

Exclusion Clause and Remedies

Any cause of dealings?
①: terms are shown to her
all, and must be told
abt the ~~existing~~ terms
(exclusion clause)

MTR - yellow line,
行李 on escalator

1. Jane took her clothes to "Fresh and White" ("FW"), a laundry shop in Sai Kung.

Terry, the shop assistant tried to tell Jane about the Terms and Conditions displayed on the wall and on the counter, but she was too busy answering her husband's call that she ignored what Terry said. Jane was asked to sign a form to acknowledge she left 2kg of laundry and one down's jacket to be cleaned. Jane asked Terry why she was asked to sign the form. Terry replied that the form merely included an exclusion clause for damage caused to buttons and zips on the garments. However, the form stated that the exclusion clause pertained to all possible damages that may be caused (the terms displayed on the wall and counter were the same as the terms on the back of the form that Jane signed). Jane signed the form without reading it.

by notice

not sufficient
enough (must
try to make
the notice exist)

(must make
sure notice
shown before
contract)

should take
reasonable
steps

Jane also wanted to buy a bottle of detergent for her pashmina and she asked Terry if they had a *Japanese product* called - "Kirei Magic", a type of detergent for wool. She heard that the detergent would leave the pashmina clean and soft. Terry said the shop did not have such product, but he knew someone who could sell it to her. Terry gave Jane a contact number and asked her to get in touch with Lewis who could help her buy this product. Jane called Lewis and ordered 3 bottles of Kirei Magic. Jane transferred the money to Lewis and gave him the delivery address. In fact, both Terry and Lewis knew Jane wanted the Japanese Kirei Magic, but Lewis sold a similar product with the same name, produced by another manufacturer in Vietnam. They deliberately concealed this information from Jane and three bottles of Kirei Magic from Vietnam were delivered to Jane's address.

羊絨

Terry did not
have full
exposure of
these terms

∴ misrepresentation

∴ Jane / sue

A few days later, Jane returned to pick up her clothes from FW, her down's jacket was torn, and the zip was broken. WS sought to rely on the exclusion clause printed on the back of the form.

撕裂 故意 隱瞞

Advise Jane as to her rights against Terry, Lewis and FW.

Exclusion Clause

sell cigarette machine

✓ said not liability for any warranty

- L'Estrange v Graucob
- Parker v South Eastern Railway (preference)
- Thornton v Shoe Lane Parking Ltd
- Olley v Marlborough Court Ltd
- McCutcheon v David MacBrayne Ltd
- Curtis v Chemical Cleaning and Dyeing Ltd (beads and sequins)
- Karsles (Harrow) Ltd v Wallis (clothes destroyed is not my expectation)
↳ fundamental service (x rely on exclusion clause)
- Photo Productions Ltd v Securicor

(provide security service) → not liable for any act of

↓ fire burn the building

employee

rule ↔ case law ↔ facts