13. Exclusion Clauses

This chapter discusses one particular type of boilerplate clause, namely the exclusion or limitation clause. The chapter examines the role and function of exclusion and limitation clauses in modern commercial contracts. In order to perform its function an exclusion or limitation clause must (i) be validly incorporated into the contract, (ii) cover the loss that has been suffered, and (iii) survive scrutiny under the Unfair Contract Terms Act 1977. Difficult interpretative issues can arise where one party seeks to exclude liability in respect of its own negligence or exclude liability for fundamental breach. The Unfair Contract Terms Act 1977 applies a reasonableness test to a number of exclusion or limitation clauses. The 1977 Act is also examined, with particular reference to the types of clause that fall within its scope.
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