FAIR CONTRACT TERMS

EXCLUSIONARY AND LIMITATION CLAUSES IN CONTRACTS

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1. JURISTIC AND ECONOMIC DOCTRINES

1. English contract law, relieved of the shackles of the forms of action, came under the influence of continental jurisprudence and economic *laissez-faire*. Based on the proposition that agreement was necessarily the outcome of consenting minds or *consensus ad idem* the doctrine *pacta sunt servanda* was both a legal and moral imperative.[1] The doctrines of 19th century philosophical radicals presupposed that individual liberty and free enterprise are essential to civilised development. "The freedom and sanctity of contract were the necessary instruments of *laissez-faire*, and it was the function of the courts to foster the one and vindicate the other".[2] The juristic and economic symbiosis was expressed by Sir George Jessel, M.R. as follows: "If there is one thing which more than another public policy requires it is that men of full age and competent understanding shall have the utmost liberty of contracting, and that their contracts when entered into freely and voluntarily shall be held sacred and shall be enforced by Courts of Justice".[3]

2. The fundamental assumptions of the individualistic doctrine are that the parties to contracts enjoyed "utmost liberty in contracting" and "competent understanding". Industrialisation and commercial expansion led to mass marketing and to the formation of trade combinations and monopolistic organisations. In many areas freedom to contract was mythical, either because of the monopolistic nature of the services or the inequality of bargaining power. The shipowner in the

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[1] See *Cundy v. Lindsay* (1878) 3 App. Cas. 459(465)
[2] Cheshire, Fifoot & Furmston, *Law of Contract,* (11th ed.), p. 18
[3] *Printing and Numerical Registering Co. v. Sampson* (1875) L.R. 19 Eq. 462 (465)

carriage of goods, the railway company in the transportation of people or the landlord in the rental of houses had a captive clientele. Freedom of contract had to be modified by the ethical need to protect the weak and promote social justice. For this purpose both the legislature and the judiciary became instruments in the process of modification.

2. EXCLUDING AND LIMITING TERMS

3. A significant development in the practice of the law of contract is the use of standard form contracts. Several factors have contributed to this development. One such factor is the multiplicity of transactions entered into by modern businesses. Most of these transactions have to be effected in widely dispersed stations by junior staff. A second factor is the economy and efficiency of utilising an expertly prepared document which is capable of general application and avoids the costs and time of individual negotiation and separate drafting. A third reason is to minimise the risk which had increased with the developments in the law of negligence and the resultant increased exposure to product liability.[4]

4. Probably the most important feature of the standard form contracts is the incorporation of terms which exclude or limit the exposure of the proponent of the standard form to liability. The exclusionary or restrictive terms largely assume one of three characteristics: a denial that any contract has come into existence or that any legal obligation has been created (consensual nullification); a limitation of liability (contractual immunity); or the creation of a barrier to the court for the enforcement of the agreement (jurisdictional impunity).

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[4] See *Dominion Natural Gas Co. Ltd. v. Collins*; *Donoghue v. Stevenson*; *Grant v. Australian Knitting Mills Ltd.*[1909] A.C. 640; [1932] A.C. 562; [1936] A.C. 85

3. TYPICAL EXEMPTION CLAUSES

CONSENSUAL NULLIFICATION

5. Probably there is no single field other than transportation in which more transactions are formed daily than in the betting and gaming business. The standard terms and conditions of Jamaican bookmakers often contain a clause in the following or similar terms:

> "(i) 'No bet will be regarded as such or as having been accepted until it has been locked in the timing apparatus supplied by us before the set time of the race(s) and before the result(s) of the specified events are known.'
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> (ii) 'All bets are received by us on the distinct understanding that the client will abide by these Rules whether or not the client claims to be in possession of our Rule Leaflets, or whether or not he has read these rules displayed in our Betting Shops.'

CONTRACTUAL IMMUNITY

6. In the standard terms and conditions for the supply of telephone services by Cable and Wireless Jamaica Limited the following provision appears:

> "The liability of the Company for damages arising out of defect in transmission, mistakes, omissions, interruptions, delays or errors occurring in the course of furnishing service and not caused by negligence of the customer shall in no event exceed an amount equivalent to the proportionate charge to the customer for the period of service during which such defects in transmission, mistakes, omissions, interruptions, delays or errors occur."

