

# **CONTRACT LAW**

## **SOME KEY PRINCIPLES**

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## FREEDOM OF CONTRACT

- The law mends no man's bargain
- A process of apportioning risk and value
- A largely unregulated process

## SALE OF GOODS – STANDARD RISKS

- Parties ?
- Quantity ?
- Quality ?
- Delivery – where and when ?
- Payment ?

## AGREEMENT FORMATION

- Oral agreements are binding
- Written agreements are provable
- Oral agreements can be evidenced in writing – keep notes
- Written agreements will usually be definitive as to the written terms – the parole evidence rule
- Agreements can be part oral and part written

## EXPRESS AND IMPLIED TERMS

### Express terms

- what did the parties say or write?
- Incorporated express terms eg Standard Terms

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### Implied Terms

- by law eg Sale of Goods Act 1979
- by the courts – custom and practice
  - making good contractual deficiencies
  - failing to state the obvious

## STANDARD TERMS

- Must be incorporated either expressly or by implication
- Clauses excluding or limiting liability must be “reasonable” UCTA 1977
- Can be poorly drafted and contain irrelevant material

## BREACH

Damages – the standard measure is to put so far as money can, the innocent party in the position they would have been in had the contract been performed

– loss of bargain

Liquidated Damages – must be a genuine pre-estimate of loss

“Penalties” are unenforceable

## DISPUTE RESOLUTION

- Statutory Time Limits – 6 years from date of breach
- Contractual time limits
- Arbitration
- Expert determination