

A Brief Study on Types of Terms within a Contract

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ABSTRACT:

Contracts are essential legal agreements that regulate a variety of economic and personal activities and interactions. Terms outline the parties' rights and responsibilities inside a contract. In order to ensure clarity, enforceability, and fairness in contractual agreements, it is crucial to understand the many sorts of words that may be included in a contract. This abstract gives a general review of the many phrases that are often used in contracts. It addresses the explicit terms, implicit terms, and statutory terms, which make up the three basic kinds of terms. There is no opportunity for misunderstanding since the terms are clearly specified by the parties in the contract. Contrarily, implied conditions are not stated expressly but are considered to be a part of the contract based on the context or custom of the industry. Statutory conditions are requirements set down by law that apply to certain sorts of contracts. For efficient contract negotiation, writing, and interpretation, it is essential to understand the many sorts of terminology that might be included in a contract. Parties may safeguard their rights, reduce conflicts, and promote mutually beneficial relationships based on clear and unambiguous contractual agreements by understanding the various kinds of words and their legal significance.

KEYWORDS:

Condition Terms, Express Terms, Implied Terms, Warranty Terms.

I. INTRODUCTION

Different sorts of phrases determine the rights, duties, and expectations of the parties engaged in a contract. When assessing the scope and enforceability of the contract, these phrases are very important. It is crucial to comprehend the various sorts of phrases in order to successfully understand and implement commercial agreements [1], [2].

Express Terms: In a contract, the parties expressly and clearly declare the terms of the agreement. They may be verbal or written agreements that spell out each party's responsibilities and rights. Express terms serve as the main channel for the parties to express their objectives and serve as the framework for the contract.

Implied Terms: Although not specified explicitly by the parties, implied terms are nonetheless considered to be a part of the contract. They are drawn from legislative requirements, common law principles, or use and custom. Implied terms fill in the blanks in the agreement where the parties haven't directly addressed certain issues but where they may be deduced logically from the nature of the agreement and the parties' objectives [3], [4].

Condition Terms: The contract's core provisions, condition terms are important and crucial. The innocent party has the right to end the contract and seek remedies if a condition term is broken. Condition terms are often important commitments or specifications that are essential to the contract's fulfilment [5], [6].

Warranty Terms: Warranty terms are optional or less significant clauses that are not seen to be necessary to the agreement. The innocent party is not entitled to cancel the contract in the event that a warranty condition is violated; instead, they may claim damages for the violation. Warranty clauses are often ancillary responsibilities or commitments that have no bearing on the contract's primary goal.

Innominate Terms: Conditions and warranties that are not clearly defined. Their rating is based on how significant the violation was and how it affected the contract. The actual results and consequences of a violation of an innominate phrase, not its categorization, establish the consequence of the breach [7], [8].

It is essential to comprehend these kinds of clauses in order to understand the parties' intentions, ascertain the repercussions of a violation, and settle disagreements that may arise from the contract. It gives each party's legal rights and duties clarity and enables parties to evaluate the relevance and value of various contract terms. On the other hand, warranties are ancillary clauses that are not as important as conditions. While a warranty breach does not provide the innocent party the right to end the contract, it does give them the right to compensation. Warranties are often seen as less serious contract violations that do not affect the core of the agreement. Between conditions and guarantees, a third kind of term is known as an innominate term. The degree and effect of the breach determine the kind of breach and its repercussions. If the breach is significant, it can be considered a condition, but a slight breach might be considered a guarantee [9], [10].

Exclusion clauses are provisions that aim to restrict or eliminate one party's obligation in the case of certain outlined events or breaches. These terms are often included in standard form contracts, and it is important to carefully review them to make sure they are reasonable, fair, and do not conflict with any laws. In order to ascertain the parties' rights, responsibilities, and possible remedies in the case of a breach, it is crucial to comprehend the various sorts of words included in a contract. Express and implied terms, conditions, warranties, innominate terms, and exclusion clauses all work together to form the framework of the contract and define the parties' rights and duties. Parties may negotiate and sign into contracts with clarity and knowledge of its legal repercussions by understanding these various sorts of words.

II. DISCUSSION

It is obvious that not all contract clauses are equally important. For instance, the seller of the automobile is in violation of a condition if it is discovered after the sale that a wing-mirror that was supposed to be included in the sale is missing. The term is not significant, however, and if the seller were to provide the cash to purchase a new wing-mirror, the agreement would probably be well received. On the other hand, a far more severe phrase would be broken if, after the sale was completed, the buyer attempted to drive the automobile away and found that the engine didn't operate at all. In this situation, money to repair the engine would likely not be sufficient, and the buyer would likely seek to revoke (or completely stop) the contract.

