

CONSUMER CONTRACTS – WHEN IS A CONTRACT MADE? I. CONSUMER CONTRACTS – WHEN IS A CONTRACT MADE? As a consumer, you probably enter into a number of contracts every day without even realizing it. You are actually making a contract when you catch a bus, buy a magazine, buy a packet of sweets or visit the cinema. Generally speaking, sellers (i.e. the owners of the goods you are purchasing), or service suppliers, should provide the goods or services you asked for in a reasonable and proper condition. Those goods and services should also be safe for your consumption. CONSUMER PROTECTION II. CONSUMER PROTECTION As mentioned in the previous section, you have created a legal relationship with the seller or the service supplier after entering into a contract with them. This section will then give you a general idea of the kind of rights and protection you enjoy under a consumer contract. The Sale of Goods Ordinance (Cap. 26 of the Laws of Hong Kong) protects those consumers who have paid money to the sellers in exchange for goods. Note that barter trade (i.e. goods are sold in exchange for other goods) is not covered under this Ordinance. Even when consumers are buying services, rather than goods, they are also entitled to protection under the law. The Supply of Services (Implied Terms) Ordinance (Cap. 457 of the Laws of Hong Kong) protects those consumers who have paid money (or, in this case, provided other considerations/benefits) in exchange for services. The aforesaid ordinances, together with several other pieces of legislation that are particularly important to consumers, will be elaborated through the following questions and answers. You should also note that even if the details of these ordinances have not been mentioned by the contracting parties, they would still be implied into the relevant sale of goods or supply of services contracts. CHANNELS FOR CONSUMER COMPLAINTS III. CHANNELS FOR CONSUMER COMPLAINTS You should first contact the traders (sellers or service suppliers) directly with details of your complaint, and give them a chance to put the matter right. It is best to put your complaint in writing and include the following information: date of the advertisement or the website where it appeared; date your order was placed; details of goods or service ordered; amount paid and the method of payment; any references (e.g. order number or customer reference number); reason(s) for your complaint; anything else you think is relevant; and how you would like your claim resolved. You should also keep copies of any letters you send along with a diary of events, and make a note of the time, the name of person you spoke to, and a brief record of what you discussed, for any telephone calls you have with the traders. CASE ILLUSTRATION IV .CASE ILLUSTRATION Scenario Mr. B and his wife (Ms. C) are very unlucky, so that they have to face the following problems with some sellers and service suppliers: 1. WHAT IS A CONTRACT? 1. WHAT IS A CONTRACT? A contract is an agreement giving rise to obligations which are recognized by law and which can be enforced under the law. A contract often involves paying money in exchange for goods or services. Except for some specific types of contract (e.g. contracts for the sale of land or real estate), Hong Kong law does not require a usual consumer contract to be in writing. Contractual obligations are based on the agreement of the contracting parties. An agreement is made when one party accepts an offer made by the other party. How does a person make a legally binding contract? The essential elements in the formation of a contract are: a) offer, b) acceptance of that specific offer, c) consideration, and d) intention to create legal obligations. (a) Offer An offer is an expression of willingness, made by one party to another, to enter into a contract on specified terms. An offer will turn to a binding contract as soon as it is accepted by the other party. An offer must be distinguished from an "invitation to treat" (an invitation to make an offer). The following example illustrates the difference: A shopkeeper is not making an offer to you by displaying a camera in the window or on the shelves. Instead, such display is an invitation to treat. It means that you are being invited to make an offer to buy the camera but the shopkeeper can either accept or reject your offer. Rationale: The shopkeeper has limited stock (say 10 pcs). If he has made an offer to sell by such display AND his offer is accepted by 50 customers at the same time, he would be bound to supply 50 cameras. If he cannot supply enough cameras, he would be "in breach of contract" and can be sued by those unsatisfied customers. (b) Acceptance There is NO contract unless and until the other party has accepted the offer. There are two general rules for acceptance: an acceptance has no effect until it is communicated to the person

making the offer; and the person accepting an offer must agree with ALL the terms of the relevant offer. With regard to point (i) above, an acceptance can be communicated by the spoken word (orally), by writing, or by conduct. An example of "acceptance by conduct" would be when the shopkeeper/cashier collects your money (which is paid for the relevant product) without saying or writing anything. For point (ii) above, you should note that both the offer and the acceptance must be made in the same terms with both sides clear about what they're agreeing to. Example: Suppose you had said, "I want to buy the digital camera that you've got in your window" and the shop had said, "We've just sold the last one that we had on a special promotional offer. We can get you another one but you will have to pay the full price". Here the seller isn't accepting your offer. He's making what the law calls a "counter-offer" and asking you whether you still want to go ahead knowing that the price will increase. At this point you're free to back out of the deal by rejecting his counter-offer. If you accept then you're agreeing to pay the higher price. A contract is made at the time when the deal is struck. It is not necessarily the moment when you hand your money to the seller. For example, you see an item being displayed in a shop window but because it is out of stock, you ask the shop to order one for you. If the shop agrees to do it, then you have made a contract, even if you have not signed anything nor paid any money over at that time. You have agreed to pay once the item arrives. (c) Consideration "Consideration" is the legal term given to the benefits (which include money, services or goods) in exchange between the contracting parties. For instance, the money you paid and the goods delivered to you by the seller are both considerations. No contract can be formed if one party is not bound to provide consideration to the other party. An exception to this principle is that when a contract is executed in a specific form called a "deed", the contracting parties may or may not be required to give consideration to each other. (d) Intention to create legal obligations Once you have agreed the terms of your deal and made a contract, you have a legal obligation or duty to go through with it. If you try to back out of it or violate any of the contract terms, you will be liable to be sued for breach of contract by the other party. Is it possible that a contract would contain an implied term (without the parties' express agreement)? What are the requirements for implying a term in a contract? Implied terms are terms that have not been orally mentioned or written down but are incorporated in the agreement/contract according to the law or the previous dealings between the parties (if any). When you read Section II of this topic, you can find out that some ordinance provisions (e.g. Sale of Goods Ordinance and Supply of Services (Implied Terms) Ordinance) may be implied in a consumer contract even if the contracting parties have not mentioned about them. An example of an implied contract term is that the buyer has the right to be given reasonable time to inspect the goods (even if that term is not stated in the relevant contract). The well-known requirements for implying a term in a written contract were stated in a judgment from the British's Privy Council. Those requirements were adopted by the Hong Kong Court of Final Appeal in the case of *Kensland Realty Ltd v Whale View Investment Ltd* and Another. For a term to be implied, the following conditions (which may overlap) must be satisfied: it must be reasonable and equitable (fair to the contracting parties); it must be necessary to give business efficacy to the contract, so that no term will be implied if the contract is effective without it; it must be so obvious that "it goes without saying"; it must be capable of clear expression; it must not contradict any express term of the contract.

