Chapter: 6. Assembling the contract: Representations, terms, and incorporation

This chapter considers how the courts determine what the terms of the contract are, both where the contract is in writing and where it is oral. It first examines unwritten contracts, focusing on oral negotiations and how the courts identify which statements, out of everything the parties said and did, were intended to have contractual force. It then discusses three categories of statements made by the parties: statements that are ‘mere puff’, statements that are factual ‘representations’, and statements that are intended to be contractual terms. It also describes written documents, and more specifically what impact the existence of a written contract has on other terms which a party argues were agreed, but which were not written down in the contract. The chapter concludes by looking at incorporation and the criteria the law sets for holding that external terms were validly incorporated into a contract.
6. Assembling the contract: Representations, terms, and incorporation

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