International Journal of Research in Social Sciences
Vol. 6 Issue 11, November 2016,
ISSN: 2249-2496 Impact Factor: 6.278
Journal Homepage: http://www.ijmra.us, Email: editorijmie@gmail.com
Double-Blind Peer Reviewed Refereed Open Access International Journal - Included in the International Serial Directories Indexed & Listed at: Ulrich's Periodicals Directory ©, U.S.A., Open J-Gage as well as in Cabell's Directories of Publishing Opportunities, U.S.A

THE CRITICAL ANALYSIS IN RULE OF INTERPOLATION OF EXEMPTION CLAUSES IN THE STANDARD FORM OF CONTRACT

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Abstract

Today, common commercial transactions be it the transferring servicing or the transmission of goods, are universally conducted on the basis that the proprietor will not be responsible for any personal injury or for any damage to or loss of the property of his customer. Always, the proprietor is in the superior bargaining position and uses a standard form of contracts which the customer needs to accept or freeing the service he seeks. Recently, Exemption clauses have demonstrated to be one of the most absorbent areas of contract law. It is an area that has prodded legislation, litigation and often requires a balancing of the freedom of contract and competing interests of consumer protection.The main aim of this paper seeks to discuss the interpolation of exemption clauses intothe standard form of contracts and considering of the court'sdecisions to the consumer protection. The main question of this study is whether the exemption clause has become a term of the contract?

The method used in this study is a descriptive research method which carried out in the critical analysis in rule of interpolation of exemption clauses in the standard formof contract.The sources of this paper are based on the research articles, books, Acts and regulations and referenced in chosenregional and international journals.The general concern with exemption

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clause is their impressive application that is agreeing to fair acts and legal proceedings to support not just the freedom of contract but the consumers' protection and traders from one another.

Keywords: Interpolation; Commercial Transactions; Exemption Clauses; Standard Form of Contract; Consumers' Protection.

Introduction

Today, common commercial transactions be it the transferring goods or servicing or the transmission of goods by the land or sea, even the use of public transport, are universally conducted on the basis that the proprietor will not be responsiblefor any personal injury or for any damage to or loss of the property of his customer to the recent or that, if responsible, such liability must be restricted to a conditioned amount. Always, the proprietor is in the superiorbargaining position and uses a standard form of contract which the customer needs to accept or freeing the service he seeks. Exemption clauses effectively make sure that one party will not be responsible in certain circumstances; they lose or limit liability. Exception clauses have generally had an awful press on the grounds that they have been abused, frequently to the hindrance of consumers and the courts have reacted to this by more than once searching for approaches to cut them down. The judiciary has held repeatedly that they support exemption clauses but they object to the misuse of exemption clauses in many cases. In the last hundred years, many decisions have been given on the validity of the exemption clause emerging in several types of contracts and while the attitude of Courts has not always been stable, it is well proven that in absence of statutory ban, liability at common law can be excluded by proper word clause in carriage and for the performance of skilled work, premises or contracts of bailment.In recent years, exemption clauses have demonstrated to be one of the most absorbent areas of contract law. It is an area which has prodded legislation, litigation and often requires a balancing of freedom of contract and the competing interests of consumer protection.

Definition of Exemption Clause and its Importance

At a vital level, an exemption clause is one that limits or excludes, or appears to limit or exclude, responsibility for breach of contract, or other liability causing by way of bailment, statute or tort.

An exemption clause is on whereby one party to contract interpolates into a contract a condition limiting orexcluding his potential responsibility for any future breach of contract by him.An exemption clause is a condition in a contract that attempts to exempt or restrict the liability of a party who is in breach of that agreement.[1] An exemption clause could be said to be a clause in a contract inserted herein by someone who it to be bound, the effect of which is to exclude all the things which generally will be bound to make eventuality plans for. In other words, the party relying on an exemption clause attempts to depend on it whichshies away from his contractual responsibility thereby depriving the other party his remedy for the breach of the term of the contract.[2]