2. WHO CAN MAKE A CONTRACT? 2. WHO CAN MAKE A CONTRACT? A person with the age of 18 or above is usually qualified to make a contract. However, you should pay special attention when dealing with the following two groups of people: A) Minor Young people make contracts every day and the law will recognize and enforce these contracts. However, there are legal rules that prevent anyone under 18 (called minors) from making certain contracts. Even if you're a minor, you can enter into certain contracts and run the risk of being sued for breach of contract. It depends on whether or not the things you agreed to buy are what the law describes as "necessaries" (a legal jargon for "necessities" which means the goods suitable to the condition in life of a minor and to his/her actual requirements at the time of the sale and delivery, such as clothes or food). A minor who fails to pay for "necessaries" can be sued by the seller. If you're under 18, there are

some types of contract that you cannot make legally, and that the law does not recognize. For examples, you cannot take out a loan, a mortgage, or to buy a flat in your own name. You cannot make a contract to buy anything which is not a "necessary". If you have done so, the relevant contract would be void. That means that if you failed to pay for the goods, the seller couldn't sue you to get his money back, but he could demand the return of the goods. B) Mental Patients and Drunkards Some people use mental illnesses or extreme drunkenness to avoid contractual liabilities. The pre-conditions are that such illnesses or drunkenness existed at the time of the transaction and prevented a party from understanding the transaction, AND the other party was aware of this condition at the time the contract was made. However, the drunkard will still be liable if he ratifies the contract (confirms the deal) when he becomes sober.

1. WHAT ARE THE STATUTORY REQUIREMENTS FOR THE QUALITY AND CONDITION OF GOODS FOR SALE? WHEN AM I CONSIDERED TO BE A "CONSUMER" UNDER THE SALE OF GOODS ORDINANCE? 1. WHAT ARE THE STATUTORY REQUIREMENTS FOR THE QUALITY AND CONDITION OF GOODS FOR SALE? WHEN AM I CONSIDERED TO BE A "CONSUMER" UNDER THE SALE OF GOODS ORDINANCE? The Sale of Goods Ordinance ("SGO") provides that goods for sale must be: Of merchantable (satisfactory) quality. Goods must meet the standard that a reasonable person would regard as satisfactory, taking account of any description of the goods, the price and all other relevant circumstances. The quality of goods includes their appearance and finish, their safety and their durability. Goods must be free from defects, even minor ones, except where these defects have been brought to your attention by the seller (section 16 of SGO). Fit for their purposes, including any particular purpose mentioned by you to the seller. For example, if you are buying a CD player and you tell the seller that the player must also play DVDs, the seller must not give you a CD player that cannot read a DVD (section 16 of SGO). As described on the package or a display sign, or by the seller. For example, if you are told that a shirt is 100% cotton, then it should not turn out to be cotton and polyester (section 15 of SGO). Correspond with the sample. If you are making a bulk purchase and you were shown a sample of the goods before receiving the whole lot, the bulk shall correspond with the sample in quality. You should also be given the chance to examine the whole lot (section 17 of SGO). If the sellers fail to meet any one of the above conditions, they are "in breach of contract". Under these circumstances, consumers are entitled to reject the goods and demand a full refund (see: Acceptance or Rejection of Goods). You should also note that under section 36 of the SGO, the buyer has the right to be given reasonable time to inspect the goods.

"Consumer" as defined in the SGO You are a "consumer" under section 2A of the SGO if: you neither make the contract in the course of a business (a commercial transaction) nor hold yourself out as doing so; the other party does make the contract in the course of a business (a commercial transaction); and the goods passing under or in pursuance of the contract are of a type ordinarily supplied for private use or consumption. In other words, you are dealing as a "consumer" if you purchase goods from a businessman or a company for your private use (you are the end user) but not for business purposes (such as resell to another party for profit making). "Goods" as defined in the SGO The term "goods" is defined under section 2(1) of the SGO as personal property other than things in action and money. Personal property should also be distinguished from, and does not include, "real property" (which includes real estate such as land, buildings and flats).

