

### PROBLEM QUESTION

Minnie wanted her furniture transported to her new house on Hollywood Road. Goofy offered to do the job. His standard contract contained the term "no liability is accepted for any damage, howsoever caused, to any goods during the course of transit". Minnie glanced through the contract and spotted the term, which she did not understand. When she asked, Goofy explained that it was only applicable if the damage to the goods was caused by a traffic accident during transit. Goofy also said that he would drive the lorry himself and that there was little risk of an accident as he was a careful driver. Upon this assurance, she signed the contract.

While Goofy was transporting the furniture, he left the lorry outside a coffee shop to get a can of Coke without turning off the engine. On his return, he found his lorry on fire. The fire destroyed all the furniture. When Minnie asked Goofy to pay for the furniture, Goofy pointed out that he was not liable as the exemption clause covered the damage. Advise Minnie. **(20 marks)**

## ANSWER

### **Key Issue: (1 mark)**

Minnie signed a standard contract for Goofy's transport business. It contains an exemption clause. It completely excludes liability for damaged goods during transit. The key issue is whether the exemption clause is valid in law.

### **Applicable Law: (7 marks, Law)**

There are three issues:

- Whether the exemption clause is valid because of incorporation by signature (*L'Estrange v Graucob*); (1 m, case law; 1 m for stating rule)
- Whether the exemption clause is invalid because of unusual factors (*Curtis v Chemical Drycleaning*); (1 m, case law; 1 m for stating rule)
- Whether an implied term exists in Minnie's standard contract (*Moorcock* and *Shirlaw v Southern Foundries*). (2 m, case law; 1 m for stating rule)

### **Application of Law to Facts: Analysis**

#### **Issue One: Exemption Clause is Valid (2 marks)**

Minnie's case resembles *L'Estrange*: the rule is that a party is bound on signing the contract. It does not matter if the party had read it or not.

In Minnie's case, she actually read the exemption clause. But she did not understand it. Hence she asked Goofy to explain. If she still did not understand, she can refuse to sign.

Minnie did not do so. It is arguable that Minnie was assured by Goofy's explanations. That is why she signed the contract. Because she signed the contract, it is valid in law (*L'Estrange*).

Thus Minnie is arguably bound by the contract upon her signature.

#### **Issue Two: Exemption clause invalid because of unusual factors (4 marks)**

Though Minnie signed the contract, I argue that this exemption clause is invalid because of misrepresentation. After incorporation, exemption clauses must be interpreted.<sup>1</sup> *L'Estrange* applies when there is no misrepresentation.

Goofy told Minnie that the exemption clause only applies to damaged goods in transit, which are caused by a traffic accident. He assured Minnie that he would drive the lorry himself. He said that he was a careful driver.

But Goofy was careless. While transporting Minnie's furniture in transit, he stopped his work to buy a drink. He did not turn off the engine. Goofy's actions are inconsistent with his assurance to Minnie. This is a misrepresentation.

Thus I argue that Minnie's facts are different from *L'Estrange*. *L'Estrange* does not apply.

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<sup>1</sup> In my slides, I said you must "read the clause carefully" (see p57 PDF; also p 41 old slide number). For exams, use the words "interpretation" or "construction".

Also Goofy misrepresented the exemption clause's scope. He told Minnie that this term only applied to damaged goods in transit which were caused by traffic accidents.

Actually this exemption clause is much wider. It completely excludes liability for any type of damage, whatever the reasons, during the transit of her furniture. Minnie's case is similar to *Curtis*. In *Curtis*, it was held that misrepresentation of an exemption clause's true scope can be invalid.

Minnie signed the contract because she was assured by Goofy. Importantly, she relied on his explanation. Without Goofy's assurance, it is arguable that she would not sign. For these reasons, *Curtis* applies to Minnie's case. The exemption clause is invalid.

### **Issue Three: Implied Term (4 marks)**

There are three ways to imply a term into a contract. We can imply terms through case law, statute, or based on custom (common business practice). In Minnie's case, I focus on case law and custom.

In *Moorcock*, it was held that a term is implied into a contract because it improves business efficacy. Though there is no express term, the court in *Moorcock* implied a term that both parties intended a wharf business must always be deep enough for ships.

This is the "business efficacy" test in *Moorcock*. It ensures that businesses can run effectively. It enables business risks to be shared fairly. It is reasonable that Minnie expects Goofy's transport business to take care of her furniture during transit.

My argument is supported by the "officious bystander" test (*Shirlaw v Southern Foundries*). It is not just Minnie who reasonably expects Goofy to transport her furniture safely, while in transit. Many people, in Minnie's position, would also say "Oh of course!".

### **Bonus Mark: s 2(2) Unfair Contract Terms Act (UCTA) (1 mark)**

**It is unlikely that Goofy can use s2(2) UCTA to exclude his liability. This section only applies if the negligence was reasonable. As explained above, Goofy's conduct was careless. It was not reasonable.**

### **Conclusion: (1 mark)**

On balance, Minnie can argue that the exemption clause she had signed is invalid at law. On this basis, she can ask Goofy to pay for the damaged furniture.