It is worth mentioning that, the exemption clause may look for excluding wholly a liability or solely to limit it. The terms "exemption clause" and "exclusion clause" are mostly freely used to encompass both terms but, in an attempt to avoid confusion, the practice adopted in accordance to use "exemption clause" as a general situation, encompassing both limitation and exclusion clauses.[3] The term "exclusion clauses" will be limited to those clauses which eliminate, or attempt to remove liability. The tag "limitation clause" will be applied merely for those clauses which do not eliminate, or attempt to remove, liability totally but, for instance, limit or attempt to restrict damages due on a breach of contract to a specified sum.[4]

Exclusion clauses purpose to exempt the responsibility of one of the parties to an agreement from his legal obligations. Such commitments are commonly contractual however the exclusions may increase to harmful liability, most normally negligence. For instance; if you buy a car from a broker, the broker may include a term in the contract of sale indicating that he does not have to pay you any reparation if you are damaged in an accident because the car was defective.A limitation clause is a kind of exemption clause which does not look entirely for excluding liability however, instead, to restrict or limit it to, for instance, a fixed amount of damages.In "freedom of contract", parties should be allowed to insert any exemption clauses they wish into a contract. However, such clauses are improbable to be "negotiated" and are most probably to be the result of a prevailing party imposing the clauses on the weaker. [5]

However, the courts, over a notable time, have sought to limit the scope and process of exemption clauses by a diversity of common law devices. The Legislation is also playing a vital role in preventing exemption clauses, mostly in the area of consumer protection. No exemption clause may use unless it is "interpolated" as a term of the contract between the"exemptor "and"exemptee". Even where the clause has been interpolated, but, it may be defeated, or reduced in scope, the effect of legislative rules or judicial intervention.

The importance of exemption clauses excluding or limiting responsibility does not have to be demonstrated. The company, which sells its goods or services, has to face important risks if these goods or services demonstrate faultily, or if their performance is not satisfactory. The responsibilities and warranties, which it may have to face, are presumably leading to heavy debts most out of proportion with the importance of its breach or the profit expected from the contract. In international agreements, including risks are increased by more likely of failure and sometimes also by a lesser knowledge of the foreign legal principles that will govern compensation. The obligor throws off definite risks, or it makes them predictable and endurable. Such limitation of responsibility is sometimes a necessary term to the performance of especially dangerous ventures; it can permit technical progress and innovation. It is often needed to make the risk insurable, or at least to give the cost of insurance bearable. It is also possibleto interest the other party in the figure of a price decrease. [6]

Exemption Clauses in the Standard Form Contracts

Exemption clauses are mostly found in standard form contracts. This can result in the statement that they have been imposed as part of a ‘take it or leave it’ by the party with the stronger bargaining position; therefore the alternatives tag of 'contract of adhesion'. The Standard Form Contract is standardized contract that possess a large number of terms and conditions in fine print which limit and mostly exclude responsibility under the contract. This gives an exclusive opportunity to the huge company to exploit the weakness of the individual by imposing upon him conditions that often similar a type of private legislation and which may go to the amount of exempting the company from whole liability under the contract.[7]The impact of standard form contracts is mostly such that the party versus whom the exemption clause is being applied had no knowledge that it was a condition of the contract. In such situations, it would hardly be

surprising if the equity of exemption clauses was questioned, exclusively where a trader is looking for depending on an exemption clause against a consumer.[8]

Interpolation of Exemption Clauses in Contracts and its Necessity

Interpolation of a clause might be the notion of as a simple manner, plainly requiring the designation of what the parties agreed to. Surely, interpolation poses without problems where both parties have real knowledge of all the conditions set out in the offer which was accepted. Problems emerge because there is often no real knowledge of all the conditions, and interpolation cannot be said to be based on any easy sense of what the parties agreed to.[9]Even when one party has been notified that a document including main clauses, outlined to be part of the contract, he will not always read it. He might even sign it without reading it. Such signature will make sure that the clauses become terms of the contract even though that party has no real knowledge of their content. Interpolation of clauses from unsigned documents can also happen, even though there is no real knowledge of their content.[5]

Interpolation without real knowledge, and even without a signature, clearly opens the way for one party to take benefit of another. This is exclusively so where one party has a set of standard terms which he desires to insertion into each contract he makes. This is often the case with contracts between trade and consumers, and the absence of any actual opportunity to familiarize with terms may be related to their reasonableness. Insertion may be possible through Signature or by virtue of notice or previous course of dealings.

