

Standard Form Contracts

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- Law of contract in recent times assumed new and wide dimensions – concluding of contracts in standardised forms led to various problems
- LIC Policies – Railway receipts for goods carriage, etc
- **Features of Standard Form Contracts**
 1. Fine print and no negotiation by parties
 2. Often exclude liability for any default
 3. No bargain, no discussion nor it is possible to do so
 - Lord denning “no customer in a thousand ever read the conditions. If he would have stopped to do so he would have missed the train or boat”
 4. Business class misused the opportunity to exploit
 5. Proliferation of dispute
 6. Difficulty of courts to remedy the exploited

Rule in L. Estrange v. Graucob Ltd.

- **FACTS**: Mrs. L signed an agreement without reading it under which she purchased a cigarette vending machine. Agreement excluded all kinds of defects. Machine was totally defective.
- **HELD**: “It is true that the dt’s practically made no efforts to bring the defects to the knowledge of the pt. but where a document containing contractual term os signed unless there is some fraud or misrepresentation, the party signing it is bound and it is wholly immaterial whether he read them or not”
- **Analysis**: weaker party was exploited by the business community. Individuals deserve some protection against possibility of exploitation inherent in such contracts. Hence courts have evolved some protective devices

Standard Form Contracts – Protective Devices

I. Reasonable notice

It is the duty of the person delivering the document to give adequate notice to the offeree of the printed terms and conditions. Otherwise acceptor is not bound by these terms.

Henderson v. Stevenson

FACTS: Pt bought a steamer ticket. Which contained on the face, words “Dublin to White heaven” on the back, certain terms, one of which excluded liability of the Co. for loss, injury or delay to the passenger or his luggage. Pt had not seen back of the ticket not there was any indication on the face about the conditions on the back. Pt’s luggage was lost by the ship wreck caused by the fault of Co’s servants.

HELD: Pt was entitled to recover his loss from the Co. in spite of exemption clause.

Henderson v. Stevenson

- **OBSERVED**: Pt could not be said to have accepted the a term which he has not seen, of which he knew nothing and which is not in any way ostensibly connected with that which is printed and written upon the face of the contract presented to him. The result would have been otherwise, if words like “**for conditions see back**” had been printed on face of the ticket to draw the passengers’ attention to the place where the conditions were printed.
- **PRINCIPLE**: “Where a written document is presented to a party for acceptance, a reasonably sufficient notice shall be given of the presence of terms and conditions. Notice will be regarded as sufficient if it will convey to the minds of people in general that ticket contains conditions.”

Parker v. South Eastern Railway Co.

- **FACTS:** Pt. deposited a bag at railway station and received a ticket – on the face words “see back”, on the back, “the co. will not be responsible for any package exceeding the value of \$10.” – a notice to the same effect was also hung up in the cloak room – pt.'s bag lost – claimed full value of the bag which was more than \$10 – co relied on the exemption clause.
- Pt. **contended** – although he knew there was some writing on the ticket, he did not see what it was as he thought that the ticket was a mere receipt for the money paid by him.
- **HELD:** Pt. knew that there was there was writing on the ticket but he did not know or believe that the writing contained conditions. Nevertheless, he would be bound because there was reasonable notice that the writing contained conditions.

Some more Examples

- Obliterated instruction – no notice
- Instruction in French language – valid notice
- No defense of illiteracy and unable to read
- **Types of documents and requirement of notice:**

1. Contractual document and mere receipts.

- Eg. Bill of lading, railway receipt, hiring chairs at a beach, cinema tickets, car parking receipt, etc.
- A document is said to be contractual if it embodies a contract i.e., person to whom it is delivered should know that it is supposed to contain conditions. But where the paper is not supposed to express the conditions of the contract it will be regarded as a mere voucher, etc., and extra care shall be taken to communicate its terms than mere warning on the face of it.

Chapelton v. Barry Urban District Council

- **FACTS**: Pt. on a beach hired two chars from the Council – received two tickets, glanced and slipped them into pocket – while sitting on a chair he had the misfortune to through canvas with result that he suffered injury – tickets carried the words “Council will not be liable for any accident or damage arising from hire of chairs”
- Pt. **argued** he had no idea that there were any conditions on these tickets
- **HELD**: Council was liable for his injury
- **REASONS**: Lord Slessor “the ticket is no more than a receipt, and is quite different from a railway ticket which contains terms upon which railway co agrees to carry the passenger. The object of ticket in this case was that person taking it might have evidence that he had paid the hire and the term printed on it was no part of the contract.”

Thornton v. Shoe Lane Parking Ltd.

