

"EXEMPTION CLAUSES AND THE CONSUMER"

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ABSTRACT

Viewed as a principle standardization has much to offer. However in reality the reverse occurs. In modern times the doctrine of freedom of contract has been abused by parties in economically stronger bargaining positions. The helpless consumer versus the gigantic manufacturers. The theoretical basis of our Contracts Act 1950 (revised 1974) that contracts are made by personal choice by individuals who reach a consensus, has become unreal.

Laissez-faire economics and their corresponding philosophic and political theories of liberalism no longer holds way. Individual freedom at times needs to be restricted in order to ensure social and economic justice, and the writer feels that the state should step in certain areas to ensure fair bargains and disallow standard agreement which incorporates comprehensively worded exemption clauses which are a blatant misuse of the powers allowed by the doctrine of freedom of contract.

The writer attempts to highlight the problems faced by the consumers which are mainly due to the strict adherence to the doctrine. This is done by giving examples and by looking at standard agreements used in certain specific contracts such as Insurance and Hire Purchase Contracts.

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CONTENTS

	<u>Page</u>
Title Page	
Abstract	i
Acknowledgements	iii
Table of Contents	iv - v
List of Cases	v - viii
List of Statutes	xi
Abbreviations	xii
* CHAPTER I EXEMPTION CLAUSES AND THE CONSUMERS	1
A. The Problem Which Arise	3 - 5
B. Freedom Of Contract And Standard Form Contracts	5 - 9
CHAPTER II JUDICIAL CONTROL OF EXEMPTION CLAUSES	10
A. Rule Of In Corporation	11
1. Notice	11 - 16
2. Signature	17 - 18
3. Course of Dealings	19 - 22
B. Contra Proferentum Rule	23 - 29
C. The Doctrine Of Fundamental Breach	30 - 37
D. The Reasonableness Test	38 - 42
CHAPTER III LEGISLATIVE INTERVENTION	43
A. The Sales of Goods	44 - 47
B. Insurance Law	48 - 50
C. Hire Purchase Contract	51 - 52
D. Contracts of Bailment	53 - 57

CHAPTER ONE

"EXEMPTION CLAUSES AND THE CONSUMERS"

Consumers are said to have rights some of which are the right to safety, the right to be informed the right to choose and the right to be heard. However these so called protection and rights of the consumers have been clearly watered down to such an extent that its existence is questionable. To protect the innocent consumer the law needs to intervene and impose safeguards, as Consumer protection is something which the law, and in the ultimate result the law alone can provide.

Before more is said about the consumer its appropriate to define the term consumer as used in this paper.

The "consumers" we are concerned with are "Individuals directly involved in obtaining and using economic goods and services...." that is the ultimate consumer, the definition concentrates on individuals purchasing goods and services for personal consumption by themselves or for some other similar unit.¹ In United Kingdom to the Malony Committee on Consumer Protection the "consumer"

¹ Carl, E. Block, Kenneth J. Roering, "Essentials of Consumer Behaviour". pg. 7.