

By fair means or foul

THERE ARE plenty of clauses that can seem unfair in contracts consumers are expected to sign when buying common services such as a bank account, a mobile phone calling plan, an educational course or an insurance contract.

Some contracts even seem to include legal sleight of hand, claiming to limit liabilities under acts of parliament. Whether any of the following would be deemed unfair under laws proposed by the Ministry of Consumer Affairs to outlaw "unfair contract terms" is moot. We leave it up to you to judge.

Property damage

The Telecom residential contract seeks to limit the company's liability for damaging customers' homes to just "\$50,000 for any event or for any series of related events" or "a total of \$100,000 in any 12-month period", as well as giving you just a month to claim.

No liability for mis-statements

Though the Fair Trading Act prohibits misleading claims, an

Xtra contract seeks to limit any customer comeback. It reads: "You acknowledge that you are not relying on any statement or representation (written or oral) made by or on behalf of Xtra and unconditionally waive any right to commence any proceeding against Xtra and any of our related companies, our employees, contractors, agents and their respective officers, and suppliers, directly or indirectly arising from any statement or representation not expressly recorded or referred to in these Customer Terms."

Varying services without notification
Vodafone's "On account" terms and conditions allows it to change its services and charges without directly notifying customers. It reads: "We may change this agreement and any free services at any time. Changes will be posted on our website. Please check this regularly for updates."

(b) We may vary the charges set out in a pricing plan at any time. We will give you at least 10

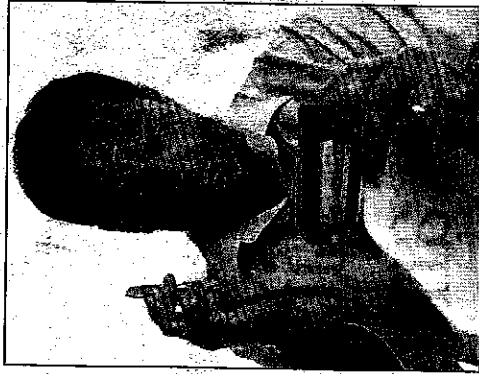
business days' prior notice and where possible one month's notice of these changes. We will notify you of these changes by posting them on our website."

No liability for failure

Vodafone appears to seek to limit any liability under the Consumer Guarantees Act for mobile phones by claiming: "If you have acquired a mobile device, equipment or other accessories, such as a battery pack or mains charger, from us or from one of our agents, all claims in relation to those products are covered by the warranty, if any, offered by the relevant manufacturer."

Indemnification against lawsuits in New Zealand

"Students" signing up in New Zealand to Dane Wealth Academy's US tax lien investment scheme signed up to a clause waiving the right to sue or take-part in any class action: "Proceedings, whether or not consistent with this Agreement shall be filed with and entered only by a court in Colum-



bus, Ohio, having jurisdiction thereof."

Securing credit-card debt

Most of us think of credit cards as unsecured debt. But banks can actually secure them against people's homes. ASB's terms and conditions, reads: "Any security interest that we hold from time to time over any of your property will secure the performance of your obligations or the payment of any money you owe us now or in the future, or both. If you fail to meet your commitments to us, then to

Fair go? More like a fair shake for the big players.

the extent of the security interest you may be entitled to repossess or sell that secured property."

Compare its parent, CBA in Australia, which has unfair contracts regulation: "All money you owe us in respect to your card account is unsecured. It does not form part of any monies secured by any security you or any other person gives us no matter what the terms of that security say."

Banks' rights to move your money around

Bank terms and conditions reserve to them the right to transfer money between a customer's accounts, if the customer has failed to make a payment. This can mean tapping a mortgage to pay off a credit card or putting one account into overdraft to pay a credit card, even where it leads to a cost to the customer.

Do you have examples of contract terms you consider unreasonable? Email

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SUNDAY STAR-TIMES 30 OCT 2010