

## **Excluding Liability in Commercial Contracts**

Harminder Sandhu, our managing director and head of Dispute Resolution provides some guidance on the drafting of commercial contracts.

Generally two businesses negotiating the terms of a commercial agreement are permitted to choose whatever those terms are. Often businesses will seek to reduce the liabilities under the contract by negotiating the insertion of a contract limitation or exclusion clause. The operation of exclusion clauses is governed by the Unfair Contract Terms Act 1977 (“UCTA”) and through case law. The following are some of the key restrictions:

- Liability for death or personal injury cannot be excluded;
- The exclusion clause must be incorporated in the contract by signature, by notice or a course of dealings;
- Reasonable steps must be taken to bring the exclusion clause to the attention of the other party;
- A person who is not a party to the contract cannot seek to rely on the exclusion clause;
- If there is any uncertainty or ambiguity the exclusion clause will be construed against the party seeking to rely on it;
- Liability for fraud cannot be excluded;
- An exclusion cannot be relied upon if it is contrary to public policy

We find exclusion clauses in negotiated agreements and also in standard terms and conditions of business. Generally these exclusions seek to either restrict the extent of a party’s contractual obligations or they limit the extent of damages for any subsequent breach of contract.

In commercial contracts exclusion clauses generally seek to exclude liabilities for breach of contract and misrepresentations. However, it is very important to carefully consider how an exclusion clause is drafted and how it operates in the context of the agreement as a whole. This is on the basis that a Court will not permit a party to a contract to seek to rely on an exclusion which effectively exonerates it from its contractual liabilities and undermines the main objective of the contract. The Court as a matter of public policy will also not permit an innocent party to be left without a remedy.

We are skilled in drafting bespoke commercial contracts and standard terms and conditions of business as well as acting for clients seeking to litigate on the question of whether an exclusion clause can be relied upon.

For any further information or advice please contact Harminder Sandhu at [hsandhu@hawkinshatton.co.uk](mailto:hsandhu@hawkinshatton.co.uk) or on 01384 216840.