CHAPTER 9

CONTENT OF CONTRACT

CONTENT CONSISTS OF TERMS INCORPORATED INTO CONTRACT BY PARTIES

TERMS INCORPORATED ORALLY, TACITLY / IN WRITING

CLICK-WRAPPED AGREEMENTS - SERVICES OFFERED BY WEBSITE - CLICK CERTAIN ICON - ACCEPTING T&C'S

TICKET CASES: UNSIGNED WRITTEN AGREEMENTS - OTHER EVIDENCE NECESSARY TO PROVE THAT DOC = TRUE REFLECTION OF CONTRACTUAL TERMS

ONLY DEFENCES: MISREPRESENTATION, FRAUD, ILLEGALITY, DURESS, UNDUE INFLUENCE, MISTAKE

CAVEAT SUBSCRIPTOR RULE: WRITTEN AGREEMENT - SIGNATORY BOUND BY ORDINARY MEANING & EFFECT OF WORDS WHICH APPEAR OVER SIGNATURE AS SIGNATURE SIGNIFIES ASSENT TO DOC

OTHER EVIDENCE NECESSARY TO PROVE THAT DOC = TRUE REFLECTION OF CONTRACTUAL TERMS
PRINCIPLES OF INTERPRETATION

VALIDITY OF CONTRACT NOT AFFECTED BY MANNER OF CREATION

PURPOSE OF INTERPRETING CONTRACTS = DETERMINATION OF PARTIES INTENTION
GUIDELINES TO FACILITATE INTERPRETATION

(1) Words are used in ordinary grammatical meaning - technical meaning - interpreted - specific usage

(2) After ascertaining literal meaning - context used, contract as whole & surrounding circumstances - taken into account

(3) If uncertainty remains - courts interpret clause against party responsible for drafting

(4) Law uses presumption:
- Parties intend agreement to be valid & enforceable
- Parties do not intend to alter common law, unless expressly indicated

(5) Parol evidence rule = brought into operation (contract reduced to writing)

If intentions cannot be determined by guidelines, contract = void for vagueness
SUPPLIER ENTITLED TO ASSUME ASSENT IN TICKET-CASES WHERE:

CUSTOMER READS & UNDERSTANDS DOC & BY CONDUCT INDICATES T&C'S ACCEPTED

IMPOSSIBLE TO PROVE THAT CUSTOMER READ DOC, SUPPLIER TOOK ALL STEPS TO ENSURE CUSTOMER ALERTED TO TERMS & CUSTOMER BY OWN CONDUCT INDICATED TERMS ACCEPTED
Parol Evidence / Integration Rule

Also known as extrinsic evidence rule / integration rule

Agreements reduced to writing

According to rule: once reduced to writing / single complete doc, written doc = only record of agreement

Party will not be able to submit evidence of agreements before / simultaneously concluded which contradict, alter / add terms
PAROL EVIDENCE RULE WILL NOT APPLY IN FOLLOWING INSTANCES:

(A) DOES NOT AFFECT EVIDENCE OF AGREEMENT CONCLUDED SUBSEQUENT TO WRITTEN CONTRACT, EVEN IF VARIES / CONTRADICTS WRITTEN CONTRACT & EVEN IF MAKES ADDITIONS / EXCLUSIONS FROM WRITTEN CONTRACT

(B) DOES NOT PROHIBIT EVIDENCE OF, PRIOR INDUCING AGREEMENTS WHERE TERMS OF EARLIER DO NOT CONTRADICT, ALTER, ADD / VARY TERMS OF INTEGRATED WRITTEN AGREEMENT

(C) ONLY EXTENDS TO EXTRINSIC EVIDENCE WHICH TENDS TO CONTRADICT TERMS OF INTEGRATED WRITTEN CONTRACT, EVIDENCE TO PROVE:

(C.1) NULLITY / VOIDABILITY OF CONTRACT AS WHOLE = NOT SUBJECT TO RULE

(C.2) OBJECTIVELY DETERMINAL FACTS RECORDED IN DOC WERE ALSO NOT SUBJECT TO RULE
RECTIFICATION

WRITTEN CONTRACT MAY BE IMPROVED IN ORDER TO RECORD PARTIES' TRUE INTENTION

(1) TRUE INTENTION

(2) WRITTEN DOC DOES NOT ACCURATELY REFLECT TRUE INTENTION

RECTIFICATION PERMISSIBLE IF PARTIES WHO APPLY CAN PROVE