Contract law

The nature of terms can be determined as a subject of any contract, which is to be set out. A term allows two parties having a binding obligation,. This allows them to perform a contract. The distinction between terms and representations can be stated as two different issues. This is because a term is an obligation, which is set up, and a promise that has to be obeyed. A representation is considered, as persuading the other party to agree into a contract.

This does not include a part contract. When classifying, it cannot be recognised that a term can be opposed to representation; this would include the type of words used. An example is " this car is a two year old model, this statement is capable of being either of the terms. The actual content shows a term that is seen as reliable and factual compared to representation.

To a certain degree the statement can be classified as a term, so it has the right for the damages for its breach. When it is a representation that turns into being untrue there is no automatic remedy available. However, it can be seen as a dispute arising, when the determination for the courts to adopt the objective analysis and intentions of the two parties. At this stage it can be verified that the courts have difficulties in examining the two terms. In the development of the courts they have created a checklist that helps to encounter a statement, that is a term or representation. This list would consist of the limited amount of factors.

These factors are used to help the courts distinguish between terms and a representation. When incorporating and expressing terms it is important that the more reliable evidence attached the more likely it is to be a term as seen

in Birch v Paramount1. The first factor, which is stated as the timing of the statement. This is considered as the length of time. This shows when a statement of agreement was brought forward and when it will be concluded. This considers that the time elapses between the statements and to show if the certain agreement is classified as a term or a representation, as shown in Bannerman v White2.

This case was seen to be a term and also two parties had understood the statement laid out during the agreement. The conclusion that was brought forward had stated that the contract was a part of a single transaction. Then moving to representation the case of Routledge v Mckay3, it was illustrated that the buyer had claimed for damages and breach of warranty. It was held that the relationship between the two parties was too wide this is because one can consider that the interval that was set out with the statement. It was later on considered, that at the beginning they did not take into account the consideration of the case.

Which proved to be a major consequence for the whole case. Another factor is the importance of the statement. This is seen as the importance of the attached statement, which is produced by the parties. As a matter of importance if a certain statement, is a term, it does have some sort of importance attached to it. Here the injured party would have not entered into a contract; it is illustrated in the case of Couchman v Hill 4.

In basic terms it is seen that if the statement is convincing and strong enough then it is considered as a term. The strength of the inducement is seen as a point that the more conferencing emphatically a statement is

made, the more likely it will be considered as a term. It is seen that the statement is accepted responsibility, or did they just insist on the other party on verifying it. It is illustrated in the case of Schawel v Read5. It was seen that the statement had held a strong strength, which showed the buyers were convened to what was stated to them in the first instance.

The next stage is, would special knowledge or skill be taken into account. This would be a question to a certain extent to see that did the maker have special knowledge and skill when stating the statement. However this situation would evolve around if someone has expert knowledge. This would be stated as a term if the relevant factors were present in the agreement.

As this is illustrated in Harling v Eddy6. It can be argued that it is a representation when seen, in the case of Oscar Chess v William 7. The reduction into writing is an oral statement. It is said that the oral statement attached is considered as a representation. However if it is a written document then it is undertaken as a term.

This factor can be argued to an extent, this is because the two parties draw up a written contract, and the statement is incorporated, it is difficult to prove if it is meant to be a term of a contact. As in the case of Routhle v Mckey 8. Another factor is parol evidence. This rule implies to oral and any other extrinsic evidence provided.

This rule is designed to adding terms at a later stage. Here it can be argued that this method does induce uncertainty. This is because it has created complication in order to determine if the contract is a term or a

representation. So therefore the law is merely concerned with the actual intentions of the parties. It can be seen in Jacobs v Batavia9.

Here it was stated that parol evidence will not be admitted to prove the same particular term, which had been verbally agreed upon. But firstly it can be said that the omitted part would not be taken as a term of the contract. However if the term is added to a written contract, it brings forward uncertainty in the agreement. In Gillespie v Cheney 10. As Lord Russell stated " although when the parties approve at a definite written contract the implications or presumptions is very strong, that such contracts is intended to contain all the terms of their bargains11".

Therefore it is seen that this rule is mainly applied to contracts that contain oral and written agreement. The custom of parol of evidence rule, it does not prevent the two parties from increasing the custom or the trade usage; this means that the results can be added to the contract. When looking at the non-operation, this is considered, to examine the external factors. This basically indicates that the two parties only agree, if any specific event was to occur. It is seen in the case of Pym v Campbell12. Here it is said that rules do not forbid the parties from calling into question that the validity of a written agreement is more useful.

This is because it helps in matters like when mistakes occur or in incidents like misrepresentation. It can be seen, when relating the factor of invalidity. This is when the expertise is given faulty information, and then the contract is more likely to be wrong. These can intend to prove that the written

agreement can have a lack of capacity, mistakes and maybe misrepresentation. When looking at the exception of rectification.

This is seen as a reflection and the main intentions of the two parties. It mainly allows the parties to identify inaccuracy in the statements. In some occasions one party may pass the documentations onto the courts in order to reflect on any amendments that need to be done, otherwise be advised that he has no clear-cut cause of action, this is due to the reasons. The incompleteness, of contract would be considered from a general point to see that a contract maybe written or partly oral. The courts consider this as being not the final contract of the statement.

However when the agreement is specially placed into a collateral contract. This can be defined in simple terms. When a single contract is taking place but during the process another contract is needed in relation, this would be demonstrated in the following exception of clauses. This concept can be determined by Lord Moulton in Heilbut v Buckleton13 it was stated as it is evident, both on principle and on authority, that there may be a contract the consideration for which is the making of some other contract14 A main consumption is to distinguish between a term and a mere representation. Here the officious bystanders imply the test of terms.

This test was taken into close consideration of Mackinnon LJ in Sirlaw v Southern Foundries Ltd. It had be stated as prima facie that which is left to be implied is something obvious15 However this test can not be applied if the parties are uncertain of the of the term. This can be demonstrated in Spring v National 16. Another obligation is implied terms as a matter of fact.

The rule is applied if the terms are obvious and if they are consistently relevant to the situation.

A term is merely a statute, which is applied to the agreement set out. The courts hold liable for any consideration that is merely delivered by the parties. My overall formation of the statement is very general. The statement, which was given to argue the question, it is considered as valid. It was examined from various perspectives; this would include a pre-contractual statement and a mere representation. A term is related to be more valid compared to a mere statement.

Also when looking at the poral evidence rule, this does not give any type of authority to public in changing the contract in any way. Lastly one factor of consideration is the judicial checklist, this is a good representation. This allows the courts on how to examine various factors. This basically allows the court to verify the difference between a mere representation and a term.