

Chapter 1 : Draft Limitation or Exclusion of Liability clauses - TermsFeed

An exclusion clause is a term in a contract that seeks to restrict the rights of the parties to the contract.. Traditionally, the district courts have sought to limit the operation of exclusion clauses.

If a person makes a contract in reliance on a misrepresentation and suffer loss as a result, they can cancel the contract or claim damages. The false statement must be one of fact, as opposed to a statement of opinion or a promise. A promise cannot be a misrepresentation because the statement made is about the future, and cannot be true or false at the moment it is made. Some latitude is allowed to people selling privately to make statements commending an article in order to arouse interest in potential buyers. A misrepresentation is innocent where a trader believes that the statement they are making is true and consequently has no intention to deceive the buyer. It is fraudulent where the trader makes the statement knowing it to be false or without believing in its truth, or without caring whether it is true or false. In that case, the trader may be guilty of the offence of fraud as well as misrepresentation. Disputes often arise over whether a misrepresentation has occurred and the nature and extent of that misrepresentation. Legal advice should be sought in these circumstances. It is a defence to misrepresentation if the person making the statement can show that they believed on reasonable grounds that it was true, or that someone else made the statement and they had no reason to know that it was made, or was not true. If a misrepresentation is relied upon in entering a contract, a person can:

Rescinding a contract It is important to attempt to rescind the contract as promptly as possible once a misrepresentation is discovered. The right to rescind may be lost if a person waits too long to seek to rescind it. The right can also be lost if: A contract can be rescinded by one party advising the other party. If the contract deals with goods, the goods should be returned in good condition. If the other party accepts this, the contract ends. However, if the other party still wants to go on with the contract, there may be a dispute which could result in court proceedings.

Damages As an alternative to rescission , a person can sue for damages as a result of relying upon a misrepresentation. The court will consider whether the statement was a misrepresentation, whether it was relied upon in entering the contract, and whether loss has been sustained. The person accused of misrepresentation may not be ordered to pay damages if they can prove either of the following:

Chapter 2 : What are exclusion clauses

Exclusion clauses. This free course is available to start right now. Review the full course description and key learning outcomes and create an account and enrol if you want a free statement of participation.

Curtis wanted a dress cleaned by the defendant. *Graucob* [] 2 KB Facts: The claimant bought a broken cigarette machine. The claimant had signed the contract which said on it albeit in tiny writing at the bottom of the page liability would be excluded for a broken machine. The parties have had previous dealings. The appellant contracted to have a car shipped somewhere by a ferry company. The appellant was given a receipt for the contract. The ferry later sunk, so he tried to get damages. The ferry company tried to argue there was an exclusion clause for this on the receipt and the walls of the ferry company office. No exclusion clause incorporated because there was not a consistency with previous dealings *Olley v Marlborough Court* [] 1 KB Facts: A couple contracted for a holiday at a reception desk. A notice on the back of their hotel room door said the hotel was not responsible for any goods lost or stolen. Negligence by the hotel led to someone entering and stealing from their room Held: The defendant used the services of a warehouse to store goods on a regular basis. Each time he delivered goods to the warehouse he was asked to sign an invoice which contained an exclusion clause. This invoice came after the contract had been agreed. On one occasion he stored some barrels of orange juice and again signed the invoice. When he went to pick them up, however, some of the barrels were empty and one contained dirty water. Consequently he refused to pay for the storage. The claimant warehouse owners brought an action for the agreed price of storage relying on the exclusion clause to demonstrate that they were not liable for the damage to the goods. The defendant argued the clause had not been incorporated into the contract as he signed the document after the contract was made. The clause was incorporated through previous dealings. The defendant would have been aware of the term from the previous contracts and therefore it did form part of the contract. The claimant was entitled to payment and the defendant had no right to claim compensation for the damage to the orange juice. The claimant hurt themselves getting off a train. Terms on the train platform excluded liability for personal injury and the train ticket also referred the purchaser to these terms on the platform. The claimant was illiterate and could not read the exclusion clause, so she argued that it was not brought to her attention Held: Railway had made reasonable steps so the claimant was unsuccessful About Us Digestible Notes was created with a simple objective:

Chapter 3 : Exclusion and limitation clauses

Exclusion Clauses Lecture An exemption clause in a contract is a term which either limits or excludes a party's liability for a breach of contract.