Conditions and warranties

Terms in contract law refer to certain phrases or sections that are a component of a contract and specify the rights and duties of the parties. A contract may include a variety of terms, such as conditions and warranties. Let's talk about conditions and warranties as different categories of contract terms:

Conditions: Conditions are crucial clauses that provide the basis or substance of a contract. They are essential to the function and execution of the contract. If a condition is broken, the innocent party may consider the contract discharged and pursue remedies. Usually, when a condition is broken, there is a right to end the contract and seek compensation. Conditions are so important that even a little violation might be regarded a breach, giving the innocent party the right to end the contract. An example of a condition in a contract for the sale of commodities is that the items must be of merchantable quality. The buyer may reject the items and end the contract if the provided goods do not satisfy the necessary standard. This is referred to as a condition breach.

Warranty: A warranty is a supplementary or incidental term that is not as important as a condition. They do not get to the heart of the contract's goal and are less fundamental to it. A warranty breach gives rise to a right to damages claims, but it does not allow the innocent party the ability to withdraw from the agreement. The party that has a warranty breach must keep up with the contract and is only entitled to compensation for any damages incurred as a result of the breach. An example of a guarantee in a contract for the sale of a vehicle is the seller's assurance that the car has received routine maintenance. If it turns out that the car was not properly maintained, this may constitute a warranty violation, giving the buyer the right to sue but not the right to break the contract.

It's crucial to remember that the line between conditions and warranties may be fuzzy and might change based on the context of the contract and the goals of the parties. Depending on the situation and the relative relevance of the word, courts may also have the power to designate a term as a warranty or a condition. It is critical to comprehend the difference between conditions and warranties since it affects the parties' rights and remedies in the case of a breach. To guarantee clarity on the nature of each term and its implications in the event of a breach,

parties should carefully write and negotiate the terms of their contracts. To fully comprehend the significance of the terms and warranties in a particular contract, legal counsel is advised.

The effect of a breach

Depending on the nature and importance of the broken condition, the consequences of various sorts of contract clauses might vary. Conditions, warranties, and innominate terms are only a few of the numerous types of words that fall under the umbrella of contract law. For each sort of term, the following is a broad summary of the consequences of a breach:

Conditions are fundamental clauses that form the basis of the agreement and are very important. If a condition is broken, the innocent party has the right to consider the contract ended and sue for compensation for any losses sustained. The at-fault party is released from fulfilling the remainder of their contractual duties. Compared to conditions, warranties are less essential to the contract and are secondary or subsidiary provisions. In the event that a warranty is broken, the innocent party may sue for compensation for any losses incurred but cannot break the contract. The guilty party is still obligated to fulfil their end of the bargain.

Terms that are indefinite, sometimes referred to as intermediate terms, do not cleanly fall within the headings of conditions or guarantees. The impact of a violation of an innominate phrase depends on how significant and damaging the violation was. If the violation is so severe as to materially deprive the innocent party of the benefits of the contract, the innocent party may choose to cancel the agreement. The innocent party may seek damages but must still uphold their responsibilities if the violation is less severe. It's crucial to remember that determining whether a phrase is a condition, guarantee, or innominate term is not always clear-cut. Depending on the particular contract and relevant regulations, it may be interpreted differently and take different forms. The categorization is based on a number of characteristics, including the parties' objectives, the nature of the agreement, and the language employed.

Additionally, by putting explicit clauses in the contract, parties to a contract may also agree on certain penalties or remedies for a violation of specified obligations. The general guidelines governing the consequences of a breach may be modified or superseded by these rules. It is recommended that the party who has been injured by a breach of contract always obtain legal counsel in order to fully grasp their rights, duties, and available options in light of the unique situation and applicable legislation.

Terms specified by the parties

The requirements, conditions, and duties that are explicitly agreed upon and spelt out by the parties themselves inside a contract are referred to as the terms defined by the parties. These conditions set out each party's obligations and rights and serve as the foundation for their contractual relationship. Either verbally or in writing, the parties expressly declare and agree to the terms. The rights, duties, and circumstances of the contract are described in these phrases, which might take the shape of certain sections, clauses, or assertions. Generally speaking, a contract's express words are its most significant and enforceable provisions. The contract's foundational clauses are known as conditions. They are essential to the execution and continuation of the agreement, and a violation of one of them may allow the innocent party to cancel the agreement and seek relief. Conditions may be made explicitly known by the parties or may be inferred from precedent or the law. Warranties are ancillary clauses that are not necessary for the contract's fundamental performance. In contrast to conditions, a warranty violation does not enable the innocent party to cancel the agreement, but it may result in a claim for damages. Warranties may be made explicitly by the parties or deemed to exist under the law.