## **TIPS: HOW TO WRITE A GOOD ANSWER**

### **Key Issue: (1 mark)**

Minnie signed a standard contract for Goofy's transport business. It contains an exemption clause. It completely excludes liability for damaging goods during transit. The key issue is whether the exemption clause is valid in law.

**Comment [d1]:** Structure. Please copy this in your assignment and exams.

### **Applicable Law: (7 marks, Law)**

There are three issues:

- Whether the exemption clause is valid based on incorporation by signature (*L'Estrange v Gracub*);
- Whether the exemption clause is invalid because of unusual factors (*Curtis v Chemical Drycleaning*);
- Whether an implied term exists in Minnie's standard contract (*Moorcock* and *Shirlaw v Southern Foundries*).

**Comment [d2]:** I give 1 mark for stating law and 1 mark for case law's name.

### **Application of Law to Facts: Analysis**

#### **Issue One: Exemption Clause is Valid (2 marks)**

Minnie's case resembles *L'Estrange*: the rule is that a party is bound on signing the contract. It does not matter if the party had read it or not.

In Minnie's case, she actually read the exemption clause. But she did not understand it. Hence she asked Goofy to explain. If she still did not understand, she can refuse to sign.

Minnie did not do so. It is arguable that Minnie was assured by Goofy's explanations. That is why she signed the contract. Because she signed the contract, it is valid in law (*L'Estrange*).

Thus Minnie is arguably bound by the contract upon her signature.

**Comment [d3]:** Structure. Please copy this for assignment and exams

**Comment [d4]:** I give 1 mark for stating law and 1 mark for case law's name.

**Comment [d5]:** This is application. You are explaining why it's similar. I give 1 bonus mark.

#### **Issue Two: Exemption clause invalid because of unusual factors (4 marks)**

Though Minnie signed the contract, I argue that this exemption clause is invalid because of misrepresentation. After incorporation, exemption clauses must be interpreted.<sup>2</sup> *L'Estrange* applies when there is no misrepresentation.

Goofy told Minnie that the exemption clause only applies to damaged goods in transit, which are caused by a traffic accident. He assured Minnie that he would drive the lorry himself. He said that he was a careful driver.

But Goofy was careless. While transporting Minnie's furniture in transit, he stopped his work to buy a drink. He did not turn off the engine. Goofy's actions are inconsistent with his assurance to Minnie. This is a misrepresentation.

**Comment [d6]:** Structure. Copy these sub headings for assignments and exams.

<sup>2</sup> In my slides, I said you must "read the clause carefully" (see p57 PDF; also p 41 old slide number). For exams, use the words "interpretation" or "construction".

Thus I argue that Minnie's facts are different from *L'Estrange*. *L'Estrange* does not apply. Also Goofy misrepresented the exemption clause's scope. He told Minnie that this term only applied to damaged goods in transit which were caused by traffic accidents.

**Comment [d7]:** You can answer this only if you read the question very carefully! What Goofy said to Minnie is close but different from the exact words of the exemption clause: "no liability is accepted for any damage, howsoever caused, to any goods during the course of transit".

Actually this exemption clause is much wider. It completely excludes liability for any type of damage, whatever the reasons, during the transit of her furniture. Minnie's case is similar to *Curtis*. In *Curtis*, it was held that misrepresentation of an exemption clause's true scope can be invalid.

Minnie signed the contract because she was assured by Goofy. Importantly, she relied on his explanation. Without Goofy's assurance, it is arguable that she would not sign. For these reasons, *Curtis* applies to Minnie's case. The exemption clause is invalid.

### Issue Three: Implied Term (4 marks)

There are three ways to imply a term into a contract. We can imply terms through case law, statute, or based on custom (common business practice). In Minnie's case, I focus on case law and custom.

**Comment [d8]:** Always state the general rule of implying terms first. You get marks.

In *Moorcock*, it was held that a term is implied into a contract because it improves business efficacy. Though there was no express term, the court in *Moorcock* implied a term that both parties intended a wharf business must always be deep enough for ships.

This is the "business efficacy" test in *Moorcock*. It ensures that businesses can run effectively. It enables business risks to be shared fairly. It is reasonable that Minnie expects Goofy's transport business to take care of her furniture during transit.

My argument is supported by the "officious bystander" test (*Shirlaw v Southern Foundries*). It is not just Minnie who reasonably expects Goofy to transport her furniture safely, while in transit. Many people, in Minnie's position, would also say "Oh of course!".

### Bonus Mark: s 2(2) Unfair Contract Terms Act (UCTA) (1 mark)

It is unlikely that Goofy can use s2(2) UCTA to exclude his liability. This section only applies if the negligence was reasonable. As explained above, Goofy's conduct was careless. It was not reasonable.

### Conclusion: (1 mark)

On balance, Minnie can argue that the exemption clause she had signed is invalid at law. On this basis, she can ask Goofy to pay for the damaged furniture.

**Comment [d9]:** Use this term in your conclusion.