What is a clause? A clause is a group of words that has a predicate and a subject. There are two different types of clauses: Independent clauses are those that can form a grammatical and complete sentence on their own. Dependent clauses are unable to form complete sentences and need another clause to make it complete. In documents A specific, separate article in document, usually a treaty, bill, or some other kind of legally binding document. A document may have separate clauses dealing with specific issues. In sentences It is a group of words that has a subject and a predicate. It may be either independent able to stand alone, or dependent when it modifies part of another clause. What is an exclusivity clause? Back to country updates menu. Trade secrets including so-called tricks of the trade are commonly protected by confidentiality agreements, non-disclosure agreements and exclusivity clauses or contracts. Exclusivity clauses are often attacked as being null and void on grounds of public policy because they restrain trade or occupation unreasonably. The facts of the case are as follows: This had the following terms: In , Luna became group franchise director of Sandre Philippines, Inc, which was engaged in direct sales of vitamins and other supplements. She began to sell and promote Sandre products to Avon employees and friends. On September 23 , Luna asked a law firm for an opinion regarding the legal consequences of the Supervisory Agreement she had entered into with Avon. The law firm said it was contrary to law and public policy. Luna then wrote to her colleagues attaching mimeographed copies of the legal opinion, and urged them to engage in other business without fear. On October 11 , Avon gave Luna notice of the termination of the Supervisory Agreement on the grounds that she had violated the exclusivity clause. Aggrieved, Luna filed a complaint for damages before the regional trial court RTC , which ruled in her favor. In declaring the contract null and void for being against public policy, the CA ruled that the exclusivity clause should be interpreted as applying solely to competing products, otherwise it would result in absurdity. Disputing the conclusion of the CA, and insisting that the exclusivity clause should be interpreted literally, Avon appealed to the Supreme Court. Citing the US Supreme Court case in Board of Trade of Chicago v US , the question to be determined is whether the restraint imposed is such as merely regulates and perhaps thereby promotes competition, or whether it is such as may suppress or even destroy competition. The Supreme Court observed that both Avon and Sandre employ direct selling to sell their products: Respondent Luna who learned the tricks of the trade from petitioner Avon, will do it for them. This is tantamount to unjust enrichment. Worse, the goodwill established by Avon among its loyal customers will be taken advantaged of by Sandre Philippines. It is not so hard to imagine the scenario wherein the sale of Sandre products by Avon dealers will engender a belief in the minds of loyal Avon customers that the products they are buying have been manufactured by Avon. In other words, they will be misled into thinking that the Sandre products are in fact Avon products. From the foregoing, it cannot be said that the purpose of the subject exclusivity clause is to foreclose the competition, that is the entrance of Sandre products into the market. Therefore, it cannot be considered void for being against public policy. Editha R Hechanova A clause is a group of words that have a subject and a predicate and is used as a sentence or part of a sentence. A term included in a contract that seeks to limit the liability of a party under the contract Share to: What is sexual exclusivity? Sexual exclusivity is the state in which one person is available only to certain persons, or even just one person. For instance, in Christian marriages the couple are sexual exclusive to one another: When you have exclusive control over something, you monopolize it.

Chapter 4 : Misrepresentation

Exclusion clause term in a contract Introduction Exclusion clause: is a term in a contract which intends to exclude one of the parties from liability or limit the person's liability to specific listed conditions, circumstances, or situations.

Definition of a Terms and Conditions A Terms and Conditions agreement is simply a set of rules for whoever is using your website or mobile app. It anticipates that there will be a breach of contract, and then excludes all liability for that breach. These clauses are often very hard to read, and very dense.

Definition of Limitation of Liability In contrast to an exclusion of liability clause, a limitation of liability clause only limits your liability for certain breaches, and may explicitly state a dollar amount that the liability is limited to. Here are some visual examples of what a limitation of liability clause looks like. You can see that in this example from Google, there is no dollar cap stated. You can also see that the first part of their clause is really trying to exclude quite a lot of their liability.

