

Human Nature being what it is, few people want to incur liability if they do not have to. For this reason parties to contracts have always tried to insert clauses into their contracts exempting or restricting liability for breach of contract or negligence. An exemption clause is a term in a contract, which seeks to enable one party to escape liability.

Monopoly power long ago was rare, and contracts tended to be between people of equal bargaining power. In the more recent past the **Sale of Goods Act 1979** permits this practice and exemption clauses are a common feature of Business contracts.

Parliament decided to control exemption clauses and now the majority of them are covered by the Unfair Contract Terms Act 1977 and supplemented by the Unfair Terms in Consumer Contracts Regulations 1999.

During the 20th century, the balance of power has altered. Companies tend to dictate to their customers the terms under which they are prepared to trade. “Take it or leave it’ attitude. And this applies straight across the board. These abuses of power usually took the form of standard conditions of sale, excluding the seller’s liability for virtually any breach of contract or any act of negligence.

Contracts were drawn up in obscure language and printed in small lettering, which was difficult for to read or understand. Nothing is wrong with such clauses made between equals but they are usually sanctioned on a weaker party by a stronger party.

If an exemption clause is upheld, the Common Law insisted the proponent to bring the clause to the attention of the other party must do everything reasonable.

Rahi’s case is deals with the exemption clause.

An exemption clause assumes the existence of a contract and the defendant has some liabilities even though the clause exempts him from them. The court (Court of Appeal) does not like exclusion clauses because they go against the bases of a contract because there should be an assumption of rights and duties on both sides.

Three things must be proven in a clause:

1. A term of contract
2. It covers damages
3. There is no reason why it should fail

Interpretation of Exemption Clauses

There are four main rules:

Contra Proferentum – an exclusion clause will be construed strictly against a person who **inserted it** –

Negligence – If a party wished to exclude liability for negligence in the performance of his contract, he must use **very clear** words. Any ambiguity will cause the term to be rejected.

Particular Duties – If a clause exempts a party from complying with specific duties or matters, then **all other** duties or matters will remain in full force.

General Words: Wording must be clear, precise and unambiguous. **General words** in an exemption clause will not as a rule absolve the person who tries to rely on them from liability.

The House of Lords received construction of exemption clause in *Aisla Craig Fishing Co. Ltd. v Malvern Fishing Co. Ltd.* (1983) where Lord Wilberforce lay down some rules like:

- *Whether a condition limiting liability is effective or not is a construction in the contract as a whole*
- *If it is to exclude liability for negligence it must be clearly and unambiguously expressed*
- *It must be construed contra proferentum*
- *One must not create ambiguities by strained construction; relevant words must be given and with natural plain meaning.*

Rahi is advised to sue the University on grounds mentioned in the principals and cases and decisions of the Appeal Court above.

Notice maybe deemed to have been given in a course of dealing between the parties *Spurling vs Bradshaw* (1956), *Kendall and Sons vs William Lillico and Sums* (1969) but there must be a consistence course of dealings: *Mc Cutcheon vs David and Mac Brayned Ltd* (1964) *Hollier V Rambler Motors Ltd.*(textbook)

Three or four transactions over a period of five years could not be described as a course of dealing.

The damage to the tires falls within S2 which deals specifically with attempts to exclude liability for negligence. S.2 goes on to provide that a person's awareness of or agreement to such a term or notice does not indicate his voluntary acceptance.

Rahi awareness of the notice does not indicate his voluntary acceptance of any risk

On Rahi's theft of his watch, the University is also liable.

Bibliographies:

Business Law: Don Keenan and Riches –2002
Principles of Business: ABE (year not stated)
Introductions to English Law: Phillip James -1979
Business Law: Third Edition: Peter Shearer -1982
Introductions to English Law: ICOSA - 1994

In Rahi's case there are two notices just as there were in Thornton vs Shoe Lane Parking (1971). Rahi paid the attendant and drove in to the car park and parked his car. Here the contract was formed before he saw the notice by paying the attendant and parking his car. It was unreasonable for a term of liability for personal injuries. Since the U.T.C.A(1977) the clause is held to be enforceable.

In Thornton, the Court of Appeal held that the defendant could not rely in an exemptions clause displayed inside the car park because it was introduced after the contract was formed.

Rahi can use Thornton's case to sue the University

It is therefore quite clear that while in many situations many things are done to protect the company, there are also situations in which justice must be done to ensure fair play.

Second Notice more general

Thefts and Damages from injury.

Olley's case for thefts of notice – 1971

Key was left at reception desk – introduced.

After contract was formed – disclaimer in room.

References:

Keenan et al Business Law: Harlow: Pearson Longman, 2002
R.L.C.- Business Training: Principles of Business Law: William Hase.
Shears et al, Business law. Great Britain: Hulton Education, 1982
James et al. introduction to English Law: Butterworth & Co. 1979
I.C.S.A. Introduction to English and E.C Law B.P.P 1994

