

# Business law: exemption clause

[Law](#), [Contract Law](#)



An exemption is a clause in a contract that exempts or removes liability from one or both parties in certain circumstances. Exemption clauses are used frequently in business organization contract. These clauses apportion risk between the parties concerned and the law upholds them, assuming the parties negotiated them while drafting the contract<sup>2</sup>. The two ways in which exemption clauses can be incorporated in a contract are: (1) Incorporation by notice and (2) Incorporation by signature.<sup>3</sup>

I would first ask X if he was notified of the hotel's policy while, he was checking in. If He was informed of a policy to secure valuables at the front desk, then he was responsible for his losses and Y had no obligation to reimburse him for his losses. However, if he was not informed of Y's policy on securing valuables while checking in then he was entitled to be reimbursed by Y. He is entitled for reimbursement because the notice in the room did not form part of the contract between himself and Y.

He became aware of this policy after the contract was made and therefore it cannot form part of the contract. Y is therefore responsible for replacing his valuables.<sup>4</sup> Tim went to Danto Auto Rental to rent a minivan for his family trip in Maxboro Estate. He was notified that the Danto Auto Rental is not responsible for any damages inflicted to any occupant of the minivan caused by mechanical problems or any vehicle accident. Tim signed the document exempting Danto Auto Rental from liability caused by mechanical problems or any vehicle accident.

For an exemption to be upheld there must be sufficient notice of the exemption or the exemption must be incorporated by signature. This means that the exemption must be in a contract signed by both parties or a party

must be made aware of the exemption clause in reasonable time or at the time of the contract. In this case the contract was made when Tim sign the rental documents. 5. An exemption clause must satisfy both the common law and statutory criteria. The courts in recent cases have, however, tended to concentrate on the statutory criteria. . Misrepresentation is: A statement of fact made by one party to contract (the representor) to the other (the representee) which, while not forming a term of the contract, is one of the reasons that induces the representee to enter into the contract. 7. In a misrepresentation case, for the courts to make its decision, it generally looks for the following two things in the representor's statement: (1) Statement of fact and (2) Inducement. 8. In a case of *Tim v Roy* - T Company build concrete houses with plycemet backing instead of blocks.

The marketing department of the company, market the houses as fully concrete. R purchase one of the houses from T Company at the cost you would pay for a fully concrete house. After living in the house for a month R found out that the house was not fully concrete. The plaintiff sued on grounds that he bought the house from the company because he thought the company was building fully concrete houses and he was deceived when they did not. In this case the information given by the Marketing department was of a fraudulent one therefore it was a fraudulent misrepresentation.

When proving a fraudulent misrepresentation the plaintiff have to prove that the representor acted in a fraudulent manner or that they made the statement knowingly or without belief it was true or recklessly. All of the above was proven. *Tanya's Boutique v. Andrea Collins* – In this case, Tanya gave wrong information concerning the originality and make of the dresses

she sold in her boutique. This information was given based on facts that she got from the Dictoria Secret weekly which have a reputation from outstanding information on quality dresses. Andrea later found out that the dresses she bought was a knock-off and not an original.

She returned the dresses and requested that her money be returned. Tanya refused to return the money. In the case, the misrepresentation by Tanya could be classified, as innocent misrepresentation because she believed the dresses were original. Therefore, her burden had been discharged and her representation could be classified as innocent misrepresentation.

9. (a)(b)(c) Type of Misrepresentation Remedies Available

1. Fraudulent	Rescission & damages
2. Negligent (common law)	Damages only
3. Negligent (representor must show reasonable grounds to believe in the truth of the statement)	Rescission & damages
4. Innocent	Rescission & Indemnity

0. 1. Indemnity - Compensation for wrong done, or trouble, expense or loss incurred. An undertaking usually by deed to indemnify another. An indemnity can only be claimed for loss arising from the entering into the contract and not for any consequential loss, which can only be claimed as damages. 2. Damages - The pecuniary satisfaction awarded by a judge or jury in a civil action for the wrong suffered by the plaintiff. (Exemplary damages; nominal damages) Damages can be assessed either on a reliance basis or on an expectation basis. 3.

Rescission - Putting a contract to an end or voiding a contract usually caused by some type of misrepresentation. It is an equitable remedy and therefore discretionary. It can be lost because of reaffirmation, lapse of time; restitution is no longer possible and a third party has gained an interest.

Rescission can be lost where the subject matter of the contract cannot be restored to the representor, and where a third party has gained an interest in the goods. 4. Onus – Burden of proof 5. Contra Proferentem rule – States that any doubt or ambiguity in the wording of a clause will be construed against the person seeking to rely on it.