

# LLB1170: Exam Scaffold Checklist –

## What are the express terms?

Incorporation of terms: are the terms, contained in the standard form, included in the parties' contract?

- By signature? → *L'Estrange v F. Grey* / *Toll v Alphapharm*
- By notice? → *Oceanic Sun Line Special Shipping Co v Fay* / *Thornton v Shoe Lane Parking*
- By course of dealing? → *Balmain New Ferry v Robertson*

## Statements made during negotiations:

What relief can P seek if a pre-contractual statement made by D turns out to be false?

- Depends upon whether D's statement is held to be: a term of the contract, a representation inducing the contract or mere puff.
- Is this pre-contractual statement admissible?
  - Admissible if contract oral/partly oral
  - If written consider the PER = may avoid effect by establishing:
    - Contract not wholly in writing
    - Collateral contract → *Sheppard v Municipality of Ryde*; *Hoyts v Spencer*
    - Estoppel → *Saleh v Romanous*
- Is the pre-contractual statement promissory?
  - Promissory? Or merely representational? → *JJ Savage v Blakney*
  - Intention – intelligent bystander → *Equuscorp v Glengallan Investments*

## What is the process by which the court construes/interprets a contract?

Two steps:

1. What extrinsic evidence is admissible in construing a contract?
  - Oral
  - Writing
  - If there is ambiguity – no actual intentions
2. What is the process?
  - Court aims to give effect to the parties' intentions, determined objectively → *Pacific v BNP Paribas*
  - Focus is on presumed intentions, subjective intentions irrelevant → *Brambles v Bathurst CC*
  - What would a reasonable person understand the language that the parties have expressed to mean → *Pacific v BNP Paribas*

## Was the exclusion clause included in the terms?

- First consider legislative restrictions
- Look to notes

## If not regulated by legislation...

Apply common law approach: 2 steps

1. Is the exclusion clause a term of the contract?

# Scaffold Exam Alberta

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A red circular graphic with a gradient, appearing as a partial circle or a thick curved line, located to the right of the author's name.

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