FACTS: Pt. parked his car in automatic car park – a notice at entrance “*Cars parked at the owner’s risk*” - pt. slipped money into a machine which brought forth a ticket, gate barrier opened and pt. parked his car – he looked at the ticket for parking time and notice some words but didn't pay attention to them – the words excluded co liability for any damage to the car or customer – while taking the car back pt. was injured - claimed compensation – dt’s sought the defense of exemption clause

HELD: Co. was liable for his injury

REASONS: “Exemption clause was so wide and so destructive of rights that the courts should not hold any man bound by it unless it is drawn to his attention in the most explicit way”

Lord Denning “In order to give sufficient notice, it should be printed in red ink with a red hand pointing to it, or something equally startling”

2. Contracts signed by acceptor

- Where party has signed a contract, he can be protected
- 1. By the doctrine of fundamental breach – Eg. *Estrange v. Graucob*
- 2. Unreasonable terms
- 3. Misrepresentation
- 4. Oral assurances
- 5. By the determination of whether party would have signed the document had he been aware of such term

Curtis v. Chemical Cleaning And Dyeing Company

FACTS: Pt. delivered a white satin wedding dress to the dts for cleaning. On being asked to sign the receipt while signing on her enquiry she was told she shall take the responsibility for sequins and beads – she then signed the receipt without reading the conditions – receipt in fact contained condition *“co. is not liable for any damage howsoever caused ”* - when the dress was returned there was a stain on it. On sued by the pt. dt's claimed defense of exemption clause

HELD: Co. was liable

Lord Denning: “By the failure to draw the attention to the width of the exemption clause the assistant created the false impression that the exemption only related to beads and sequins and that it did not extend to the material of which the dress was made. This was sufficient to disentitle them from relying on exemption clause.

3. Notice of unusual terms

- Where a condition is particularly onerous or unusual, a clear, fair and reasonable effort shall be made to bring such terms to the attention of the party concerned.

Interphoto Library v. Stifletto Visual programmes

FACTS: Dts. an advertising agency required certain transparencies – pt. dispatched 47 transparencies with a delivery note which stated that *“the same were to be returned within 14 days and that holding fee of \$5 per day for each transparency would be charged if they were not so returned”* - dts did not use them and kept them aside for further two weeks – an invoice arrived from pt. claiming \$3,783 holding fee – dt pleaded absence of notice.

4. Contemporaneous Notice

- Notice of the terms shall be given before or at the time of contract. A subsequent notice will amount to modification of the contract and as such will not bind the party unless he assents to it.
- Eg. Hiring hotel a week before occupied – on occupying the notice read “*proprietors shall not be liable for articles lost or stolen unless handed over to the manager for safe custody*” – property was stolen due to negligence of staff
- **HELD:** Hotel was liable for the loss as the notice was not part of the agreement

II. Theory of fundamental breach

- Even where adequate notice of terms and conditions has been given, the party imposing conditions may not be able to rely on them if he has committed breach of contract which can be described as fundamental
- Every contract will have a core obligation. Breach of such obligation is not excused even though exemption clause is inserted to protect him
- *Davies v. Collins*
- **FACTS**: pt gave dress for cleaning with a dry cleaner – clause, “*no liability for loss arising from necessary handling and liability limited to 10 times the cleaning charges*” - dress was lost
- **Held**: dt. is liable for clause having no effect.

III. Strict Construction

- Where the clause is widely expressed exempting the liability as to be highly unreasonable, any ambiguity in the mode of expressing it is resolved in favour of the weaker party

Hollier v. Rambler Motors AMC Ltd.

FACTS: pt. sent his car to garage for repairs – dt. carried out the services to the car 3-4 times in the last 5 yrs. – on each occasion pt. signed an invoice which excluded liability for damage caused by fire – this occasion he did not sign any document but this time the car was destroyed by fire due to negligence of the dt. Pt sued the dt for loss- dt. argued course of dealing in the past established a perfect contract which excluded liability for loss due to fire.

HELD: dts. were liable.

REASONS: 3-4 dealings over last 5 yrs was not sufficient to create such course of dealing between the parties as to amount to notice of terms. The term if accepted to be noticed, might have excluded liability for loss due to fire but not liability for loss due to fire by negligence.

IV. Liability in Tort

- Even where an exemption clause is exhaustive enough to exclude all kinds of liability under a contract, he may be held liable under torts for compensation.
- *White v. John Warwick & Co. Ltd.*

FACTS: pt. hired a bi-cycle from the dt., who agreed to maintain it in working order – clause, “*nothing in this agreement shall render the owners liable for any personal injuries*” - while the pt was riding the cycle the saddle tilted forward and he was thrown and injured. Pt claimed compensation – dt relied on exemption clause

HELD: Although the clause exempted dt from liability in contract, he was not exempt for tortious liability for negligence

V. Unreasonable terms

- A term is deemed unreasonable if it would defeat the very purpose of the contract or if it is against public policy. Such unreasonable term is excluded from contract.
- *Lilliy White v. Mannuswamy*

FACTS: A laundry receipt contained a condition that *“the customer would be entitled to claim only 15% of the market price or value of the article in case of loss”* - pt's saree was lost – claimed value – 15% was offered – sued for full value – relied on clause limiting liability

HELD: term was unreasonable and against public policy hence liable to pay the full value of the saree

Lord Denning: “there is always the vigilance of the common law, which while allowing freedom of contract, watches to see that it is not abused”