

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'estrage 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** –
 - Ambiguities will be construed **against benefiting party**
 - E.g. a clause excluding “all warranties express or implied” not effective to exclude liability. *Wallis, Son and Wells v Pratt and Haynes* (1911)
 - 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)
 - *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)
 - 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.
 - TNT **could not rely** on exclusion clause as the goods were damaged during a departure from the carriage promised.