2. WHAT STATUTORY REQUIREMENTS EXIST REGARDING THE QUALITY OF SUPPLY OF SERVICES? WHEN AM I CONSIDERED TO BE A "CONSUMER" UNDER THE SUPPLY OF SERVICES (IMPLIED TERMS) ORDINANCE? 2. WHAT STATUTORY REQUIREMENTS EXIST REGARDING THE QUALITY OF SUPPLY OF SERVICES? WHEN AM I CONSIDERED TO BE A "CONSUMER" UNDER THE SUPPLY OF SERVICES (IMPLIED TERMS) ORDINANCE? When a consumer buys a service but the contract itself is silent on certain aspects, the parties can rely on the Supply of Services (Implied Terms) Ordinance ("SSO"), which provides: services should be carried out with reasonable care and skill (which generally means the services must meet the standard that a reasonable person would regard as satisfactory) (section 5 of the SSO); services should be performed within a reasonable time if the time of performance has not been fixed by the contract (section 6 of the SSO); and a reasonable charge should be paid if the charge has not been fixed by the contract (section 7 of the SSO). If service suppliers

fail to meet any one of the above conditions, they would be "in breach of contract". Under these circumstances, consumers are entitled to sue defaulting suppliers for compensation. Section 8(1) of the SSO provides that as against a party to a contract for the supply of a service who deals as a consumer, the other party (the service supplier) cannot, by reference to any contract term, exclude or restrict any liability of his arising under the contract by virtue of this Ordinance. In other words, the supplier cannot impose a contract term that excludes or restricts his liability on breach of contract. "Consumer" as defined in the SSO You are a "consumer" under section 4 of the SSO if: you neither make the contract in the course of a business (a commercial transaction) nor hold yourself out as doing so; the other party does make the contract in the course of a business (a commercial transaction); and the services provided to you under, or in pursuance of, the contract are of a type ordinarily supplied or provided for private consumption or benefit. In other words, you are dealing as a "consumer" if you hire a trader or a company (or its staff) to supply services to you for your own consumption. Examples include the transportation service provided by a taxi driver, car repairing services provided by a garage, or hairdressing services provided by a salon, etc. According to section 3 of the SSO, however, a contract of employment or a contract of apprenticeship is NOT equivalent to a contract for the supply of service.

3. SOME TRICKY SELLERS MAY PROVIDE WRONG INFORMATION TO MISLEAD THEIR CUSTOMERS. HOW AM I PROTECTED AGAINST FALSE DESCRIPTIONS MADE BY SELLERS?

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As mentioned in the previous Q&A, the Sale of Goods Ordinance provides that any goods sold must correspond to their samples and descriptions which are provided by their sellers and/or printed on their packages. The Trade Descriptions Ordinance, Chapter 362, Laws of Hong Kong ("TDO"), prohibits false trade descriptions for goods (section 7) and services (section 7A). False Trade Description in relation to goods Any person who in the course of any trade or business: applies a false trade description to any goods; supplies or offers to supply any goods to which a false trade description is applied; or has in his possession for sale or for any purpose of trade or manufacture any goods to which a false trade description is applied commits an offence. False Trade Description in relation to services A trader who: applies a false trade description to a service supplied or offered to be supplied to a consumer; or supplies or offers to supply to a consumer a service to which a false trade description is applied commits an offence. A trader who adopts "Unfair Trade Practices" commits an offence. There are five kinds of "Unfair Trade Practices" outlined under Part IIB of the TDO.

Section 13E: Misleading Omissions A commercial practice is a misleading omission if it: omits / hides / provides unclear, unintelligible, ambiguous or untimely material information; fails to identify its commercial intent; or causes the average consumer to make a transactional decision that he would not have made otherwise.

Section 13F: Aggressive Commercial Practices A commercial practice is aggressive if: it significantly impairs the average consumer's freedom of choice or conduct through the use of harassment, coercion or undue influence; and causes the consumer to make a transactional decision that he would not have made otherwise.

Section 13G: Bait Advertising Having regard to the nature of the market in which the trader carries on business and the nature of the advertisement, it is considered bait advertising if: there are no reasonable grounds for believing that the trader will be able to offer for supply a product at the price that has been advertised, or the trader fails to offer for supply the product advertised at that price for a reasonable period and in reasonable quantities. It is not bait advertising if: the advertisement states clearly how long the offer lasts or the quantity offered for supply at the advertised price; and the trader offers the product for supply at that price or for that period and in that quantity.

Section 13H: Bait and Switch A trader who makes an invitation to purchase a product at a specified price with the intention of promoting a different product and: refuses to show or demonstrate the product to consumers; refuses to take orders for the product or deliver it within a reasonable time; or shows or demonstrates a defective sample of the product commits an offence.

Section 13I: Wrongly Accepting Payment A trader wrongly accepts payment if at the time of acceptance: he intends not to supply the product; he

