

## **Toll (FGCT) Pty Ltd v Alphapharm Pty Ltd (2004) 219 CLR 165**

<https://lawcasesummaries.com/knowledge-base/toll-fgct-pty-ltd-v-alphapharm-pty-ltd-2004-219-clr-165/>

### **Facts**

- Alphapharm Pty Ltd (**Alphapharm**) was a sub-distributor of a flu vaccine. They had a contract with Finemores (owned by Toll).
  - Finemores was to deliver and safely store the vaccine from various places.
  - Finemores gave Richard Thomson, a representative of Alphapharm's distributor EB, a cover letter with a quote, which also stated that its services are subject to the conditions on the other side of the consignment note. However, there was no consignment note.
  - Thomson signed on behalf of Alphapharm a credit application form which also included 'Conditions of Contract' (on the other side of it). The conditions were not read.
  - The conditions were:
    - clause 5: Customer entered contract on its own behalf and as an agent for its associates.
    - clause 6: Finemores would not be held responsible for loss or damage to the goods.
- Alphapharm commenced proceedings after Finemores negligently transported the vaccine, destroying it from unsafe storage.

### **Issues**

- Was Finemores able to rely on the exclusion clause?

### **Held**

- Gleeson CJ, Gummow, Hayne, Callinan and Heydon JJ held that it does not matter if you do not read the terms - a signature is a declaration that you agree to the terms contained within.
- The evidence suggested that Thomson was acting on behalf of Alphapharm.
- Signatures have the effect of declaring that you have read and understood the terms of the contract.

### **Quotes**

"It is not the subjective belief or understandings of the parties about their rights and liabilities that govern their contractual relations. What matters is what each party by words and conduct would have led a reasonable person in the position of the other party to believe."

(Gleeson CJ, Gummow, Hayne, Callinan and Heydon JJ at page 179)

### **Full Text**

The full text is available here: <https://jade.io/summary/mnc/2004/HCA/52>

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