

# DEFINING YOUR LIABILITY IN ADVANCE: LIQUIDATED DAMAGES, LIMITATION AND EXCLUSION CLAUSES

10 July 2020 | London

Legal Briefings - By **James Baily, Sarah Hawes and David Nitek**

---

Parties to commercial contracts commonly seek to set some parameters around what will happen in the event of a breach. They may for example agree a fixed sum that is payable on breach, or set a maximum sum for any damages, or exclude liability (or particular categories of liability) altogether.

Such clauses may not always have the effect the parties expect, either because of how they are interpreted by the courts or because they are held to be unenforceable as a result of statute or common law principles.

In this sixth of our updated and relaunched series of contract disputes practical guides, James Baily, Sarah Hawes and David Nitek consider the main types of clause that may be used and the extent to which they will (or will not) be effective, and provide some practical tips for commercial parties.

You can [click here](#) to download the PDF guide or [here](#) to access our webinar exploring these issues.

We will be publishing further editions of the updated series of contract disputes practical guides in the coming months. In the meantime, the first five editions in our relaunched series, and the remaining editions from the original series, are available [here](#) on our [Litigation Notes blog](#).

## KEY CONTACTS

If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.



**JAMES BAILY**  
PARTNER, LONDON

+44 20 7466 2122  
James.Baily@hsf.com



**SARAH HAWES**  
HEAD OF CORPORATE  
KNOWLEDGE, UK,  
LONDON

+44 20 7466 2953  
Sarah.Hawes@hsf.com



**DAVID NITEK**  
PARTNER, LONDON

+44 20 7466 2453  
david.nitek@hsf.com

---

## LEGAL NOTICE

The contents of this publication are for reference purposes only and may not be current as at the date of accessing this publication. They do not constitute legal advice and should not be relied upon as such. Specific legal advice about your specific circumstances should always be sought separately before taking any action based on this publication.

© Herbert Smith Freehills 2021

---

**SUBSCRIBE TO STAY UP-TO-DATE WITH LATEST THINKING, BLOGS, EVENTS, AND MORE**

Close