JURISDICTIONAL IMPUNITY

7. In many building contracts provisions in the following or similar terms appear:

> "The Owner shall be entitled to retain a Sum of Ten per cent of the agreed price of the dwelling, excluding any escalation in actual building component costs, as security

against the remedying of any structural defects in walls, roofs, floor or foundations or in the infrastructure which shall appear or arise within Ninety (90) days of the date of issue of the Certificate mentioned in paragraph (12) hereof and of which written notice shall have been given by the Owner within such period and which (notwithstanding the issue of the said Certificate) shall be due to materials or workmanship not in accordance paragraph (2) of this Agreement. Such defects shall within a reasonable time after receipt of the notice in that behalf be made good by the Designated Builder and (unless the qualified Architect, Engineer or Quantity Surveyor mentioned in paragraph (12) hereof otherwise directs) at its own costs; PROVIDED HOWEVER that on the Designated Builder obtaining a new qualified Architect's Engineer's or Quantity Surveyor's Certificate certifying that the defects complained of have been made good as aforesaid, such Certificate shall be binding on the parties hereto, the retention sum of Ten Thousand United States Dollars aforesaid shall forthwith become payable and all liability of the Designated Builder hereunder, whether expressed or implied, shall henceforth cease and determine and.

The Owner hereby irrevocably authorises and directs the financial institution to pay the net proceeds of the said Mortgage Loan or of the mortgage for a lesser amount (if applicable) to the Designated Builder or to such person or persons as the Designated Builder shall nominate."

4. JUDICIAL MODIFICATION

8. Judicial efforts to prevent injustice arising from the impact of exemption clauses were at an early stage evidenced by the insistence that where the document was not signed by the party against whom the term is pleaded the Court must be satisfied that reasonable notice of it had been given

before the contract was entered into. In *Parker v. South Eastern Ry. Co.*[5], where the defendants claimed that a passenger was bound by the terms set out in a cloakroom ticket of which he was ignorant, Melish, L.J., stated that the test was whether the defendant had done what was sufficient to the person or class of persons to which the plaintiff belonged.

9. The defendant will not be able to rely on the excluding or limiting term where it was brought to the plaintiff's attention after the contract was made. Thus in *Olley v. Marlborough Court Ltd.*, a husband and wife arrived at a hotel as guests and paid for a week's board and residence in advance. They went up to the bedroom allotted to them, and on one of its walls was a notice that "the proprietors will not hold themselves responsible for articles lost or stolen unless handed to the manageress for safe custody". The wife then closed the self-locking door of the bedroom, went downstairs and hung the key on the board in the reception office. In her absence the key was wrongfully taken by a third party, who opened the bedroom door and stole her furs. The defendants sought to incorporate the notice in the contract. The Court of Appeal thought that even if incorporated in the contract, the term was not sufficiently clear to cover the defendant's negligence but Singleton and Denning, L.JJ. considered that in any case the contract was completed before the guests went to their room and so the provision could not bind them.

10. A Jamaican case which does not demonstrate the same judicial predilection for the protection of the public is *Williams v. Cornwall Betting Services Ltd*[7]. In this case the appellant was a bettor on horse races placing his bets with a shop operated by the respondent. Every Saturday morning he would go to this betting shop, collect a race programme confirming all the

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5 (1877) 2 C.P.R. 416. See also *Richardson v. Roundtree* [1594] A.C.217.
6 [1949] 1 All E.R. 127.
7 (1984) 21 J.L.R.1.

names of the horses in each race for the day with other information including names of jockeys and trainers. The daughter of the appellant would read the information on the programme for him as he was illiterate. After this exercise the appellant would return to the betting shop and place his bets. The particular notice which limited the maximum odds on this occasion was shown to differ from other notices on race programmes and the lines stating the limitation on the stencilled programme were obliterated. The Court of Appeal held that the partial notice that appeared on the race programme received from the respondent's shop, and which was read to the appellant by his daughter, was sufficient to alert and put the appellant on guard so as to make inquiries as to the contents of the whole notice.

