



**PARLIAMENT OF THE DEMOCRATIC
SOCIALIST REPUBLIC OF
SRI LANKA**

**UNFAIR CONTRACT TERMS
ACT, No. 26 OF 1997**

[Certified on 17th October, 1997]

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L.D.—O. 51/96.

AN ACT TO IMPOSE LIMITS ON THE EXTENT TO WHICH CIVIL LIABILITY FOR BREACH OF CONTRACT, OR FOR NEGLIGENCE OR OTHER BREACH OF DUTY, CAN BE AVOIDED BY MEANS OF CONTRACT TERMS AND OTHERWISE ; AND TO PROVIDE FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO

BE it enacted by the Parliament of the Democratic Socialist Republic of Sri Lanka as follows :—

1. This Act may be cited as the Unfair Contract Terms Act, No. 26 of 1997.

Short title.

2. (1) Nothing in sections 3, 4 and 5 shall apply to, or in relation to, a contract specified in the First Schedule to this Act.

Application.

(2) The provisions of sections 3, 4, 5 and 6 shall apply only to business liability and the references to liability in those sections shall be construed accordingly.

3. (1) A contract term or a notice given to persons generally or to particular persons which purports to exclude or restrict or has the effect of excluding or restricting, a person's liability for death or personal injury resulting from negligence shall be of no effect.

Avoidance of liability for negligence.

(2) A contract term or notice given to persons generally or to particular persons which purports to exclude or restrict or has the effect of excluding or restricting, a person's liability for any other loss or damage resulting from negligence shall have effect only in so far as such contract term or notice satisfies the requirement of reasonableness.

(3) Where a contract term or notice purports to exclude or restrict or has the effect of excluding or restricting, liability for negligence, a person's agreement to such contract term or awareness of such notice shall not itself be taken as constituting his acceptance of any risk.

Avoidance of liability for contract.

4. (1) This section applies as between parties to a contract where one of the parties deals as consumer or on the other's written standard terms of business.

(2) As against that party the other cannot by reference to any contract term—

(a) when himself in breach of contract, exclude or restrict any liability of his in respect of that breach ; or

(b) claim to be entitled—

(i) to render a contractual performance substantially different from that which was reasonably expected of him under the contract ; or

(ii) in respect of the whole or any part of his contractual obligation, to render no performance at all,

except in so far as (in any of the cases mentioned in this subsection) the contract term satisfies the requirement of reasonableness.

Unreasonable indemnity clauses.

5. (1) A contract term which purports to impose on a person dealing as consumer an obligation to indemnify any other person (whether a party to the contract or not) in respect of liability that may be incurred by such other person for negligence or breach of contract shall have effect only in so far as such contract term satisfies the requirement of reasonableness.

(2) This section applies whether the liability referred to in subsection (1)—

(a) is directly that of the person to be indemnified or is incurred by him vicariously ;

(b) is to the person dealing as consumer or some other person.

Illustration

A, a ferry owner contracts with B to transport B's car by ferry.

One of the terms of the contract is that B is to indemnify A against damage to third parties resulting from the negligent handling of the car by A's crew.

The term is valid only if it satisfies the test of reasonableness.

6. (1) In the case of goods of a type ordinarily supplied for private use or consumption, a contract term or notice contained in, or operating by reference to, a guarantee of the goods which purports to exclude or restrict or has the effect of excluding or restricting, liability for any loss or damage—

Guarantees.

(a) arising from the goods proving defective while in consumer use ; and

(b) resulting from the negligence of a person concerned in the manufacture or distribution of the goods,

shall be of no effect.

(2) In this section—

“consumer use” when used in relation to goods means use, or possession for use, otherwise than exclusively for the purposes of business ;

“guarantee” means a writing which contains or purports to contain, some promise or assurance, howsoever worded, that defects will be made good by complete or partial replacement or by repair, monetary compensation or otherwise.

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Sale and Hire
Purchase.

7. (1) A contract term which purports to exclude or restrict or has the effect of excluding or restricting, liability for breach of obligations arising from—

(a) section 13 of the Sale of Goods Ordinance ;

(b) section 4 (1) of the Consumer Credit Act, No. 29 of 1982,

shall be of no effect.

(2) A contract term which purports to exclude or restrict, or has the effect of excluding or restricting, as against a person dealing as consumer, liability for breach of the obligations arising from—

(a) sections 14, 15 or 16 of the Sale of Goods Ordinance ;

(b) sections 4(2), 4(3), 4(4) or 4 (5) of the Consumer Credit Act, No. 29 of 1982,

shall be of no effect.

(3) A contract term which purports to exclude or restrict, or has the effect of excluding or restricting, as against a person dealing otherwise than as consumer, liability for breach of the obligations arising from any of the provisions referred to in subsection (2) shall have effect only in so far as it satisfies the requirement of reasonableness.

Effect of breach.

8. (1) When a contract term is effective, under the provisions of this Act, only if it satisfies the requirement of reasonableness, it may be found to meet that requirement and given effect to, notwithstanding the fact that the contract has been terminated either by breach or by a party electing to treat it as repudiated.

