
Exclusion Clauses and Unfair Contract Terms

10th Edition
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Tenth Edition

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To Leah—the icing on the cake

Preface to the Tenth Edition

The 10th edition of any textbook is a fair cause for celebration, but it is for more than the number of editions that this latest edition is noteworthy.

In the time since the previous edition, while legislative change to the main enactments have been minimal, the courts have been more than usually active. This edition thus features case law illustrating at the highest level the correct approach to the interpretation of contract terms, just what are to be regarded as onerous and unusual terms, and just when, given all that has happened between contracting parties, a clause can be fairly said to have been incorporated into a contract.

If Parliament has kept away from Unfair Contract Terms Act and the Unfair Terms in Consumer Contracts Regulations, the courts have not. We now have much greater clarity as to the types of clause which fall within the former, as well as a fresh batch of cases on the all-important reasonableness test. As for judicial interpretation of the latter, again, much has been done to illuminate the problem of deciding just when a disputed clause is fair. It is right to say, though, that the major developments under the Regulations have been in relation to our understanding of what is meant by a “core provision”. One of the newly established Supreme Court’s very first decisions was *Office of Fair Trading v Abbey National Plc* which brought to an end a long and complex set of hearings to a contentious end.

The law is stated as at February 21, 2011.

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