



Quiz

Implied Exclusivity in Commercial Agreements

1. Why did AAP claim Rehau was not entitled to purchase the products from any supplier other than AAP?
 - a. Upon construction of the express terms of the contract, by implication, the agreement was an exclusive agreement;
 - b. The agreement expressly provided that it was an exclusive agreement;
 - c. The parties had made an oral agreement to the effect that Rehau would not purchase the products from any other supplier;
 - d. Rehau terminated the contract with only one month's notice however, the agreement provided for three.

2. Which of the following was an express term in the contract between AAP and Rehau which caused the Judge in the Supreme Court to hold that the agreement was an exclusive agreement?
 - a. That AAP would reserve its own production capacity for the purpose of ensuring it could meet Rehau's needs;
 - b. That if AAP could not manufacture and supply the goods, Rehau was entitled to get those goods from another supplier;
 - c. That AAP was required to keep a buffer stock of two month's worth of goods for Rehau;
 - d. All of the above

3. What was the decision of the Court of Appeal?
 - a. That upon application of the *Codelfa* principles, an implied term of exclusivity applied and the appeal was upheld;
 - b. That upon construction of the express terms of the agreement, an implied term of exclusivity applied and the appeal was dismissed.
 - c. That upon the application of the *Codelfa* principles, an implied term of exclusivity applied and the appeal was dismissed.
 - d. Both B and C.

4. In accordance with the decision of *Electricity Generation Corporation v Woodside Energy Ltd [2014]* what will the Court consider when determining whether or not a term can be implied into an agreement or contract?
 - a. Whether it is just and reasonable to do so;
 - b. Whether it makes commercial sense to do so;
 - c. The level of formality of the agreement or contract;
 - d. All of the above.

5. What can practitioners take away from the case of *Rehau Pte Ltd v AAP Industries Pty Ltd [2018]* NSWCA 96?
 - a. It is possible to imply a term from an incomplete contract;
 - b. It is wrong to assume that a term does not apply to an agreement, simply because the term is not expressly provided;
 - c. It is imperative to ensure that contracts are drafted so that exclusivity is provided for expressly;
 - d. All of the above.

Answers:

1. A 2. D 3. B 4. B 5. B