Representations are statements or claims that one party makes to persuade the other side to sign the contract. Although they are regarded as a component of pre-contractual talks, representations are not regarded as contractual terms in and of themselves. However, a representation is regarded as an explicit term if it is made a part of the contract. Terms that are not explicitly specified by the parties but are nevertheless regarded as a part of the contract are known as implied terms. The existence of implied conditions may be determined by the court based on the parties' intentions and the nature of the contract, or by the law, such as common law standards or statutory provisions.

These clauses specify that all past oral or written agreements are superseded and that the written contract contains the full understanding between the parties. Any additional provisions that could have been discussed or agreed

upon outside of the written contract are intended to be excluded by these clauses. In order to minimise misunderstandings and disagreements, it is crucial for parties to explicitly and specifically define the terms within their contract. While implicit conditions and statements may also have legal importance, express terms are often the more significant and enforceable. Parties may discover and specify the exact phrases that are pertinent to their agreement by seeking legal counsel and making sure there is clear communication throughout the contract writing process.

Consideration of the terms by the courts

Courts are crucial in analysing and assessing the enforceability of various sorts of phrases when examining the terms of a contract. In order to comprehend the rights and responsibilities created by the contract, the courts carefully examine the wording, context, and intentions of the parties. Here are some important factors that courts take into account when deciding what kinds of conditions to accept in a contract:

1. **Express Terms:** Express terms are those that the parties have specifically agreed upon and are usually stated in writing or verbally. Express phrases are given a lot of weight by courts since they capture the parties' intents and understanding. The stated words shall be interpreted by the courts according to their plain and common meaning while taking the whole contract into account.
2. **Implied Terms:** Terms that are not explicitly specified but are nevertheless taken into consideration to be a part of the contract are known as implied terms. The common law, statutory requirements, or the parties' alleged intents may all be used by courts to infer words. To give the contract validity and represent what the parties would have agreed upon had they given the issue explicit thought, implied terms are required.
3. **Conditions and Warranties:** The difference between conditions and warranties is noted by the courts. Conditions are fundamental clauses at the heart of a contract, and when they are broken, the innocent party may be entitled to cancel the agreement and pursue damages. Conversely, warranties are less important provisions, and a violation often permits the innocent party to seek damages but not to break off the agreement.
4. **Exclusion and Limitation provisions:** These provisions aim to restrict or exclude responsibility for certain violations or occurrences. The enforceability of such provisions under relevant laws, such as the Unfair Contract Terms Act of 1977 in the UK, is carefully examined by courts. The parties' negotiating strength and the clause's clarity are two criteria that the courts consider when determining whether these provisions are acceptable.
5. **Entire Agreement Clauses:** Clauses stating that the contract constitutes the parties' full agreement and overrides all prior conversations or agreements are known as "entire agreement clauses." Courts take into account these provisions while figuring out the extent and enforceability of the contract's terms, as well as whether any earlier statements or agreements were excluded from or included in the agreement.
6. **Ambiguity and Contra Proferentem:** When a clause in a contract is unclear or open to several interpretations, the courts use contract interpretation rules to discover the parties' intentions. As confusing wording are interpreted against the party that created or offered the provision, the contra proferentem rule is put into action.
7. **Custom and Usage:** Trade conventions and usage may be taken into account by courts when interpreting a contract's provisions. These practices or customs may be used to fill in the blanks or clarify the meaning of certain phrases if the parties are engaged in a particular trade or profession with established practices or customs.

It is the responsibility of the court to make sure that the contract's provisions are read and implemented in a fair and reasonable manner in light of the unique circumstances. To ascertain the rights and responsibilities resulting from the contract, their analysis takes into account a number of variables, including the nature of the term, the parties' intentions, statutory requirements, and pertinent legal principles.

Innominate terms the Hong Kong Fir approach

The "Hong Kong Fir" method is named after a pivotal court decision that popularised the use of innominate phrases in contract law. The English Court of Appeal heard the case, *Hong Kong Fir Shipping Co. Ltd v. Kawasaki Kisen Kaisha Ltd*, in 1962. Innominate words were first proposed in this case's ruling as a potential

middle ground in contract law between conditions and warranties. A charterparty agreement for the hiring of a ship was at issue in this case. As a result of the ship's performance falling short of expectations, there were disagreements between the parties over the severity of the breach.

Key Principles:

Innominate Terms: The Court of Appeal introduced the concept of innominate terms as terms that are not automatically classified as conditions or warranties. Instead, their consequences depend on the severity or impact of the breach.

Seriousness of the violation: According to the Hong Kong Fir approach, whether the innominate word should be viewed as a condition or a guarantee depends on how severe the violation was. A substantial violation would be considered a condition, whilst a less serious violation would be considered a guarantee.

