



Quiz

Contracts by Conduct

1. Which of the following is *not* an element of a contract by conduct?
 - a. The parties have engaged in a discussion or negotiation
 - b. They have put forward terms
 - c. They have expressed various levels of agreement to those terms
 - d. They have produced a written contractual document
2. What was the holding of the Court of Appeal in *Feldman v GNM Australia Ltd* [2017] NSWCA 107?
 - a. Confidentiality was an essential term without which there could be no contract by conduct
 - b. Confidentiality was not an essential term to a finding of a contract by conduct
 - c. Whilst confidentiality was an important term, it was not essential
 - d. Confidentiality was not in issue at all
3. Why is it important to draft a heads of agreement in a litigation settlement context?
 - a. It not only sets out the objective surrounding circumstances, but also the subjective intentions of the parties
 - b. It will be very difficult for a party to subsequently argue that they thought that a term not contained in the heads of agreement they have signed was essential to the bargain

- c. It is very useful in truncating the issues in litigation, and quarantining facts which may take a large amount of time to prove and distract the primary judge from the real issues in dispute
 - d. All of the above
- 4. What was the holding of the court in *Andar Transport Pty Ltd v Brambles Ltd* (2004) 217 CLR 424?
 - a. The court was willing to imply a new contract following on the heels of the expired contract, with identical terms, including the new contract being for a set term, as was the case with the expired contract
 - b. The court was not willing to imply a new contract following on the heels of the expired contract
 - c. The court was willing to imply a new contract following on the heels of the expired contract, with identical terms, with the exception of the new contract being for a set term, as was the case with the expired contract
 - d. None of the above
- 5. What was the position of the Court of Appeal on exactness in *CSR Ltd v Adecco (Australia) Pty Ltd* [2017] NSWCA 121?
 - a. Where the parties are in flagrant breach of a contract before expiry, and after expiry continue to act in flagrant breach of the contract, exactness is satisfied
 - b. Performing a contract exactly means that the essentials of the contract are being performed as if the parties were still bound by those terms
 - c. Exactness calls for a character of performance that is consistent with the terms of the expired contract, even if that performance might diverge from a course of conduct previously engaged in by the parties before expiry
 - d. Both B and C

Answers:

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