(2) Where a contract is affirmed by a person entitled to treat it as repudiated, such affirmation shall not be taken as excluding the requirement of reasonableness in relation to any contract term.

9. A contract term which purports to affect or take away, the rights of a party to such contract arising under, or in connection with the performance of, another contract to which he is a party, being rights which relate to the enforcement of another person's liability which such other person is prohibited, by the provisions of this Act, from excluding or restricting, shall be of no effect.

Evasion by means of secondary contracts.

10. (1) A contract term which is effective, under this Act, only in so far as it satisfies the requirement of reasonableness satisfies that requirement if the contract term is a fair and reasonable one to be included having regard to the circumstances which were, or ought reasonably to have been known to or in the contemplation of the parties when the contract was made.

Reasonableness Test.

(2) In determining for the purposes of section 7 whether a contract term satisfies the requirement of reasonableness regard shall, without prejudice to the generality of subsection (1), be had to the matters set out in the Second Schedule to this Act. Nothing in this subsection shall be read or construed as preventing a Court or an arbitrator from holding, in accordance with any rule of law, that a term which purports to exclude or restrict any relevant liability, is not a term of that contract.

(3) A notice (not being a notice having contractual effect) which is effective, under this Act, only in so far as it satisfies the requirement of reasonableness, satisfies that requirement if it is fair and reasonable to allow reliance on it having regard to all the circumstances obtaining when the liability arose or would have arisen.

(4) Where by reference to a contract term or notice a person purports to restrict his liability to a specified sum of money and the question arises whether such term or notice satisfies the requirement of reasonableness regard shall be had to—

- (a) the resources which such person could expect to be available to him for the purpose of meeting the liability should it arise ; and

(b) how far it was open to such person to cover himself by insurance.

(5) It is for the party claiming that a contract term or notice satisfies the requirement of reasonableness to show that it does.

Extent of exemption clauses.

11. To the extent that the provisions of this Act prohibit the exclusion or restriction of any liability, it also prohibits—

(a) the making of the liability or its enforcement subject to restrictive or onerous conditions ;

(b) the exclusion or restriction, of any rights or remedy in respect of the liability or the subjection of any person to any prejudice in consequence of his pursuing any such right or remedy ; and

(c) the exclusion or restriction of rules of evidence or procedure,

and to that extent, sections 3, 6 and 7 also prohibit the exclusion or restriction of liability by reference to terms and conditions which purport to exclude the relevant obligation or duty :

Provided that an agreement in writing to submit future differences to arbitration shall not be regarded, for the purposes of this Act, as excluding or restricting any such liability.

Sinhala text to prevail in case of inconsistency.

12. In the event of any inconsistency between the Sinhala and Tamil texts of this Act, the Sinhala text shall prevail.

Interpretation.

13. (1) In this Act, unless the context otherwise requires—

“business” includes a profession and the activities of any government department or local authority or public corporation ;

“business liability” means liability for breach of obligations or duties arising—

- (a) from things done or to be done by a person in the course of a business (whether his own business or another’s); and
- (b) from the occupation of premises used for business purposes of the occupier.

“goods” has the same meaning as in the Sale of Goods Ordinance;

“hire-purchase agreement” has the same meaning as in the Consumer Credit Act, No. 29 of 1982.

“negligence” means the breach—

- (a) of any obligation arising from the express or implied terms of a contract to take reasonable care or exercise reasonable skill in the performance of the contract; and
- (b) of any common law duty to take reasonable care or exercise reasonable skill.

“notice” includes an announcement, whether or not in writing, and any other communication;

“personal injury” includes any disease and any impairment of the physical or mental condition of a person.

(2) A party to a contract “deals as consumer” in relation to another party if—

- (a) he neither makes the contract in the course of a business nor holds himself out as doing so; and
- (b) the other party makes the contract in the course of a business; and

(c) in the case of a contract governed by the law of sale of goods or hire-purchase, the goods passing under or in pursuance of the contract are of a type ordinarily supplied for private use or consumption.

(3) On a sale by auction or by competitive tender, the buyer shall not in any circumstances be regarded as dealing as consumer.

(4) It is for the person claiming that a party does not deal as consumer to show that he does not.

FIRST SCHEDULE

(section 2 (1))

Any contract of Insurance.

Any contract so far as it relates to the creation or transfer of an interest in land, or to the termination of any such interest.

Any contract so far as it relates to the creation or transfer of a right or interest in any patent, trade mark, industrial design or other intellectual property, or to the termination of any such right or interest.

Any contract so far as it relates—

(a) to the formation or dissolution of a company or partnership ; or

(b) to the constitution or the rights or obligations of its members or partners.

Any contract so far as it relates to the creation or transfer of securities or of any right or interest in securities.

SECOND SCHEDULE

"GUIDELINES" FOR APPLICATION OF REASONABLENESS TEST

The matters to which regard is to be had in particular for the purposes of section 7, are any of the following which appear to be relevant —

- (a) 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;
- (b) 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;
- (c) 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);
- (d) 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;
- (e) whether the goods were manufactured, processed or adapted to the special order of the customer.

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