer.

DEMONSTRATE AN UNDERSTANDING OF CONTRACTS IN RESTRAINT OF TRADE

- A restraint of trade clause restricts the future freedom of one of the parties to the contract to carry on his business, trade, or profession.
- Restraint of trade clauses are usually invalid unless the party seeking to enforce them can show that in the particular circumstances the restraint is reasonable.
- In deciding whether a restraint is reasonable, the courts will consider if the business interest is one that can be legally protected, and the reasonableness of the length of time imposed and the geographical area covered.