

Optimising and attacking ICT and online contract terms: Part 5

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Speed read

In this series of articles, we overview some of the issues that we addressed at the New Zealand Law Society's May 2015 IT and Online Law Conference.

Part 5 discusses the challenges around incorporating contract terms in online contracts.

Lawyers will often fuss over getting the words of the online contract to be nice and robust. However, they may not think of what can in fact be a bigger issue; are the pretty terms online actually going to be enforceable?

Sometimes the attention is better placed there, instead of on making the terms 20% better.



The Detail

This follows on from our previous articles:

- [Optimising and attacking ICT and online contract terms: Part 1](#)
- [Optimising and attacking ICT and online contract terms: Part 2](#)
- [Optimising and attacking ICT and online contract terms: Part 3](#)
- [Optimising and attacking ICT and online contract terms: Part 4](#)

Incorporation of terms into the contract – a contract law issue

In our last article in this series [Optimising and attacking ICT and online contract terms: Part 4](#), we described the position as to the opt-out insurance charge on the Air New Zealand app, to illustrate FTA unfair contract terms. Those facts are a useful example of how the contract issues apply, as to incorporation of terms.

Often online, the real legal issue for contracts is not whether the T's and C's are up to scratch and work; frequently the supplier loses at first base, as the terms are not adequately incorporated in the contract. This is a very common failing in online contracts. Given that many users of the Air NZ booking app would fail to see the opt-out charge, clearly there is a good argument that the contract term is not binding, as insufficient attention has been drawn to it.

This is a good way of segueing into the next and final article in our series: "What is important?" Lawyers will often fuss over getting the words of the online contract to be nice and robust. However, they may not think of what can in fact be a bigger issue; are the pretty terms online actually going to be enforceable? Is there sufficient attention drawn to the terms? This is a legal question and sometimes the attention is better placed there, instead of on making the terms 20% better.

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