

**INTEGRATED COMPUTER SERVICES V DIGITAL EQUIPMENT
CORPORATION (AUSTRALIA) PTY LTD (1988) CA 365 OF 1986**

New South Wales Court of Appeal - 23 December 1988

FACTS

This case concerned a dispute between the parties about the existence of contracts between ICS & DEC for the sale and purchase of a VAX Main Frame computer. The terms of the alleged contract were that ISC would purchase the VAX for \$150,000 upon the terms that funds for the acquisition of the VAX were to be set aside the rate of \$600 from the sale by ICS of The other alleged contract was that until the full purchase price was paid, ICS was to have on-line access to the VAX computer or that ICS was to have access to the VAX to the extent that it was necessary to launch a computer program. The alleged agreements were not in writing.

ISSUE

Was there an enforceable contract between the parties despite the lack of a written agreement and the dispute about the terms of the contract?

FINDING

On the issue of formation of contract, the Court held that the question to ask is whether the conduct of the parties, viewed in light of the surrounding circumstances showed a tacit understanding or agreement.

This was found to be an enforceable contract between the parties which had been breached by DEC.

QUOTE

McHugh JA said:

“It is often difficult to fit a commercial arrangement into the common lawyers’ analysis of a contractual arrangement. Commercial discussions are often too unrefined to fit easily into the slots of “offer”, “acceptance”,

“consideration”, and “intention to create a legal relationship” which are the benchmarks of the contract in classical theory.” – page 15 of CA 365 of 1986

“The question in this class of case is whether the conduct of the parties viewed in the light of surrounding circumstances shows a tacit understanding or agreement. The conduct of the parties, however, must be capable of proving all the essential elements of an express contract.” – page 17 of CA 365 of 1986

“Moreover, in an ongoing relationship, it is not always easy to point to a precise moment when the legal criteria of a contract have been fulfilled. In a dynamic commercial relationship new terms will be added or will supersede older terms. It is necessary therefore to look at the whole relationship and not only at what was said and done when the relationship was first formed” – page 18 of CA 365 of 1986

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IMPACT

This case shows the conflict between the legal analysis of a contractual arrangement and the business persons' perception of a contractual arrangement. A person may be bound by an unwritten agreement provided there is sufficient evidence that the elements of a contract existed.

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