11. The Courts have also manifested the judicial aversion to exemption clauses by applying a strict construction. Thus if there is any doubt as to the scope or meaning of the clause it will be construed against the proposer of the agreement in the manner most favourable to the preservation of normal contractual liability. An extreme example of this approach is *Hollier v. Rambler Motors (AMC) Ltd.*[8], where the plaintiff agreed with the manager of the defendants' garage that his car should be towed to the garage for repair. While at the garage the car was substantially damaged by a fire as a result of the defendants' negligence. The defendants contended (in the event unsuccessfully) that the contract was subject to a course of dealings, which incorporated their usual terms. These terms included a condition that "the company is not responsible for damage caused by fire to customer's cars on the premises". The Court of Appeal held that even if this clause formed part of the contract, it would not serve to protect the defendants. Since the defendants could only be responsible for damage by fire if they were negligent, the clause might appear at first sight

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[8] [1972] 1 All E.R. 399.

unambiguous but the Court held that it could be read by a reasonable customer as a warning that the defendants would not be responsible for a fire caused without negligence and was not therefore sufficiently unambiguous to exclude the defendants' liability.[9]

12. In *Kaiser Bauxite Co. v. Consolidated Engineers Ltd.*[10], the respondent's tractor caused damage to the appellant's by reason of the negligence of the appellant's servant. Clause 2 of the relevant agreement stated "with respect to the equipment operated and maintained by lessor, the rental rate herein stated includes the cost of any and all repairs to and maintenance and replacement of the equipment and any loss thereof or damage thereto arising from any cause whatsoever shall be borne by lessor." The Court of Appeal held that

> "bearing in mind the unlikelihood of parties agreeing to releasing in advance their claims to recover in negligence arising out of acts or omissions committed against them by the parties with whom they have contracted, and bearing in mind that it is still more unlikely that they would undertake to answer for the liability for faults of the other contracting party injuring third parties, there is no mention or even suspicion of a mention in clause 2 of the appellant being indemnified in respect of its own negligence, whether to third parties or to the lessors, for there was no express reference to negligence and so the appellant had failed to show that the clause exempted negligence by its servants or that the clause could not be applied to some ground other than negligence."

13. An important limitation on the effectiveness of exemption clauses is that it will not be

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[9] See also *Motor and General Insurance Co. Ltd. v. Phillips* (1990) 1 T.L.R. 536 (C.A., T. & T.) 536.

[10] (1985) 22 J.L.R. 182

extended to avail a person who is not himself party to the contract. Thus in *Adler v. Dickson*[11], the plaintiff was a passenger on a ship and the ticket contained provisions to the effect that "passengers are carried at passengers' entire risk" and that the shipping company will not be responsible for any injury whatsoever to the person of any passenger arising from or occasioned by the negligence of the company's servants. The plaintiff while climbing a gangway was injured. She wisely sued the master and boatswain and not the shipping company. The English Court of Appeal held that the ticket did not by its terms cover the master or boatswain but also considered, whether if it did, they were protected. Jenkins and Morris, L.JJ. said the master and boatswain being not parties to the contract would not have been able to rely on the exemption clause. Denning, L.J. notably did not agree. In *Scruttons Ltd. b. Midland Silicon Ltd.*[12], the House of Lords held that an exemption clause in a bill of lading could not protect the stevedores as they were not parties to the contract between the consignor and the shipping line. It seems however that if a party has clearly agreed that the immunity should apply to third persons such third persons may be able to rely on the exemption clause but the position is far from clear.[13]

14. The doctrine of the fundamental term has also been successfully prayed in aid to defeat exclusionary clauses. In *Karsales (Harrow) Ltd. v. Wallis*[14], the defendant inspected a car owned by X, found it in good order and wished to take it on hire purchase. X therefore sold it to the plaintiffs, and they re-sold it to a hire-purchase company. The defendant made a contract with this company.

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[11] [1954] 1 All E.R. 397

[12] [1962] A.C. 446

[13] See *Elder Dempster & Co. v. Patterson etc Co.* [1924] A.C. 522; *Wilson v. Darling Island Stevedoring Co. Ltd.* (1955) C.L.R. 43; *Krawill Machinery Corpn. v. R. C. Herd & Co. Inc.* [1959] 1 Lloyd's Rep. 305; 359 U.S. 297; *The Eurymedon* [1975] A.C. 154; *The New York Star* [1979] 1 Lloyd's Rep. 298; 52 A.L.J.R. 337 (H.C. of Austr.); [1981] 1 W.L.R.138(P.C.)