intends to supply a product that is materially different; or there are no reasonable grounds for believing that the trader will be able to supply the product: within the period specified by the trader at or before the time at which the payment or other consideration is accepted; or if no period is specified at or before that time, within a reasonable period. Enforcement Guidelines The Commissioner of Customs and Excise is the principal Enforcement Agency to determine whether the trade practices are unfair by reference to the Enforcement Guidelines. For trade practices relating to telecommunications and broadcasting, the Enforcement Agency is the Communications Authority (sections 16BA and 16H). The Enforcement Guidelines cannot and do not aim to mandate traders to conduct their business in a particular way. They serve as a guide as to when conduct may constitute a contravention of the fair trading sections of the TD0. The Guidelines are neither legally binding nor subsidiary legislation. Traders do not incur any civil or criminal liability by contravening any part of the Guidelines. Rather than criminal proceedings, section 30L provides that the Enforcement Agencies may resolve cases in respect of conduct that constitutes an offence under specified sections by accepting a written undertaking from alleged trader if the trader undertakes not to continue/repeat/engage in conduct or commercial practice of the kind or of a substantially similar kind of concern. Acceptance or withdrawal of the undertaking is subject to the consent in writing by the Secretary for Justice. If an undertaking is accepted, the enforcement agency may not commence/continue the investigation or bring/continue the proceedings in court. The enforcement agency may also publish the accepted undertaking. The Enforcement Agencies may apply to the court for an injunction to order a trader not to continue or repeat or engage in the contravening conduct (see sections 30P and 30Q). The Enforcement Agencies are more likely to institute criminal proceedings rather than seeking an undertaking in cases of serious contravention of the fair trading sections of the TD0. Factors (which are non-exhaustive) to be considered are: whether the conduct continues over a long period of time or involves a series of contraventions against the same victim or same group of victims; the number of victims and amount of financial loss or other detriment suffered or likely to be suffered by the victim(s); whether the conduct was fabricated, with prior planning; whether the victims are particularly vulnerable; the prevalence of the conduct and its impact on the community, including the risk posed to public health and safety, or to the environment; whether there are elements in the conduct which caused or are likely to cause harassment, anxiety or distress to the victims; any attempt by the trader to conceal his identity, whether directly or indirectly, such that the Enforcement Agency or the victims (or both) cannot easily identify or trace the trader; lack of remorse; the trader's compliance history and conviction record(s); and whether the trader has obstructed the Enforcement Agency in taking lawful action during an investigation. For the full content of the Enforcement Guidelines, please [click here](#). Gold or Platinum articles There are also regulations under the TD0 dealing specifically with gold and platinum articles. Under the Trade Descriptions (Marking) (Gold and Gold Alloy) Order (Cap. 362A) and Trade Descriptions (Marking) (Platinum) Orders (Cap. 362C), all articles made of gold, gold alloy, or platinum must bear a mark indicating the fineness of gold or platinum content in the form and manner specified. Articles made of different parts of gold or platinum of different fineness, or partly of gold or platinum and partly of other metal must also be clearly marked as such. Watches Under section 2 of the Trade Descriptions (Place of Origin) (Watches) Order (Cap. 362D), the place in which the movement of a watch (i.e. the main part of a watch without the watch band) was manufactured or produced is to be regarded as the place in which the watch has been manufactured or produced. However, this requirement does not apply to any watch that has been exported, or is intended to be exported, from Hong Kong to the Mainland under the Mainland and Hong Kong Closer Economic Partnership Arrangement (CEPA) and that is qualified for a zero tariff under the Arrangement. Food and Drugs Schedule 3 of the Food and Drugs (Composition and Labelling) Regulations (Cap. 132W) states that unless there is exemption in the Regulations or otherwise stated, the following information should be marked in either English or Chinese language or in both languages on the label of pre-packaged food: name of the food; list of ingredients; indication of "use by" or

"best before" date; statement of special conditions for storage or instructions for use; name and address of manufacturer or packer; count, weight or volume of food. If Chinese and English languages are used in labelling, the food name and the ingredient list of the pre-packaged food shall be labelled in both languages. Regulation 4A of the Food and Drugs (Composition and Labelling) Regulations (Cap. 132W) provides that prepackaged food shall be marked and labelled in the manner prescribed in Schedule 3. The items listed in Schedule 4 are exempt from the requirements of this regulation to the extent specified in that Schedule. Schedule 3 states the requirement of "Count, weight or volume" in Paragraph 7 and the appropriate language in Paragraph 8. Regulation 4B provides that prepackaged food shall be marked or labelled with its energy value and nutrient content in compliance with Part 1 of Schedule 5. Items exempt from Part 1 of Schedule 5 are listed under Schedule 6. Any person who advertises for sale, sells or manufactures for sale any prepackaged food which - (a) is not marked or labelled in compliance with regulation 4A(1) or 4B(1); or (b) has on its label any nutrition claim that does not conform to regulation 4B(5), commits an offence and is liable to a fine at level 5 (Criminal Procedure Ordinance (Schedule 8) and to imprisonment for 6 months. Schedule 7 provides for the nutrient reference values for different nutrients for the purpose of nutrition labelling and Schedule 8 states the conditions for nutrient content claim.

4. GOODS FOR SALE ARE NOT ALWAYS SAFE FOR CONSUMPTION. HOW AM I PROTECTED AGAINST FAULTY OR DANGEROUS GOODS? 4. GOODS FOR SALE ARE NOT ALWAYS SAFE FOR CONSUMPTION. HOW AM I PROTECTED AGAINST FAULTY OR DANGEROUS GOODS? There are several pieces of legislation dealing with the safety of consumers. The most common one is the Consumer Goods Safety Ordinance (Cap. 456 of the Laws of Hong Kong). Under the Consumer Goods Safety Ordinance, all consumer goods (except those listed in the Schedule to the Ordinance) must comply with the general safety requirements or the safety standards and specifications prescribed by the Secretary for Economic Development and Labour. The Ordinance imposes a statutory duty on manufacturers, importers and suppliers to ensure that the consumer goods they supply are reasonably safe. The Ordinance also imposes controls on the advertising of consumer goods. Any person who sells unsafe goods is liable to a fine and/or imprisonment. Those unsafe goods may also be seized by the Customs and Excise Department and other authorized officers. The Consumer Goods Safety Ordinance does not prescribe mandatory safety tests on products before they are put up for sale. Sellers or suppliers are however encouraged to have their consumer goods tested by an approved laboratory to determine whether or not they are reasonably safe. It does not necessarily mean that goods which are not covered under the Consumer Goods Safety Ordinance are "uncontrollable" or are not currently controlled. These goods are most likely regulated by separate ordinances (examples can be found in section 3, section 5 and section 8 of the Toys and Children's Products Safety Ordinance, Cap. 424). You may contact the Consumer Council or consult a lawyer for further details.

Warning/caution notice The Consumer Goods Safety Regulation (Cap. 456A) came into operation in April 1998. The Regulation requires that any warning or caution with respect to the safe keeping, use, consumption or disposal of any consumer goods must be given in both the Chinese and English languages. Further, the warning or caution must be legible and placed in a conspicuous position on the consumer goods themselves, on any package containing the consumer goods, or be a label securely affixed to the package, or be a document enclosed within the package.

