

EXPRESS TERMS

Incorporated by:

- Being written into the contract, or
- Making a statement prior to the contract's conclusion.

Guidelines on incorporation:

- Importance of statement – Bannerman v White (1861)
- Knowledge and skill of the person making the statement – Dick Bentley Productions v Harold Smith Motors (1965)
- The timing of the statement – Routledge v McKay (1954).

IMPLIED TERMS

By fact

Marks and Spencer v BNP Paribas (2015)

To be implied by fact:

- Without the term, the contract would lack commercial or practical coherence.
- The term must be necessary for **business efficacy** – The Moorcock (1889).
- The term must satisfy the **business necessity test** (previously known as the *officious bystander* test) – Shirlaw v Southern Foundries (1926).

IMPLIED TERMS

By law

Consumer Rights Act 2015: sale of goods

section 9:	satisfactory quality
section 10:	fit for purpose
section 11:	as described

Consumer Rights Act 2015: supply of services

section 49:	reasonable care and skill
section 50:	binding information
section 51:	reasonable price
section 52:	reasonable time

UNFAIR TERMS

In law

Consumer Rights Act 2015: unfair terms

section 62: any term that is unfair under the Act is not binding.

A term is unfair if contrary to the requirement of good faith, it causes a significant imbalance in the parties' rights and obligations.

Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013

- These regulations outline key information that should be provided to consumers entering into contracts online, over the phone or from a catalogue.
- The consumer has the right to cancel within **14 days** after ordering.

EXCLUSION CLAUSES

Common law

Exclusion clauses must be incorporated:

- by signature - L'Estrange v Graucob (1934)
- by reasonable notice – Parker v South Eastern Railway (1877)
- by a previous course of dealing – Spurling v Bradshaw (1956).

The exclusion clause has to **cover the breach**.

EXCLUSION CLAUSES

Statute

Unfair Contract Terms Act 1977 apply only to non-consumer contracts

section 2:	exclusion of liability for negligence
section 3:	exclusion of liability for breach of contract
section 6:	exclusion of liability in contracts for sale of goods
section 11:	reasonableness test