[14] [1956] 1 W.L.R.936

The contract contained a term that "no condition or warranty that the vehicle is road-worthy or as to its condition or fitness for any purpose is given by the owner or implied therein". One night a "car" was left outside the defendant's premises. It looked like the car in question. But it was a mere shell; the cylinder head was broken; all the valves were burnt; two pistons were broken, and it was incapable of self-propulsion. The defendant refused to accept it or to pay the hire-purchase instalments; and, when sued for these, pleaded the state of the so-called car. In reply to this plea, the plaintiffs relied on the excluding term. The Court of Appeal held that the thing delivered was not the thing contracted for. The excluding term therefore did not avail the plaintiffs, and judgment was given for the defendant.

17. In shipping cases a deviation from the agreed or normal trade route has similar consequences. In *Joseph Thorley Ltd. v. Orchis SS Co.*[15], a cargo was shipped on a vessel described as "now lying in the port of Limassol and bound for London". Instead of proceeding direct to London, the ship went first to a port in Asia Minor, then to a port in Palestine and then to Malta. When she reached London, the cargo was damaged through the negligence of the stevedores. The shipowner pleaded a term in the bill of lading exempting them from such liability. It was held that the deviation, though it was not the direct cause of the damage, precluded the shipowners from relying on this term. Fletcher Moulton, L.J. said:

> "The cases shew that, for a long series of years, the Courts have held that a deviation is such a serious matter, and changes the character of the contemplated voyage so essentially, that a ship owner who has been guilty of a deviation cannot be considered as having performed his part of the bill of lading contract, but something

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[15] [1907] 1 K.B. 660

fundamentally different, and therefore he cannot claim the benefit of stipulations in his favour contained in the bill of lading."

18. In *Levison v. Patent Steam Carpet Cleaning Co. Ltd.*[16] the plaintiffs entrusted a carpet worth £900 to the defendants for cleaning under a contract which purported to limit the defendant's liability to £40. The carpet disappeared in circumstances which could not be explained by the defendants. It was possible therefore that it had been lost by fundamental breach and the English Court of Appeal held that the defendants could only limit their liability if they could show that the loss arose from some cause which did not constitute fundamental breach.

19. In the Jamaican case of *Olds Discount Co. v. Jumps*[17] the plaintiff company claimed to recover monies due and owing by J., the first defendant, under a hire-purchase agreement in respect of a truck. In his defence J. alleged that there was a warranty in the agreement that the company was the owner of the truck and that the company was in breach of this warranty in that the truck had been lawfully seized by the true owner, P. J. counter-claimed for damages. The company then joined D., from whom it had bought the truck, as a second defendant, and claimed against D. for damages for breach of warranty as to title. Fox, J. held that the ability of the company to give a good title to J. was a fundamental term of the contract between them in that it was a condition of the contract that the company was the owner of the truck at the time when it was let out on hire to J.; J. could, therefore, recover his money, without relying on the warranty as to title, by resting his claim on a total failure of consideration.

20. Apart from cases where the Courts can intervene on equitable grounds, such as where fiduciary relationships exist if the exclusionary clause is adjudged to be sufficiently brought to the

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[16] [1978] 3 All E.R. 498
[17] (1963) 8 J.L.R. 160

notice of a contracting party and its terms are clear and unambiguous the Court is unable to prevent its effectiveness. In the final analysis it is a question of construction. In *Photo Production Ltd. v. Securicor Transport Ltd.*[18], the plaintiff, the owners of a factory, entered into a contract with the defendants, a security organisation, under which the defendants were to arrange for periodic visits to the factory during the night. On one such visit, an employee of the defendants started a small fire which got out of hand and destroyed the entire factory and contents, worth about £615,000. The plaintiffs brought an action and the defendants relied on exemption clauses, including one which provided that "under no circumstances" were they "to be responsible for any injurious act or default by any employee...unless such act or default could have been foreseen and avoided by the exercise of due diligence" by the defendants. (It was not alleged that the defendants had been negligent in engaging this employee.) In the Court of Appeal it was held that this exemption could not avail the defendants because they had been guilty of a fundamental breach but the House of Lords unanimously reversed this decision. Lord Wilberforce said:

> "I have no second thoughts as to the main proposition that the question whether, and to what extent, an exclusion clause is to be applied to a fundamental breach, or a breach of a fundamental term, or indeed to any breach of contract, is a matter of construction of the contract."

Furthermore he thought the clause completely clear and adequate to cover the defendant's position. The plaintiff's action therefore failed. It is instructive to note that the House of Lords thought this result not only technically correct but also fair and reasonable.