5. IN ORDER TO AVOID CERTAIN LIABILITIES, OR TO EXPLOIT CUSTOMERS, SOME SELLERS OR SERVICE SUPPLIERS MAY INSERT EXEMPTION CLAUSES INTO THEIR CONTRACTS OR IMPOSE UNFAIR TERMS. ARE THESE TERMS VALID UNDER THE LAW? 5. IN ORDER TO AVOID CERTAIN LIABILITIES, OR TO EXPLOIT CUSTOMERS, SOME SELLERS OR SERVICE SUPPLIERS MAY INSERT EXEMPTION CLAUSES INTO THEIR CONTRACTS OR IMPOSE UNFAIR TERMS. ARE THESE TERMS VALID UNDER THE LAW? The law tries to stop traders from avoiding their responsibilities to you if you are injured or your property is lost or damaged because those traders failed to take proper care. They cannot hide behind cleverly worded clauses or a few lines of small print in a contract. They can still be liable to pay compensation.

A) Unreasonable Exemption Clauses An exemption clause is used to avoid liability when things go wrong. Such a clause has to be "reasonable" before a trader can rely on it to avoid a claim brought against him/her by a consumer. In other words, the

relevant exemption clause may have no effect if it is proved to be unreasonable. The reasonableness test is satisfied if the judge concludes that the relevant exemption clause was fair and reasonable having regard to the circumstances which were, or ought reasonably to have been, known to or in the contemplation of the parties when the agreement was made (section 3(1) of the Control of Exemption Clauses Ordinance, Cap. 71 of the laws of Hong Kong). In considering what is "reasonable", schedule 2 of the Control of Exemption Clauses Ordinance provides the following guidelines: the strength of the bargaining positions of the parties relative to each other, taking into account (among other things) alternative means by which the customer's requirements could have been met; whether the customer received an inducement to agree to the term, or in accepting it had an opportunity of entering into a similar contract with other persons, but without having to accept a similar term; whether the customer knew or ought reasonably to have known of the existence and extent of the term (having regard, among other things, to any custom of the trade and any previous course of dealing between the parties); where the term excludes or restricts any relevant liability if some condition is not complied with, whether it was reasonable at the time of the contract to expect that compliance with that condition would be practicable; whether the goods were manufactured, processed or adapted to the special order of the customer. Under normal circumstances, traders cannot escape from liability arising from the death or personal injury of a consumer if the incident happened due to the traders' negligence (for legal proceedings relating to person injury or death, please click here). Example If a restaurant loses or damages property that you deposited in their cloakroom, they must prove that they have already taken reasonable care of it. They cannot simply put up notices saying something like "The management does not accept any responsibility..." and then expect to escape from any sort of obligation to look after your property. You can challenge notices like that, if you think that such notices are unreasonable. It rests with the Court to make the final decision. B) Unfair Contract Terms The Unconscionable Contracts Ordinance (Cap. 458) only applies to a contract for the sale of goods or supply of services in which one of the contracting parties is dealing as a consumer. If the Court finds out that the contract or any part thereof was unconscionable (unfair/not sensible) in circumstances relating to the contract at the time when it was made, the Court would have the jurisdiction under section 5 of the Unconscionable Contracts Ordinance to refuse to enforce the contract, or to enforce the remainder of the contract without the unconscionable part, or to limit the application of, or to revise or alter, any unconscionable part so as to avoid any unconscionable result. When deciding whether or not the contract or any part of is unconscionable, the Court will consider the following points according to section 6 of the Unconscionable Contracts Ordinance: the relative strengths of the bargaining positions of the consumer and the other party; whether, as a result of conduct engaged in by the other party, the consumer was required to comply with conditions that were not reasonably necessary for the protection of the legitimate interests of the other party; whether the consumer was able to understand any documents relating to the supply or possible supply of the goods or services; whether any undue (inappropriate) influence or pressure was exerted on, or any unfair tactics were used against, the consumer or a person acting on behalf of the consumer by the other party or a person acting on behalf of the other party in relation to the supply or possible supply of the goods or services; and the amount for which, and the circumstances under which, the consumer could have acquired identical or equivalent goods or services from a person other than the other party. Example A case about the sale of a hotel/resort service membership was heard in the Small Claims Tribunal in 2002 in which an "unconscionable" consumer contract was cancelled by the Tribunal. The Adjudicator (judge sitting at the said Tribunal) gave the following reasons to support the judgment: the claimants (2 consumers) were in a weak bargaining position as they had to sign a contract already prepared in a standard form provided by the defendant (a resort company); the claimants did not have sufficient time to scrutinize the contract and could not seek independent advice before signing the contract; the claimants suffered a "special disadvantage" because the defendant could not prove that the company owned the resort (or had the right to occupy it) when the contract was made; the

claimants could not use the resort before the membership fee (\$115,500 to be paid by instalments) was paid up in full, and in addition must pay an annual management fee; inappropriate influence or pressure was exerted on the claimants before the contract was made. You can read the judgment of this case (in Chinese only) from the Judiciary webpage.

