Any term of a contract must be clear and certain. If there is any ambiguity, there can be no agreement – Gibson v Manchester CC. Mere puff (advertising hyperbole) and mere representation (statement of fact) are NOT terms. A term is a contractual promise. The first step in relation to terms is to see if the statement is incorporated into the contract. There are ‘express terms’ (both parties are aware of them), including pre-contractual statements made during negotiations, and agreed terms written into the contract. ‘Implied terms’ (terms that neither party has necessarily seen), which can be implied by the courts at common law: in law (necessary to contract) OR in fact (business efficacy to contract – intention imputed to parties), and can implied by statute.

### EXPRESS TERMS
Terms that are specifically agreed between the parties either orally or in writing are said to be express.

1. Was the statement when it was made, was it clear the statement was important? – Bannerman v White. The court decided that it was a term of the contract that the hops had not been treated with sulphur.

2. **Timing** (just before or at the point of contracting in order for it to be a term) – Routledge v McKay

3. **Reduction into writing** – Intreprenuer Pub Co v East Crown Ltd. Is the term in the contract?

### COURT CONSIDERS:

1. **Specialist knowledge** – Oscar Chess v Williams; cf Bentley v Harold smith (motors)

2. **Assumption of responsibility** – if you haven’t been allowed to verify then it will be a term of the contract – Schaweel v Reade. However, in Hopkins v Tanqueray, the delay was too long i.e the sale was made before so it wasn’t a term at all of the contract.

### PAROL EVIDENCE RULE:
Extrinsic evidence may not be adduced to vary an express written contract – Jacobs v Batavia. If you have a written contract, nothing outside should be allowed into it.

### Avoiding the Rule

1. Not wholly written contracts – J Evans & Sons v Andrea Merzario. Ct decided it was a partly written contract.

2. **Collateral contracts** – City of Westminster v Mudda.


### Avoiding the argument
Include the entire agreement clause – Intreprenuer Pub Co. v East Crown Ltd

### IMPLIED TERMS

**Implied terms are those to which no direct reference has been made during negotiations.**

### TERMS IMPLIED IN LAW

**A term implied in law into all contracts of a particular type because it is necessary** – Liverpool City Council v Irvin; Mahmud v BCCI; Crossley v Faithful & Gould Holdings Ltd

### TERMS IMPLIED IN FACT

**Trade custom** (two business in same business know what each other contracts are like, despite the fact the contract was not signed in time) – British Crane Hire v Ipswich Plant Services

**Course of dealing (it must be regular and consistent)** - McCutcheon v MacBrayne; Hollier v Ramblers Motors. However, in Photolibrary Ltd v Burda Senator Verlag, there was a course of dealing.

**Test:** put it back to the business under which the business knowledge and context of the contract – Atwood v Telecom Ltd

**Business efficacy:** The Moorcock

The test: “something so obvious that it goes without saying” – Shirlaw v Southern Freight. Contrasts: Ultraframe (uk) Ltd v tailored roofing systems with equitable life assurance society v hyman

### IMPLIED BY STATUTE

**Sale of Goods Act 1979** – implies terms into a contract

- S12 Title (can’t sell something you don’t own ie nemo dat qui non habet– Rowland v Dival\"
- S13 Description – Arcos v Ronaeen
- S14 Quality or fitness – Priest v Last – only applies to sales made in the course of business
- S15 Sample – Godley v Perry

**Sale of Goods & Services Act 1982**

- S13 – with due care and skill
- S14 – within reasonable time
- S15 – pay reasonable consideration

### BREACH OF A TERM

The breach of a term gives rise to two possible options:

- If a term is a **CONDITION**, the innocent has a right to either terminate the contract and claim damages OR affirm and claim for damages.
- If the term is a **WARRANTY**, the innocent person only has a right to sue for damages only, not to terminate.

### CONDITION or WARRANTY?

**Poussard v Spiers** – held it was a condition as it “went to the root of the contract”. Agent was entitled to terminate. However, in Bettini v Gye – held it was a warranty. Not such a serious breach as he only missed 3 days of rehearsals.

**CONDITION**

Promissory conditions ie promises that are fundamental to contract.

Contingent conditions is clause in the contract by which the contract hangs. Two types:

- Contingent conditions ie clause in the contract (some event happens) and condition subsequent (if specific happens then whole contract is over).

### HOW IS A CONDITION CLASSIFIED?
- Statutory indications, judicially.

### Statutory classification

- **SGA 1979** – S12(5A), S13(1A), S14(6), S15(3).
- All conditions unless s15(4) applies ie if business buying from another business and

### BREACH OF AN INNOMINATE TERM

The breach of an innominate term gives rise to two possible options:

- If a term is an **INNOMINATE** term, the innocent has a right to either terminate the contract and claim damages OR affirm and claim for damages.
- If the term is a **PERISHABLE** term, the innocent person only has a right to sue for damages only, not to terminate.

### CONDITION or PERISHABLE?

**Kawasaki Kisen Kaishi Co v BCCI**

Generally: Judiciary – Hong Kong Fir v Kawasaki; Aerial Advertising Co v Batchelor Peas

### INNOMINATE TERMS

Contract doesn’t specify that it is a C or W, OR the terms cannot be categorised as being a C or W. Court looks ‘to seriousness of the consequences of the breach’ – Hong Kong Fir v Kawasaki; Aerial Advertising Co v Batchelor Peas

### BREACH of innominate term

Innocent party’s rights may be uncertain and possibility of wrongful repudiation – Hong Kong Fir.

### Judiciary

‘Use of the word “condition” is an indication of the parties intentions, but it is by no means conclusive’ – Schuler v Wickman

Generally: Judiciary – Hong Kong Fir v Kawasaki; “goes to the root of the problem”. A term ‘breach of which deprives the innocent substantially the whole benefit of the contract’.

ALWAYS A CONDITION: Specific terms: Judiciary – precedents which have established certain terms as conditions: expected ready to load (The Mihalis Angelos); time of performance (Bunge v Trades)

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