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[18] [1980] A.C.827

21. The House of Lords has expressed disapproval of extreme judicial hostility to exclusionary clauses. In *Ailsa Craig Fishing Co. Ltd. v. Malvern Fishing Co. Ltd.*[19], Lord Wilberforce said "one must not strive to create ambiguities by strained construction... The relevant words must be given, if possible, their natural plain meaning." In *George Mitchell (Chesterhall) Ltd. v. Finney Lock Seeks Ltd.*[20], Lord Diplock agreed with Lord Denning in the Court of Appeal that recent legislation had "removed from judges the temptation to resort to the device of ascribing to the words appearing in exemption clauses a tortured meaning so as to avoid giving effect to an exclusion or limitation of liability when the judge thought that in the circumstances to do so would be unfair."

5. LEGISLATIVE INTERVENTION

22. Parliamentary intervention in the field of commercial agreements has been spasmodic. There are several areas in which the public interest and the protection of the innocent or the ignorant demand legislative intervention. The construction of defective houses is one important example.[21] Another example is public passenger transportation.[22] Thus there are statutory provisions relating to hire-purchase and moneylending agreements and as a result of international conventions special legislation relating to carriage of goods by sea and air transportation. An early and significant example is the Motor Vehicle Insurance (Third Party Risks) Act which not only imposed compulsory insurance coverage of third parties but placed a statutory liability on motor insurers to pay a minimum sum as damages to injured third parties irrespective of exemption or limiting clauses in the policy.[23] Even in these cases however the legislation may permit certain types of exclusion or limiting clauses

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[19] [1983] 1 All E.R. 101
[20] [1983] 2 All E.R. 737(739)
[21] See The U.K. Defective Premises Act, 1972
[22] See The U.K. Road Traffic Act, 1960, s. 151; The Transport Act, 1962.
[23] *Central Fire & General Ins. Co. Ltd. v. Hylton* (1985) 22 J.L.R. 358.

though the terms will be strictly construed against the insurers.[24]

23. In Jamaica the most significant legislative intervention so far is the Fair Competition Act. This Act is of limited scope however. It is primarily directed at preventing uncompetitive practices and abuse of dominant position in the market with specific reference to rivals or potential rivals. The agreements which fall under the controlling provisions of this Act are largely those which contain provisions that -

(a) directly or indirectly fix purchase or selling prices or any other trading conditions;

(b) limit or control production, markets, technical development or investment; and

(c) share markets or sources of supply.

24. The Act prevents any person from giving effect to an "exclusionary provision" of an agreement, but the definition of "exclusionary agreement" is literally and conceptually distinctly different from the sense in which we have been using the term. Section 18(1) of the Act states:

> "For the purposes of this Act, a provision of an agreement is an exclusionary provision if -
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> (a) the agreement is entered into or arrived at between persons of whom any two or more are in competition with each other; and
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> (b) the effect of the provision is to prevent, restrict or limit the supply of goods or services to, or the acquisition of goods or services from, any particular person or class of persons either generally or in particular circumstances or in particular conditions, by all or any of the parties to the agreement or, if a party is a company, by an interconnected company."

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[24] *Maharaj v. Presidential Insurance Co. Ltd.* (1990) 1 T.T.L.R. 205; *Robertson v. Central Fire & General Ins. Co. Ltd.* (1978) 16 J.L.R. 235 (policy only covered passengers carried in pursuance of a contract of employment).

25. Accordingly, if the public is to be protected against the power of large enterprises and the compulsions of the market more comprehensive legislation is needed. In the United Kingdom a gigantic step has been taken by the enactment of the Unfair Contract Terms Act 1977. This Act deals essentially with unfair exemption clauses. Accordingly, it does not deal with fair contract terms generally or with unfair imposition of liability. It must therefore be read in conjunction with statutory provisions dealing with implying reasonable and fair terms in agreements. The principal example is the Sale of Goods Act. In the U.K. this approach is strengthened by the Supply of Goods (Implied Terms) Act. However the Jamaican Sale of Goods Act which is based on the earlier English Act of 1893 permits the parties by expressed terms to exclude the terms as to fitness of the goods for their purpose, the merchantability of the goods, the title of the vendor and the compliance of the goods with the sample or description by express provisions to that effect. In the English Act of 1979, however, the emphasis is on the protection of consumer interests and these implied terms are now compulsorily imposed.