6. THE GOODS THAT I HAVE ORDERED ARE DELIVERED TO ME IN POOR CONDITION. CAN I REJECT THE GOODS AND ASK FOR A REFUND? 6. THE GOODS THAT I HAVE ORDERED ARE DELIVERED TO ME IN POOR CONDITION. CAN I REJECT THE GOODS AND ASK FOR A REFUND? Generally speaking, sellers have a duty to deliver the goods and buyers have a duty to accept and pay for the goods in accordance with the terms of the contract. Section 37 of the Sale of Goods Ordinance provides that buyers are deemed to have accepted the goods when: they tell or intimate to the sellers that they have accepted the goods; when the goods have been delivered to the buyers and they act in relation to the goods in a manner which is inconsistent with the ownership of the sellers (e.g. the buyers claim that they are the owners and then resell the goods); or after a reasonable time they retain the goods without intimating to the sellers that they have rejected the goods (whether a “reasonable time” has elapsed can be determined by whether the buyers had a reasonable opportunity to examine the goods). Rejection of Goods You are entitled to reject the goods and get your money back if the goods: are faulty; are not of satisfactory quality; do not match their descriptions; or are different from the ones you ordered. In order to make a valid rejection, there must be a clear indication that the goods were not accepted and remain at the risk of the seller (i.e. the buyer takes no responsibility for the goods). You should call the seller immediately, return the goods by yourself, or ask the person who delivered the goods to take them back. Under section 38 of the Sale of Goods Ordinance, where goods are delivered to the buyer, and the buyer refuses to accept them with a lawful reason (e.g. the goods are not of satisfactory quality), that buyer is not bound to return them to the seller (although he may still do so). It is sufficient if that buyer intimates to the seller that he refuses to accept them. A clear and prompt rejection is particularly important if you are not buying at a shop or on the spot. For instance, when you are ordering by phone, fax or on the internet, you don’t get to see the products until they are delivered to you, and often you have to pay in advance. Return of Goods If you find out some problems on the goods after accepting them, you may not be entitled to return the goods and demand a full refund. However, you can sue the seller for compensation if the seller refuses to replace the goods with the new ones. Delivery The seller must deliver your goods by the agreed date. The seller should let you know if the goods can’t be delivered on time. If the date for delivery has passed and you haven’t received anything, you may treat it as though you had never placed the order (if you have previously emphasized that punctual delivery is necessary). If you have already paid, demand a full refund.

7. IF I HAVE TO PROVIDE MY PERSONAL DATA (E.G. MY ADDRESS AND ID CARD NUMBER) TO A SELLER OR SERVICE PROVIDER, WHAT SHOULD I BE AWARE OF? 7. IF I HAVE TO PROVIDE MY PERSONAL DATA (E.G. MY ADDRESS AND ID CARD NUMBER) TO A SELLER OR SERVICE PROVIDER, WHAT SHOULD I BE AWARE OF? In Hong Kong, consumers’ personal data is protected by the Personal Data (Privacy) Ordinance (Cap. 486 of the Laws of Hong Kong). When sellers or service providers collect personal data from their customers, they act as the “data users” and must observe the six data protection principles. To get more information, please go to another topic - Personal Data Privacy.

1. BESIDES GOING DIRECTLY TO COURTS, WHERE ELSE CAN CONSUMERS SEEK ASSISTANCE OR MAKE COMPLAINTS? 1. BESIDES GOING DIRECTLY TO COURTS, WHERE ELSE CAN CONSUMERS SEEK ASSISTANCE OR MAKE COMPLAINTS? Other than contacting the traders directly, you may approach the following organizations: Consumer Council You can contact the Consumer Council to seek advice or to make a complaint (telephone hotline: 29292222). The Consumer Council is a body corporate subsidized by Government funding. Details of its power, roles and function can be found under the Consumer Council Ordinance (Cap. 216 of the Laws of Hong Kong). The functions of the Council are stipulated by law and include providing consumers with information on goods and services, acting as mediator in resolving consumer complaints, tendering advice on policies touching on consumer rights and interest, and encouraging businesses and professional associations to establish codes of practice. Since the Council is not a law-enforcement body, it has no authority

to sue traders. The relevant complaints are dealt with by way of mediation. However, the Council can censure trade mal-practices by naming/publicizing the traders concerned . For cases that involve significant consumer interest but cannot be resolved by mediation or other means, applications for assistance can be made to the Consumer Legal Action Fund. Customs and Excise Department For problems concerning "trade descriptions" or "safety of goods", you can also complain to the Customs and Excise Department directly (general enquiry hotline- 28157711; complaint hotline - 81003553). The Department will entertain complaints concerning: short weights and measures; overstating the fineness of gold and platinum; unsafe toys and children's products; unsafe consumer goods; discrepancies involving the rough diamonds certification scheme. For more details concerning the above, please visit the Customs and Excise Department's webpage. Communications Authority For problems concerning trade practices in relation to telecommunications and broadcasting, you can complain to Communications Authority directly. Travel Industry Council of Hong Kong (complaints against travel agents) The Travel Industry Council ("TIC") is entrusted with the responsibility to regulate outbound and inbound travel agents under the Travel Agents Ordinance (Cap. 218 of the Laws of Hong Kong). Its mission is to maintain a high standard of professionalism within the industry and to protect the interests of both the traders and travellers. The TIC provides the following services to the public: handle consumer complaints; to help travellers apply for ex-gratia payment from the Travel Industry Compensation Fund and financial assistance from the Package Tour Accident Contingency Fund Scheme; to promote consumer awareness of travel protection and travel safety; 24-hour public service hotline: 2969 8188; inbound tourist service hotline: 2807 0707. The TIC website contains a list of FAQs on possible consumer complaints for inbound travel and outbound travel. Food and Environmental Hygiene Department The mission of Food and Environmental Hygiene Department ("FEHD") is to work hand in hand with the community in building Hong Kong into a world-class metropolis renowned for its food safety and public hygiene. Contact details: address: 44/F Queensway Government Offices, 66 Queensway, Hong Kong; fax: 2869 0169; 24-hour enquiry and complaint hotline: 2868 0000; e-mail: enquiries@fehd.gov.hk The Insurance Claims Complaints Bureau The Insurance Claims Complaints Bureau ("ICCB") is a self-regulatory initiative implemented by the insurance industry to protect consumer interest. One of the main objectives of ICCB is to receive referrals for complaints relating to claims arising out of personal insurance policies and to facilitate the settlement or withdrawal of such complaints, disputes or claims whether by the making of awards (decisions/verdicts), or by such means as shall seem expedient. For more information, please refer to the relevant question and answer in the insurance topic. 2. IF CONSUMERS HAVE TO INSTITUTE LEGAL PROCEEDINGS, WHAT SHOULD THEY PAY ATTENTION TO? 2. IF CONSUMERS HAVE TO INSTITUTE LEGAL PROCEEDINGS, WHAT SHOULD THEY PAY ATTENTION TO? Apart from complaining to the Consumer Council or the Customs and Excise Department, you can seek the advice of a solicitor. There is always the option of going to court. Sometimes, just telling a bad trader that you may go to court is enough to get your complaint sorted out. Small Claims Tribunal If you do decide to go to court, there is a special way of suing for small amounts by using the small claims procedures in the Small Claims Tribunal. No person can be represented by a lawyer in the Small Claims Tribunal (but you can consult a lawyer before attending the Tribunal's hearing). The most you can claim by using the small claims procedures is HK\$75,000 . If the claim exceeds \$75,000, you are not allowed to subdivide it in order to bring to the Tribunal a number of cases that are each below the \$75,000 limit. The only way you can bring a claim in excess of the \$75,000 limit before the Tribunal is if you abandon any amount above \$75,000. Types of claims can be handled by the Small Claims Tribunal include: debts; service charges; damage to property; consumer claims (e.g. claims relating to goods or services with poor quality). Before commencing a formal trial at the Tribunal, the Adjudicator (Tribunal's judge) and the Tribunal Officer will attempt to mediate the dispute between the parties. If both parties agree to settle, the Tribunal will grant a written consent order and further trials or hearings can be avoided. For details about the procedures and fees for hearings at the Small Claims Tribunal, please visit the Judiciary's webpage. If the parties cannot reach an amicable settlement at the first

