

When is a condition not a condition?

Businesses (sole traders, partnerships, companies) enter into contracts every day with other businesses whether it be for the sale of goods or provision of services, for example, and prior to doing so will agree terms and conditions of that contract.

How many of you actually understand what the consequence might be of a failure or a refusal by one party to perform its obligations under any of those terms and conditions (a 'breach' of the contract)?

The law classifies terms of a contract into conditions and warranties. There is also a category of terms which may be either conditions or warranties. The relevance of this is that breach of a condition or warranty leads to different remedies available through the Courts for the innocent party.

The breach of a condition entitles the innocent party to treat the contract as being at an end and to additionally claim damages for any loss suffered. This is because a condition is seen as being of such importance that it goes to the 'heart' or the 'root' of the contract. A breach of a condition would be disastrous for the performance of the contract as a whole and so it can be treated as being at an end.

A warranty is not as important as a condition. A breach of a warranty will not render the contract impossible to perform, as breach of a condition might. As such the breach of a warranty entitles the innocent party to damages only.

A breach of a term which is designated neither a condition or a warranty entitles the innocent party to either treat the contract as being at an end and/ or to claim damages depending on the effect of the breach.

Why is any of this relevant? If you are in the process of agreeing terms and conditions with another party be clear on what are the fundamental parts of the agreement and know what may happen in the event there is any breach of those parts, both in terms of what the consequences will be for you should you be in breach and what your remedies are should the other party breach.

If you are unclear as to what amounts to a condition and what does not then in the event of a breach you may end up arguing the issue in Court, which takes time and money away from you and your business.

The Court has decided in certain circumstances that what is labelled a condition is not necessarily so. The Court has the discretion to look at the intentions of the parties at the time of entering into the contract and what the effect of the breach is. If that happens, the mere fact that you have labelled a condition as such may not mean it actually is a condition. Be sure therefore when agreeing terms and conditions with another party that you know and agree which terms are actually in fact conditions and which are not.

If you need advice following a breach by you or another party of a contract then please contact me using my details provided. If you are in the process of agreeing terms and conditions with another party and require assistance please contact our commercial department for guidance.

For more information please contact:

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