Effects of Breach: Rather than a predefined categorization of the word, the consequences of a breach of an innominate phrase are established by the actual repercussions experienced by the innocent party. If the breach significantly deprives the innocent party of the full benefit of the contract (i.e., the breach is a condition), they have the right to end the agreement. The innocent party may still seek damages but cannot break the contract if the breach does not materially deprive them of their complete benefit (i.e., the breach is a guarantee).

Subjective and Objective criteria: Both subjective and objective criteria are taken into account when assessing the gravity of a violation. Objective elements include the nature of the term and the parties' expectations, whilst subjective aspects allude to the real effect of the breach on the innocent party.

Significance: The Hong Kong Fir method of innominating phrases has a profound effect on contract law. By concentrating on the actual impact rather than categorising phrases as conditions or guarantees inflexibly, it gave flexibility in establishing the effects of a violation. This strategy improved the alignment of the remedy with the real damage experienced and allowed for a more detailed investigation of contractual violations.

It's vital to note that common law nations that recognise innominate phrases generally rely on the Hong Kong Fir approach. It is recommended to get advice from local laws and legal authorities for particular assistance since the use and meaning of innominate terminology may change depending on the jurisdiction.

III. CONCLUSION

In conclusion, it is critical to comprehend the various sorts of words in a contract in order to ascertain the parties' rights and responsibilities as well as the agreement's general enforceability. Contracts are made up of several phrases that specify the parameters, requirements, and demands of the parties. Express terms are those that have been agreed upon and are expressly expressed by the parties. These agreements may be expressed verbally or in writing, although written agreements are often preferable since they make the parties' intentions apparent. Express terms are essential in defining the fundamental parameters of the agreement and serves as the basis for all contractual duties. Contrarily, implied conditions are not explicitly specified but are assumed to be a part of the agreement based on common law, legislative requirements, or the actions of the parties. Implied terms are required to carry out the parties' objectives or fill in any gaps where the parties may not have addressed certain issues directly in the contract. Conditions are key clauses that constitute the basis of the agreement and are seen to be necessary for it to function. A condition breach gives rise to a right to terminate the contract and seek compensation. A condition being broken is often seen as a significant failure that defeats the contract's main goal.

REFERENCES

- [1] S. Rouhani and R. Deters, "Security, performance, and applications of smart contracts: A systematic survey," IEEE Access. 2019. doi: 10.1109/ACCESS.2019.2911031.
- [2] J. Liu and Z. Liu, "A Survey on Security Verification of Blockchain Smart Contracts," IEEE Access. 2019. doi: 10.1109/ACCESS.2019.2921624.
- [3] P. Debono, "Transforming public procurement contracts into smart contracts," Int. J. Inf. Technol. Proj. Manag., 2019, doi: 10.4018/IJITPM.2019040103.
- [4] Y. Huang, Y. Bian, R. Li, J. L. Zhao, and P. Shi, "Smart contract security: A software lifecycle perspective," IEEE Access. 2019. doi: 10.1109/ACCESS.2019.2946988.
- [5] H. Eenmaa-Dimitrieva and M. J. Schmidt-Kessen, "Creating markets in no-trust environments: The law and economics of smart contracts," Comput. Law Secur. Rev., 2019, doi: 10.1016/j.clsr.2018.09.003.

- [6] M. E. Soares and P. Mosquera, "Fostering work engagement: The role of the psychological contract," *J. Bus. Res.*, 2019, doi: 10.1016/j.jbusres.2019.01.003.
- [7] K. Muhammad, O. Saoula, M. R. Issa, and U. Ahmed, "Contract management and performance characteristics: An empirical and managerial implication for Indonesia," *Manag. Sci. Lett.*, 2019, doi: 10.5267/j.msl.2019.4.012.
- [8] J. A. M. Coyle-Shapiro, S. Pereira Costa, W. Doden, and C. Chang, "Psychological Contracts: Past, Present, and Future," *Annual Review of Organizational Psychology and Organizational Behavior*. 2019. doi: 10.1146/annurev-orgpsych-012218-015212.
- [9] S. N. C. Tahrim, M. Z. Muhammad, M. S. M. Rosdi, M. N. H. Yusoff, A. Musa, and N. M. Din, "The revival of mudharabah contract: A proposed framework," *Res. World Econ.*, 2019, doi: 10.5430/rwe.v10n2p70.
- [10] I. Sergey, V. Nagaraj, J. Johannsen, A. Kumar, A. Trunov, and K. C. G. Hao, "Safer smart contract programming with scilla," *Proc. ACM Program. Lang.*, 2019, doi: 10.1145/3360611.