hearing, you need to get ready for the subsequent trial. To get more information about how to prepare for the trial (from both the Claimant's and the Defendant's perspective), please click [here](#). District Court or High Court If the amount of your claim is over \$75,000, you must submit your claim to the District Court or the High Court. The maximum claim that can be handled by the District Court is \$3,000,000. While for the High Court, there is no upper limit on the claim amount. Since the claim amount is bigger and the procedures involved are much more complex, you are strongly advised to find a lawyer to represent you in any proceedings in these 2 courts. Financial assistance for consumer legal actions A) Consumer Legal Action Fund The Consumer Council also runs a Consumer Legal Action Fund ("the Fund"), which will assist consumers to pursue their matters in courts. You can apply for legal assistance under the Fund if you are a consumer or a group of consumers involved in a matter which: (a) relates to consumer transactions, such as: unmerchantable (poor quality) goods, including food and drugs; unfair and unconscionable contract terms; unreasonable exemption clauses in consumer contracts; false or misleading advertising claims; false trade descriptions; any other case of significant consumer interest; or (b) involves significant public interest or injustice (e.g. other consumers may be affected if the defaulting trader continue to do business). In order to be eligible for the Fund, normally you must have already exhausted all other means of resolving the dispute in question, and be unable to qualify for any form of legal aid. Applicants for assistance under the Fund need not undergo a mandatory means test in order to qualify for assistance. However the Trustee may take into account an applicant's financial resources in deciding whether to accept or reject a particular case. There is a non-refundable application fee payable at the time of application. If your case is to be tried in the Small Claims Tribunal, the application fee is HK\$100. If your case is to be tried in the District Court or other higher courts, the application fee is HK\$1,000. If your case is unsuccessful, you need not make any further payment. The Fund pays for all your costs and expenses. On the other hand, if your matter is successful, you will be asked to pay a contribution to the Fund. For more information about the Fund, please visit the Consumer Council's webpage. If you want to obtain an application form for the Fund, the Consumer Council has provided the form. Please click [here](#) to download the form. B) Legal Aid If you are not submitting your claim to the Small Claims Tribunal, and wish to have it tried in the District Court or the High Court, you may apply for legal aid if you satisfy certain conditions set out by the Legal Aid Department. For details, please go to another topic - Legal Aid.

1. HE TOOK HIS CLOTHES TO A DRY CLEANER BUT THE CLOTHES WERE SUBSEQUENTLY DAMAGED BY THE CLEANER. CAN HE CLAIM AGAINST THE DRY CLEANER? 1. HE TOOK HIS CLOTHES TO A DRY CLEANER BUT THE CLOTHES WERE SUBSEQUENTLY DAMAGED BY THE CLEANER. CAN HE CLAIM AGAINST THE DRY CLEANER? The law says the service supplier (dry cleaner) has to take reasonable care of customer's (Mr. B's) property. If the dry cleaner fails to do the job properly, Mr. B can ask him to do it again. If the clothes have been ruined, then the dry cleaner will have to fix them or make compensation. It may be difficult to work out exactly how much money that Mr. B would be entitled to. He has to take into account how old the clothes were and how much wear he has already gotten out of them. Even though there was a notice saying something like "all garments cleaned entirely at customer's risk", Mr. B can still make his claim. If the dry cleaner has made a mess of the job then a notice like this won't shield him. An exemption has to be reasonable before it can be enforced (see: Unreasonable exemption clauses).

2. HE HAS PURCHASED SOME GOODS BUT LATER HE DEMANDED A REFUND. WHAT WILL HAPPEN IF THE SHOPKEEPER REFUSES TO GIVE HIM HIS MONEY BACK? 2. HE HAS PURCHASED SOME GOODS BUT LATER HE DEMANDED A REFUND. WHAT WILL HAPPEN IF THE SHOPKEEPER REFUSES TO GIVE HIM HIS MONEY BACK? It all depends on the reason for Mr. B's refusal. He is not entitled to a refund if: • he has just changed his mind about the item purchased; • before confirming his order, he was told that the goods were damaged or the fault was so obvious that he should have noticed it; • he damaged the goods by himself; • he subsequently altered the goods (e.g. took up the hem on a skirt); or • he has kept the goods for quite a long time without letting the seller know that there was something wrong with the goods (see: Acceptance and Rejection of Goods).