MISREPRESENTATION

26. Consumers frequently suffer from advertisements and representations which are not merely the understandable extolling of the vendor's goods or services but are substantially false and misleading. The U.K. 1977 Act provides that any provision which purports to exclude or restrict any liability of a contracting party for a misrepresentation or any consequential remedy shall be of no effect except in so far as it satisfies the requirements of reasonableness. An escape from the confines of this provision may be found by drafting a clause which does not classify as an exclusion or restriction. In *Overbrook Estate Ltd v. Glencombe Properties Ltd.*[25], a provision whereby a principal limited the authority of the agent to make representations, was held not to be such a clause as is

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[25] [1974] 1 W.L.R. 1335

prohibited by the statute. It appears therefore that legislation in this area should make it clear that a statement in an agreement that no representations have been made or that the representations have not been relied on will not form a escape route for the misrepresentor.[26]

INDEMNITY CLAUSES

27. Under the U.K. 1977 Act any person contracting as a consumer cannot be required under the terms of the contract to indemnify another in respect of liability incurred by that other for negligence or breach of contract, except to the extent that the term satisfies the requirement of reasonableness. Thus if A., a member of the public, requests B. & Co. to provide lunches for his staff and A. contracts to indemnify B. & Co. against all claims and demands whatever in excess of $1,000, and Mrs. C. falls ill because of the state of a lunch supplied by B. & Co., A. would have a claim against B. & Co., but B. would, by virtue of the indemnity clause, be able to call on A. to indemnify it. Such a clause will not be caught by the 1977 Act. The defect in this statutory provision is that it only applies to a person dealing as a consumer and not to other contracting parties.

UNFAIR TERMS IN STANDARD FORM CONTRACTS

28. This area comprises the major thrust of the U.K. 1977 Act. By the Act an exclusion clause cannot be relied on where one of the parties to the contract deals as a consumer on the other's written standard terms of business except in so far as it satisfies the requirement of reasonableness. In this connection an exclusion clause is defined as:

(a) excludes or restricts the liability of the party in breach *in respect of that breach*;

(b) permits the promisor to render a contractual performance substantially different from that which was reasonably expected of him; or

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[26] See *Lowe v. Lombank* [1960] 1 All E.R. 611; *Cremdean Properties Ltd. v. Nash* (1977) 241 E.G. 837.

(c) permits the promisor in respect of the whole or any part of his contractual obligation to render no performance at all.

THE TESTS OF REASONABLENESS

29. The U.K. Act relies heavily on the concept of reasonableness. The Act provides that the general reasonableness test is satisfied if it can be shown that the exclusion or limiting term is a "fair and reasonable one to be included having regard to the circumstances which were, or might reasonably to have been, known or in the contemplation of the parties when the contract was made." In relation to some provisions of the Act, general guidelines are set out as to the criteria of reasonableness.

30. The case of *R. W. Green Ltd. v. Cade Bros. Farm*[27] is a useful illustration of the application of the reasonableness test. The plaintiff who were seed potato merchants sold seed potato on the standard conditions of the National Association of Seed Potato Merchants. These conditions provided that "notification of rejection, claim or complaint must be made to the seller...within three days...after the arrival of the seed at its destination," and that any claim to compensation should not amount to more than the contract price of the potatoes. Eight months after delivery it was discovered that potato virus had infected the consignment. Griffiths, J. held that since potatoes are very perishable and the terms had been in existence for a considerable time after negotiations between the Association of Farmers and the Association of Merchants the limitation as to damages was reasonable but not the limitation as to the time for making the claim with respect to the particular defects, which could not be discovered on inspection within the stipulated time.

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[27] [1978] 1 Lloyd's Rep. 602

6. CONCLUSION

31. The judicial capacity to ameliorate the rigors of exclusionary terms is limited and can in most situations be nullified by skilful draftsmanship. The responsibility falls on the legislature to maintain the balance of fairness and commercial efficiency. Statutory provisions have been in operation for a sufficient period in other jurisdictions to provide useful information on the effectiveness of statutory intervention as well as the economic impact. In the European Community there are conventional provisions which require member states to harmonise their statutory provisions respecting fair contract terms. There are many areas which may require separate treatment, e.g. consumer credit, internet sales and employment contracts. Now that the laissez faire doctrine of freedom of contract no longer reigns supreme the onus falls on the legislature to provide a comprehensive scheme of consumer protection and fair contract practices.