

Unfair Contract Terms: Indemnities and Limitations of Liability

“Since 2021 will be a significant year for the unfair contract term (UCT) laws, we’ve been bringing you a series of articles on the UCT laws. This is instalment number four. It addresses indemnities and limitations of liability clauses: two contractual devices that are commonly used to allocate risk,” writes Peter Sise in *Clayton Utz’ Knowledge*.

“Before going any further, it is worth recapping some of the main points from our first instalment on the general rules of the UCT laws. First and foremost, the UCT laws do not apply to all contracts. The primary limit on the UCT laws’ scope is that they only apply to standard form contracts which are either a ‘consumer contract’ or a ‘small business contract’.”

“Second, a term will only be unfair if:

- (i) it would cause a significant imbalance in the parties’ rights and obligations arising under the contract;
- (ii) it is not reasonably necessary to protect the legitimate interests of the party who would be advantaged by the term; and
- (iii) it would cause detriment (whether financial or otherwise) to a party if it were to be applied or relied on.

“All three elements must be fulfilled for a term to be unfair.”

Read the blog.