3. HE TOOK HIS COMPUTER TO A SHOP FOR REPAIR. WHEN HE COLLECTS IT LATER HE CAN'T BELIEVE

THAT THE SERVICE CHARGE IS SO HIGH. HE WOULD NEVER HAVE AGREED TO THE JOB IF HE HAD KNOWN IT WOULD BE THAT EXPENSIVE. CAN HE REFUSE TO PAY THE REPAIR CHARGE? 3. HE TOOK HIS COMPUTER TO A SHOP FOR REPAIR. WHEN HE COLLECTS IT LATER HE CAN'T BELIEVE THAT THE SERVICE CHARGE IS SO HIGH. HE WOULD NEVER HAVE AGREED TO THE JOB IF HE HAD KNOWN IT WOULD BE THAT EXPENSIVE. CAN HE REFUSE TO PAY THE REPAIR CHARGE? If the price has not been confirmed before completing the job, the repairer is entitled to charge a "reasonable" rate for the work (section 7 of the Supplied of Services (Implied Terms) Ordinance). If Mr. B does not pay what the repairer asks, the repairer is legally entitled to hold onto Mr. B's computer until he pays the fee. Even though Mr. B may think that he is being overcharged, he will have to pay the money if he wants his computer back. But in the meantime, Mr. B can make it clear to the repairer that he pays the fee "under protest" and that he intends to dispute it. Mr. B will need to find out what other repairers would have charged for doing the same job. He shall then put it down in writing and send a letter to the repairer confirming that he was paying the bill under protest and demand a refund of the overcharged portion. If the repairer refuses to make a refund, Mr. B can take his case to the Consumer Council or the Small Claims Tribunal (please go to Channels for Consumer Complaints). 4. HE PUT A DEPOSIT DOWN FOR A CAR BUT THEN HAS SECOND THOUGHTS. CAN HE WITHDRAW FROM THE DEAL AND ASK FOR A REFUND OF HIS DEPOSIT? 4. HE PUT A DEPOSIT DOWN FOR A CAR BUT THEN HAS SECOND THOUGHTS. CAN HE WITHDRAW FROM THE DEAL AND ASK FOR A REFUND OF HIS DEPOSIT? It is likely that Mr. B will lose his deposit. He has broken his contract with the seller, and the seller is entitled to compensation. If Mr. B is asked to put down a deposit (but he is hesitated to confirm the order), he may ask whether or not the deposit is refundable. He may then request the seller to put that down in writing in order to avoid future arguments. 5. HE TOOK HIS CAMERA FOR REPAIR BUT THE SHOP LOST IT. CAN HE OBTAIN ANY COMPENSATION? 5. HE TOOK HIS CAMERA FOR REPAIR BUT THE SHOP LOST IT. CAN HE OBTAIN ANY COMPENSATION? The repairer is required to take reasonable care of Mr. B's camera and therefore Mr. B is entitled to compensation. If the repairer doesn't provide other compensation then he must supply a new camera to Mr. B. Sometimes it may be very difficult to assess the actual amount of loss and further negotiations between both parties may be required. 6. HE RECEIVED SOMETHING IN THE MAIL THAT HE HAS NEVER ORDERED. DOES HE HAVE TO PAY FOR IT? 6. HE RECEIVED SOMETHING IN THE MAIL THAT HE HAS NEVER ORDERED. DOES HE HAVE TO PAY FOR IT? Mr. B does not owe any money if he receives an item that he has never ordered. If he gets bills or collection letters from a seller who sent him something he has never ordered, he can write to the seller stating the facts and ask the trader to take the goods back. If the bills continue, he should insist the seller to send him the proof of his order. If this still doesn't stop the bills, Mr. B can try to seek assistance from the Consumer Council. If Mr. B sent for something in response to an advertisement claiming a free gift or trial period, but is now being billed, he should re-check the whole advertisement in detail. It may say something about charging shipping and handling, or worse, he may have inadvertently joined a club or subscribed to a magazine. He should then write to the seller offering to return the goods and stating that he believes the advertisement was misleading. 7. MS. C HAS RECENTLY PURCHASED SOME COUPONS (PREPAID COUPONS) FROM A BEAUTY SALON BUT THAT SALON SUDDENLY CLOSES DOWN. CAN SHE CLAIM HER MONEY BACK AND BY WHAT MEANS? 7. MS. C HAS RECENTLY PURCHASED SOME COUPONS (PREPAID COUPONS) FROM A BEAUTY SALON BUT THAT SALON SUDDENLY CLOSES DOWN. CAN SHE CLAIM HER MONEY BACK AND BY WHAT MEANS? There is little safeguard on consumer interest in prepayment scheme or coupons. In some cases, a company closes down some time after it has gone into liquidation. In some other cases, a company's business comes to an end without prior notice to the outside world. The reasons for a company's demise can be just as diverse: there may be financial difficulties, fierce competition, retirement, fraud, personal reasons and so forth. Consumers who find themselves in such an unfortunate situation may seek legal advice from lawyers, or contact the Consumer Council and the Police. If a winding-up order has been granted against the company (in case it is a limited company), then the aggrieved consumers are legally entitled to recover their payment for the tickets. However, the consumers will only be treated as ordinary or unsecured creditors on claiming their loss. In reality, this means that the

consumers will usually recover no more than a small proportion of the debt. In order to be eligible as one of the creditors in a winding-up action, Ms. C has to prove that the company owes her money by completing a Proof of Debt Form (Form 63A). She must also submit the form to the provisional liquidator or liquidator, together with documentary evidence, if any, after the winding-up order has been made against the company. For more details, please refer to the topic of Bankruptcy and Winding-up. If the company closes down suddenly without leaving any assets, the prospect of consumers (holding pre-paid coupons or vouchers) recovering their loss is usually very slim.