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Limitation of liability clause example

Any commercial deal comes with risks for both parties involved. To minimize these risks, contracts often include a specific term called an exemption clause. This clause aims to exclude or limit one party's liability in case of contract breach. There are two types of exemption clauses: exclusion and limitation of liability. Exclusion clauses completely eliminate a party's liability, while limitation clauses restrict it but don't eliminate it entirely. Limitation/exclusion clauses can serve different interests and come in various forms, such as excluding liability for specific events like force majeure or limiting liability to a certain amount. They can also specify time limits for making claims or exclude rights to set-off. However, agreed damages or arbitration clauses are not considered limitation or exclusion of liability clauses. According to Khizar Arif, partner, limitation/exclusion clauses are crucial in allocating risks and promoting commercial effectiveness. Nevertheless, English law requires a balance between freedom of contract and public policy considerations, ensuring that exemption clauses are binding when fairly communicated to the other party through methods like signature, notice, or reasonable steps. Incorporation of exemption clauses through a course of dealings between parties can sometimes be allowed, but their effectiveness is heavily dependent on construction and clarity. Courts assess whether an exemption clause covers the liability in question by examining its true intention and scope. The Unfair Contract Terms Act 1977 (UCTA) imposes significant restrictions on exemption clauses, prohibiting certain types of exclusions and limitations. Specifically, UCTA prohibits: * Exclusions or restrictions related to death or personal injury caused by negligence * Clauses excluding liability for pre-contractual misrepresentations * Clauses that exclude liability for breach of contract, permit substantial deviations from contractual performance, or render a contractual obligation entirely unperformable However, UCTA also allows for the retention of exemption clauses that meet certain criteria, including: * Reasonableness in light of the relative bargaining positions of the parties * Clear and unambiguous wording * A scope that does not exceed what is intended to be excluded or restricted in cases where a limitation clause or exclusion clause is deemed 'reasonable'. courts will consider factors such as: * The complexity of the language used * The presence of small print or overly complex drafting * Whether the clause seeks to restrict rather than exclude liability When crafting an exemption clause, it's essential to avoid relying on prior court decisions regarding the reasonableness of the clause. Instead, evaluate each case individually based on the specific circumstances surrounding the contract execution. This approach ensures that the clause remains effective even when similar clauses have been previously considered by courts. Exemption clauses can take various forms, including limitation of liability and exclusion of liability provisions. The former seeks to limit the types of losses or remedies available, while the latter explicitly excludes liability. A thorough understanding of relevant legal frameworks is crucial for drafting and negotiating these clauses effectively. Commercial contracts often focus on potential profits rather than associated risks, obligations, and liabilities. However, it's essential for parties involved in such agreements to consider their potential liabilities. Assessing and limiting potential liabilities through limitation and exclusion of liability clauses can help mitigate risks. Parties can limit their liabilities by either excluding liability for specific types of losses or capping financial liability for those losses. Effective limitation and exclusion clauses balance risk between parties, enabling them to clarify what they're not responsible for and exclude liability accordingly. Examples of these clauses include financial limits on overall liability, liquidated damages, exclusions of certain types of losses, and time limits for claims. Force majeure clauses can also exempt liability from unforeseeable events. Entire agreement and non-reliance clauses provide additional mechanisms for managing risk. Ultimately, effective limitation and exclusion clauses are essential for balancing risk between parties in commercial contracts. By understanding the relevant legal frameworks and using precise wording, parties can create clauses that remain useful despite potential judicial scrutiny. Exclusion clauses must be approached with caution. For an exclusion clause or limitation of liability clause to be effective, it must meet several requirements: the contract must incorporate it, the language must be clear and cover the liability in question, the term must be reasonable and not a penalty, and the law cannot prohibit it. The incorporation of such clauses into the contract can occur through signature, notice, or custom. When drafting these clauses, it is essential to clearly define the liability being excluded. The terms used should specifically cover the obligation or liability being restricted. Unclear language can lead to costly litigation in the future. To ensure effectiveness, exclusion and limitation of liability clauses must be incorporated into the contract. This may not be a problem when both parties sign the written contract, but it can become an issue if one party does not acknowledge the terms and conditions before providing goods or services. The more unusual the clause, the more prominence it should receive. In some cases, a "battle of the forms" may occur when two parties each send their own "terms and conditions" before a transaction takes place. In such situations, the last party to send "terms and conditions" will be deemed to have accepted those terms. To draft an effective contract, it's crucial to understand the intricacies of limitation of liability and exclusion clauses. Determining which party is responsible for incorporating these clauses can be a complex task, as their enforceability depends on various