EXCLUSION CLAUSE

Three types of exclusion clauses:

1. Total exclusion of liability in favour of one party excluding a right that the other party would have had (L'estrange v Graucob Ltd (1934)).
2. Limit liability to a specified amount (Darlington Futures Ltd v Delco Australia Pty Ltd).
3. Placing conditions on exercise of contractual rights (e.g. must make a claim within 30 days) –

Two stage process:

1. Does the clause form part of the contract?
2. What is the legal effect of the clause? (construction)

- Contra Proferentem Rule –
  - o Ambiguities will be construed against benefiting party
  - o E.g. a clause excluding “all warranties express or implied” not effective to exclude liability. Wallis, Son and Wells v Pratt and Haynes (1911)
  - o However, when P hired bike from D and contract included clause exempting D from any liability “for any personal injuries to the riders of the machines hired”. Although bike was defective exclusion clause was still valid (could however sue in tort - White v John Warwick and Co Ltd (1953)).

- Fundamental breach – can prevent liability for a fundamental breach of the contract (serious breach) – Council of the city of Sydney v West (1965)

- Four corners rule – exclusion clause will not protect damages for loss if the breach was outside the four corners (within the scope) of the contract as contemplated by the parties. – Council of the City of Sydney v West (1965)
  - o Davis v Pearce Parking Station Pty Ltd (1945)
    - ▪ Plaintiff parked vehicle in D’s parking station where it was damaged. D removed car to the public street and left keys in the ignition. It was stolen.
    - ▪ Receipt had a term “garaged at the owners risk” and “parking station not responsible for loss or damage”. Because the contract contemplated the event, liability was excluded.

- Deviation rule – if performance causing the breach deviated from performance as contemplated by parties, exclusion clause will not protect the party. - Thomas National Transport (Melbourne) Pty Ltd v May and Baker (Australia) Pty Ltd (1966)
  - o TNT contracted to carry goods and hired a subcontractor. Depot was closed when subcontractor collected goods and stored goods in shed at his home overnight. Shed was destroyed by fire.
  - o TNT could not rely on exclusion clause as the goods were damaged during a departure from the carriage promised.