

Contract Terms – General – Terms, Statements and Representations

Express and implied terms	Terms are what the parties of a contract have agreed to.	Express terms – specifically agreed within a contract – e.g. item and price	
		Implied terms – implied by the contract – e.g. if I ask for a cup of coffee it should be hot.	
Types of term	Condition	Something that is so important that failure to perform would destroy the main purpose of the contract. The remedy for breach of condition is repudiation,	Poussard v Spiers and Pond (1876)
	Warranty	A minor term of a contract – breach of a minor term will not prevent the contract from being performed and D may be able to seek damages but the contract cannot be repudiated	Bettini v Gye (1876)
	An innominate term	A term in a contract that is not defined as a condition or warranty. Whether it is regarded as a condition or a warranty depends on the severity on the consequences of any breach of the term. Instead of insisting at the outset of the contract, the parties wait until the effect of the breach makes it a condition or warranty	Hong Kong Fir Shipping Co. Ltd v Kawasaki Kisen Kaisha Ltd (1962)
Is a statement as mere representation or a term of a contract	This important to remedies, there is difficulty in deciding if something is a term or a mere representation. The courts will take into account the following factors to help them do so.		
	The importance attached to the representation	If the statement is obviously important it will be seen as a term.	Couchman v Hill (1947)
	Special knowledge or skill of the person making the representation	For example the private seller of a car is not expected to have the same level of knowledge as a professional car dealer	Oscar Chess v Williams (1957) (representation) Dick Bentley v Harold Smith Motors (1965) (term)
	Any time lag between making the statement and making the contract	Is there a delay and the contract does refer to the statement then it is likely to be a representation rather than a term.	Routledge v Mackay (1954)
	Whether there is a written contract	The courts will presume that the parties will ensure that everything they want to be a term is written in the contract.	
Terms implied by common law or statute	Implied by Statute	Business e.g. Sale of Goods Act 1979, Sale of Goods and Services Act 1982 Business and Consumer Consumer Rights Act 2015	
	Terms implied by Common Law	Business Efficacy and the officious bystander test Two part test <ul style="list-style-type: none"> Is the term necessary to make the contract effective? (business efficacy) If the parties to the contract had thought about it, would they have agreed that the suggested term was obviously going to be in the contract? (the officious bystander) 	Business Efficacy The Moorcock(1989) Officious Bystander Shirlaw v Southern Foundaries Ltd (1939) Shell UK Ltd v Lostock Garage Ltd (1977) Egan v Static Control Components (Europe) Ltd (2004) M and S plc v BNP Paribas Securities Trust Co. (Jersey) Ltd (2015)
		Custom – much of English Law is formed on custom and some survive today as in Hutton v Warren (1836)	Hutton v Warren (1836)
		Prior dealings between the parties – may indicate terms to be implied	Hillas v Arcos (1932)

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