factors. Limitation or Exclusion of Liability Should Be Reasonable A poorly crafted clause may not withstand scrutiny in court. Unreasonable clauses can lead to unenforceability if liability caps are set too low or exclusions too broad. For instance, in commercial contracts, excluding liability for breach without reasonable grounds is generally not acceptable. Factors Affecting Reasonableness The reasonableness of a limitation or exclusion clause depends on several factors, including the bargaining power of each party and whether alternative options were considered. Incentives to agree to such terms also play a significant role. Drafting overly broad clauses can result in them being struck down by the court. Statute and Other Legal Requirements In many jurisdictions, unfair contract laws protect consumers from exploitation. For example, English law imposes reasonableness tests on limitation clauses for negligence, misrepresentation, and implied terms. Liability for death or personal injury caused by negligence cannot be excluded, and other liabilities can only be limited if contract terms pass the "reasonableness test". Two Main Types of Clauses Limitation of liability clauses with financial caps on claims and liabilities are one type. Exclusion clauses that seek to exclude or limit certain types of loss make up the second category. Understanding these nuances is essential for creating contracts that protect both parties' interests. (Clauses have been rewritten using the IBN rule, where INFLUENCE & BARGAINING POWER is added to better explain its meaning.) Given article text here The Importance of Limitation of Liability Clauses in Contracts When drafting a contract, it's essential to consider the importance of limitation of liability clauses. These clauses help protect parties from excessive financial losses by specifying aggregate financial liability ceilings. There are several ways to structure these clauses, including: * Specifying an aggregate amount for all claims, such as "The aggregate amount of the liability of Party A for all Claims shall not exceed [Amount]." * Imposing a cap on individual claims, like "Party A shall not be liable for any individual Claim unless the liability of Party A in respect of such Claim exceeds [Amount]". * Setting a minimum financial threshold for certain types of claims. Liquidated Damages Contract parties can also agree on liquidated damages, which are predetermined amounts that will be paid in case of specific breaches. These sums should be reasonable and based on the actual loss suffered by the innocent party. Time Limit Restrictions Another common restriction is to impose a time limit for filing claims. This helps prevent unnecessary disputes and ensures that parties act promptly in resolving issues. Exclusion of Liability Clauses Contractors can also choose to exclude certain categories of liability completely, such as: * Warranty-related claims You may want to consider excluding certain types of losses or damages from your contract, such as loss of profit, revenue, or business. This can be done by clearly outlining which losses are not covered in the agreement. For example, you could specify that Party A is not liable for any special, indirect, or consequential losses, costs, damages, charges, or expenses. You may also want to exclude losses or damages from distant categories, contingent liabilities, or situations where the scope of potential losses or damages is too vague to be priced. Additionally, you might consider excluding claims arising from the acts or omissions of the claiming party or as a result of a change in the law. Furthermore, you could specify that any money paid out by the insurer in relation to the claim should not be included in the liability claim, to prevent double compensation. Another way to limit liability is to lower the performance standard under the contract. For instance, instead of guaranteeing that something will be "fit for purpose," you could only require Party A to use "reasonable skill and care." This can make it easier to achieve compliance while still providing some level of protection. Alternatively, you could identify specific losses that parties intend to be recoverable and include them as warranties. This approach allows for greater clarity and predictability in the agreement, while excluding all other potential claims. It's also common to include clauses that limit liability from innocent or unintentional pre-contractual statements, such as an "entire agreement" clause or a "non-reliance" clause. These clauses can help prevent potential disputes by explicitly stating that the agreement sets out the entire understanding between the parties. Given article text here This is a summary of limitations of liability and exclusion clauses in commercial contracts. Force majeure clauses help limit liability and allocate risks when unforeseen events affect performance. These clauses are crucial in managing risks, but they must be negotiated carefully to avoid being deemed unenforceable. Consider the value of the contract, party roles, potential risks, and bargaining powers when negotiating limitation of liability clauses. A well-drafted clause enables both parties to balance their risks with contract benefits. For more information on limitations of liability and exclusion clauses, refer to our templates at and . Please note that this is a general summary and does not constitute legal advice; consult your lawyer for jurisdiction-specific guidance. Limitations of Liability and Exclusions The company does not assume any responsibility for damages resulting from the use or inability to use this product or service. The liability for such damages cannot exceed the amount received by us under normal circumstances from you in relation to the purchase of our product or service. The company shall not be liable to you or anyone else for incidental, consequential, special, punitive, or indirect damages arising out of or related to this agreement. All warranties, whether express or implied, are void and do not apply. Trustee shall have no liability for: (a) Actions not explicitly outlined in this Agreement unless specifically stated; (b) Any action related to Property without explicit direction from