Legislation on these clauses But what does the law say about these clauses? The general principle of freedom of contract must be balanced against public policy concerns that a party who freely undertakes a binding contractual obligation should not be equally free to absolve itself from its duty to perform. Courts around the world have often held that exclusion clauses are not enforceable unless a number of conditions are met. These conditions are very clear: Is the liability in question covered by the clause? Are there any cases or legislation regulating its effect? Generally, the clause can be incorporated by signature, by notice, or by the previous course of dealings. Incorporation by signature is just that: If the contract is not signed, the clause can be incorporated by notice. This means that the person trying to rely on the clause e. In the US, an important factor in enforcing a limitation of liability provision is to be able to show that the provision was negotiated between two parties with relatively equal bargaining power. Generally, a business and a consumer are not considered to have equal bargaining power. This helps make the clause more reasonable and less onerous on the consumer. Courts do not look favorably on a limitation of liability clause that limits liability to a minimal dollar amount. The contract contained a limitation of liability clause in the third paragraph, which read: In most cases, if your clause does not explicitly state the type of liability or damage you want to exclude, the Courts will not allow your clause to be binding on your customers. This means that if you want to exclude liability in tort, for indirect losses, or for consequential damages, you need to explicitly state those things in your clause. There are some types of losses that you cannot exclude, however. For example, in the UK you cannot exclude liability for negligence, even if the consumer agrees to your contract. Other types of exclusions are allowed, but if the clause is ever litigated, Courts usually interpret the clause in the strictest possible way against the party that inserted it into the contract. In other countries, you can exclude liability for negligence, but it has to be explicit and the customer or consumer must have clearly agreed to it. In some jurisdictions, there will be specific legislation regulating the way in which these types of clauses are dealt with by the Courts, and what kinds of clauses are illegal. This is the act that prohibits you from excluding liability for negligence, as discussed above. It can be argued however that the clause has not been incorporated into the contract, or that the customer has not agreed to it rather than the contract itself being intrinsically unfair. This means that courts are willing to step in and mark a contract as voidable if it is so one-sided with excessive or inconspicuous but onerous terms, as in these cases it is usually argued that the consumer could not possibly have agreed to the contract had those clauses been brought to their attention. On the other hand, with regard to case law in the US, the Markborough v. Superior Court, landmark Californian case, established that limitation of liability clauses are legal, as long as the customer has been given a reasonable opportunity to review the clause. In that case, a developer, Markborough California, Inc. The developer argued that the provision was not specifically negotiated and not expressly agreed to. The court disagreed, and said that the letter the engineers sent with the proposed contract gave the client a reasonable opportunity to review the agreement and negotiate any element of it. First, if you include one of these clauses in your Terms and Conditions agreement, make sure that your agreement is easy to find and are brought to the notice of your customers. There are two different ways that you can approach the display of your Terms and Conditions, called browsewrap and clickwrap. Browsewrap is a method where you display your Terms and

Conditions agreement on your website and gain agreement or acceptance from your users by having them browse the website to find the agreement. Ensuring that your legal agreements are seen and read by your customers is the most important step to protecting yourself legally and making sure that your clauses stand up in court. Second, ensure that your clauses are easy to read and understand and that any exclusion or limitation of liability clauses are either highlighted in red or written in bold text with capital letters. In the examples that we looked at above, Bass Pro and Gander Mountain had their clauses written in capital letters, but they were not easy to read at all. The Google Store example, on the other hand, was not in bold or highlighted but was very clear and written in simple language. If your clauses are difficult to read or hidden amongst large tracts of text, it could be argued that your customers did not have an opportunity to read and understand the clause. Third, carefully draft your clauses to make sure all different types of liability are clearly excluded, and that any limitation of liability caps are a reasonable dollar amount in the circumstances. Dollar cap amounts should always reflect a reasonable proportion of the loss that could result if a breach was to occur. Finally, be aware of types of liability are not allowed to be excluded in your area, either by legislation or case law. Many jurisdictions do not allow the exclusion of negligence or personal injury, so make sure that your clause is not contravening legislation or case law by trying to exclude all of your liability. With the above hints and tips, you should be able to make sure that your limitation of liability and exclusion of liability clauses are within the law. By making sure that they are drafted clearly, reasonably and precisely, incorporated into your contract, and brought to the attention of your customers, you can feel secure in knowing that they will not be overturned. By Leah Hamilton Qualified Solicitor. Oct 23, This article is not a substitute for professional legal advice. This article does not create an attorney-client relationship, nor is it a solicitation to offer legal advice.

Chapter 5 : Unfair terms - common law

The common law treatment of clauses excluding liability for negligence was discussed in Section 2(1) of UCTA states that an exclusion clause cannot be used to exclude or restrict business liability for death or personal injury caused by negligence.