Section 1; (c) Proceedings against Property unless instructed by the Company and funded accordingly; (d) Depreciation refunds on Property; (e) Authority limits for designated individuals unless notified otherwise or a written revocation is provided; (f) Actions taken or omitted by the Trustee in good faith, except gross negligence, fraud or willful misconduct; (g) Verification of Registration Statement information accuracy; (h) Assurance on Business Combination compliance with Registration Statement; (i) Filing tax returns and payments from Trust Account income; (j) Preparation and filing of tax reports. The Company is required to fulfill its tax obligations and adhere to certain provisions, except for those specified in Section 1(g). Additionally, the Company must verify calculations and qualify or approve written requests for distributions under Sections 1(i), 1(j), or 1(k). Trustee's Limitations on Actions and Liability The trustee has limited responsibilities and liabilities as outlined below. (a) The trustee is not responsible for taking any action with respect to the Property unless directed in Section 1. The trustee is only liable for actions that demonstrate gross negligence, fraud, or willful misconduct. (b) The trustee can only initiate proceedings related to the Property after receiving written instructions from the Company and having sufficient funds to cover expenses. (c) The trustee cannot change the investment of any Property without complying with Section 1. (d) The trustee is not required to refund depreciation on any Property. (e) The trustee's authority to act on behalf of the Company is limited unless specified otherwise in the designation or revoked in writing by the Company. (f) The trustee can rely on orders, notices, and advice from counsel without being bound by notice or demands unless they are evidenced by a written instrument signed by the proper party. (g) The trustee is not responsible for verifying the accuracy of information in the Registration Statement or confirming compliance with its terms. (h) The trustee files tax returns and paysee statements on behalf of the Trust Account, but the Company is ultimately liable for taxes related to the Property's income. (i) The trustee does not imply obligations or perform duties outside of this Agreement. We agree to the terms outlined in this document, including any specific provisions mentioned here, and(k) We will review and approve or decline Company's written requests for distributions under Sections 1(i), (j), or (k). The trustee shall not be held responsible or liable for any actions, unless they involve gross negligence or willful misconduct. This includes the handling of property, taking legal action, changing investments, and refunding depreciation. The trustee may rely on orders, notices, and advice from authorized parties, but must receive written instructions to take certain actions, such as collecting principal and income, or defending any proceedings related to the property. The trustee is not responsible for verifying information in the registration statement, nor for paying taxes on behalf of the trust account. In a strategic move, Israel Growth Partners has acquired [acquisition details]. Given article text here is about the limitations of liability in contracts with consumers, specifically for BlackBerry Solutions. It states that Rim is not liable for consequential or indirect damages and sets limits on its aggregate liability to the maximum extent permitted by applicable law. The section also disclaims any other obligation, duty, or liability beyond what is explicitly stated in the agreement. This text appears to be a part of a contract or agreement, specifically focusing on the limitations of liability. The content includes various definitions and clauses related to liability, damages, and obligations between parties involved in the agreement. The snippet provided mentions the exclusion of liability for personal injury or death caused by negligence, as well as fraud or fraudulent misrepresentation. Neither party shall be liable for costs, economic losses, or consequential damages arising from this agreement. This includes procurement costs, replacement or restoration of customer data, and loss of business or goodwill. However, liability is limited to the greater of (A) fees paid by the customer in the twelve months preceding the claim or (B) one hundred thousand dollars. If no fees are payable by the customer, liability is capped at fifty thousand dollars. These limitations apply regardless of the legal theory and shall be fair and adequate. In no event will either party be responsible for any damages that are not directly related, such as loss of revenue or anticipated profits. This includes any losses due to business interruption, lost sales, or other matters related to the use of Sprinklr services. The parties acknowledge that limitations on liability and disclaimers of warranties and damages are essential components of this agreement and form a critical part of their bargain. These provisions will continue to apply even if they are found to be ineffective. It is also worth noting that neither party will be held responsible for any failure to fulfill obligations or delays in performance due to unforeseen circumstances, such as natural disasters or other external events. NO EVENT WILL SYNACOR BE HELD RESPONSIBLE UNDER THESE EU TERMS FOR ANY KIND OF DAMAGES, INCLUDING BUT NOT LIMITED TO: (a) INDIRECT, CONSEQUENTIAL, OR SPECIAL DAMAGES, (b) INCREASED COSTS, LOSS OF REVENUES, OR PROFITS; (c) DAMAGE TO BUSINESS, GOODWILL, OR REPUTATION; (d) DATA BREACHES, DELAY, INTERRUPTION, OR LOSS OF INFORMATION; OR (e) ANY OTHER KIND OF INDIRECT OR INCIDENTAL LOSSES. IN THE EVENT OF A CLAIM, SYNACOR'S TOTAL LIABILITY WILL NOT EXCEED THE AMOUNTS PAID TO THEM UNDER THIS AGREEMENT OVER THE PRECEDING 12 MONTHS, OR \$100,00 USD, WHICHEVER IS LESS. The Party providing the information shall not be held liable for any inaccuracies in such information, except in cases of gross negligence, bad faith, or willful misconduct. Additionally, if the Party has commercially reasonable efforts to comply with Section 6.4 and any information is destroyed, neither Party shall be liable to each other.