The clause recognizes a potential breach of contract, and then excuses liability for the breach. Alternatively, the clause is constructed in such a way it only includes reasonable care to perform duties on one of the parties. The clause places a limit on the amount that can be claimed for a breach of contract, regardless of the actual loss. The clause states that an action for a claim must be commenced within a certain period of time or the cause of action becomes extinguished. Term Must be Incorporated[edit] The courts have traditionally held that exclusion clauses only operate if they are actually part of the contract. There seem to be three methods of incorporation: In somewhat of a contradiction, that is not to say that the proferens actually has to show that the other person read the clause or understood it except where the clause is particularly unusual or onerous. It is not even necessary to show that the attention of that particular person was actually drawn to it. The notice must be given before formation of the contract as illustrated in *Olley v Marlborough Court Ltd*. What this means usually depends on the facts, however, the courts have indicated that equality of bargaining power between the parties may be taken into account. Judicial Control of Exclusion Clauses[edit] Strict Literal Interpretation[edit] For an exclusion clause to operate, it must cover the breach assuming there actually is a breach of contract. If there is, then the type of liability arising is also important. Generally, there are two varieties of liability: The courts have a tendency of requiring the party relying on the clause to have drafted it properly so that it exempts them from the liability arising, and if any ambiguity is present, the courts usually interpret it strictly against the party relying on the clause. As espoused in *Darlington Futures Ltd v Delco Australia Pty Ltd*, [6] the meaning of an exclusion clause is construed in its ordinary and natural meaning in the context. Although we construe the meaning much like any other ordinary clause in the contract, we need to examine the clause in light of the contract as a whole. Exclusion clauses should not be subject to a strained construction in order to reduce the ambit of their operation. Essentially this means that the clause will be construed against the interests of the person who proposed its inclusion. As a result, if a party wishes exempt his liability for negligence, he must make sure that the other parties understand that. The King [11] held that: If the exclusion clauses mention "negligence" explicitly, then liability for negligence is excluded. If "negligence" is not mentioned, then liability for negligence is excluded only if the words used in the exclusion clause are wide enough to exclude liability for negligence. If there is any ambiguity, then the contra proferentem rule applies. If a claim on another basis can be made other than that of negligence, then it covers that basis instead. In Australia, the four corners rule has been adopted in preference over the idea of a "fundamental breach". However, if acts of negligence occur during authorised acts, then the exclusion clauses shall still apply; [13] [14] If the contract is for the carriage of goods, if the path is deviated from what was agreed, any exclusion clauses no longer apply. They do not apply in cases of deliberate breach. Statutory Control[edit] Even if terms are incorporated into the contract and so would be effective, there are various statutory controls over the types of terms that may have legal effect. The Unfair Contract Terms Act renders many exemption clauses ineffective.

Chapter 6 : What is EXCLUSION CLAUSE? definition of EXCLUSION CLAUSE (Black's Law Dictionary)

“Exclusion clauses are terms that exclude or limit liability for a party when they breach the contract” Exclusion clauses are allowed due to freedom of contract “The courts do intervene occasionally e.g. to prevent a party in a stronger bargaining position from exploiting the other party.

Exclusion clauses in commercial contracts: But to lawyers, who read exclusion clauses through a prism of past case law and long-standing rules of interpretation, the decision is interesting. This trend should make the English courts a more business-friendly place to litigate. The contract included a limitation and exclusion clause which stated: Liability for any claim in relation to asbestos is excluded. The developer sued Arup, claiming breach of contract, breach of statutory duty and negligence. What was the effect of the exclusion clause? The Court of Appeal was asked to decide whether the exclusion clause exempted Arup from all liability for asbestos-related losses suffered by the developer. The developer argued that it did not because: In addition, it only applies where the loss contemplated could arise out of either negligence or some other cause. A changing approach to exclusion clauses? In major construction contracts the parties commonly agree how they will allocate the risks between themselves and who will insure against what. Exemption clauses are part of the contractual apparatus for distributing risk. There is no need to approach such clauses with horror or with a mindset determined to cut them down. Contractors and consultants who accept large risks will charge for doing so and will no doubt take out appropriate insurance. Contractors and consultants who accept lesser degrees of risk will presumably reflect that in the fees which they agree. So, what can we take from this decision? Jackson LJ was open in his desire to champion autonomous agreements between commercial parties. The courts are willing to assess the legal and commercial context in which agreements are made, allowing weight for commercial considerations. Adopting this approach means that the courts seem to find less ambiguity in commercial contracts, reducing the relevance of the traditional rules of interpretation, such as contra proferentem. Less reliance on historic cases like *Canada Steamship* should give commercial parties further confidence that the court will enforce the agreement that the parties have reached. Together, these subtle changes should help make the law of England and Wales and our Business and Property Courts an attractive choice, particularly when compared with other jurisdictions, such as some civil law jurisdictions, where the courts are perceived to be more interfering.

Chapter 7 : What is a War Exclusion Clause? - Definition from Insuranceopedia

Definition of exclusion clause: Provision in a contract under which one party's liability (that would arise by implication of law) is excused in the listed conditions, circumstances, or situations (called exclusions).

Chapter 8 : What is an Exclusion Clause? (with pictures)

An exclusion clause is a clause in a contract that excuses a party to the contract of liability in situations covered by it. This type of term in a contract can be illegal in certain settings, while in other cases, it may be in common and widespread use.

Chapter 9 : Australian Contract Law | Julie Clarke

Misrepresentation is the giving of false information by one party (or their agent) to the other before the contract is made, which induces them to make the contract.