Interpolation of Exemption Clause through Signature

Interpolation of clauses by signature is essentially a very automatic process. It leaves little room for any questioning of the interpolation of the clause into the contract and has the advantage of sameness. The related clause will be inserted into the contract if it consists of a contractual document which has been signed by the person looking for reject that the clause is part of the contract.[5]This is clearly subject to misrepresentation or claim of fraud, however, in the lack of such an allegation, the signature will act to insert the clause whether the party signing had any knowledge of the clause or not. These terms may contain an exemption clause. This situation is

unchangeable even if the individual signs the agreement without reading it. The rule is basically an application of the parol evidence rule.

The general rule is that if a party to a contract signs it then he will be bound by its terms whether or not he has read them or understood them. In the case,L'Estrange v/s F Graucob Ltd. ((1934) 2 KB 394),shows this point: Miss.Estrange purchased a cigarette slot machine from Graucob Ltd. The machine demonstrated to be faulty. She claimed that Graucob Ltd., wherein breach of an implied term that the machine was reasonably suitable for its purpose. Graucob Ltd. rejected that any such term could be implied. They depend on a clause in the order form, which the plaintiff had signed, which said any statement or express, implied condition or warranty, statutory or otherwise not specified herein is hereby excluded. This clause was in small-print and Miss. Estrange hadn't read it and didn't know of its contents. The court held that Miss.Estrange signature on the order form consists the clause meant that her whole absence of knowledge of the exemption clause was irrelevant. The clause excluded the term from being implied, and Graucob were not in breach of the contract notwithstanding of the faults in the slot machine.

The base for this rule lies in the objective approach to intention. If anindividual had sign the agreement then it is reasonable to derive that he agrees to all the term and conditions in that agreement. The "interpolation by signature" rule does not use in cases where the seller has misrepresented the nature of the document that the buyer has signed. In the case of Curtis v/s Chemical Cleaning and dyeing co. Ltd. ((1951) KB 805), the ScruttonL.J said that; the signature was gained by misrepresentation. The appeal court held that the laundry could not rely on the clause to passage responsibility for negligent damages to the claimant wedding dress. The laundry assistant has misrepresented that the clause and afterward made the clause void.

At the moment, it is considered explainable in most cases on the base of the objectionable test. The signing of the document in the case of L'Estrangehas resulted as the model to the terms of the contract. The second situation in which the rule does not use is when the document signed is in fact not a contractual document. In Grogan v/s Robin Meredith Plant Hire((1996) 53 Con LR 87), the signature on the time sheet had no effect on the insertion of terms in the parties' contract. This relied on the deciding that when directing the document and the condition of its use between

the parties, would not conclude that it claim to have a contractual effect. It was decided to be a downright administrative document and afterward void.Therefore; the Estrangeapproach is one which underpins the total of commercial life; any corruption of it would have serious consequences far beyond the commercial community. However, this approach might come under new pressure if a specific line is taken to contracting on the internet.[6]

As has been indicated, some consideration needs to be given to electronic contracting, i.e. to contracts made via e-mail or on the internet. The first point to be made is that there is a wholediversity of actions which could be seen as a signature. That is illustrated by the Law Commission's broad approach to what should establish a signature to satisfy statutory formality requirements. They have taken the line that,"Digital signature, scanned manuscript signature, typing someone's name and clicking on a site button are, in our view, all methods of signature that are ordinarily able to satisfya lawful signature requirement".[10]

Interpolation of Exemption Clause by Virtue of Notice

If a contractual document consist of exemption clause is not signed, its terms may, nevertheless, be interpolated submitted that reasonable notice of such terms has been carried to the other party. The party looking for depending on the exemption clause requires not show that he really brought it to the attention of the other party but only that he took reasonable steps to do so.[10]In the case of Sweeney v/sMulcahy((1993) I.L.R.M. 289), the parties were gentle and cooperated in the adequate informing of notice. But in many cases, exemption clauses desire to be buried in documents. Notice is of great importance as it permits a party who might be somewhat disadvantaged to lead clear of contracts which may be harmful. For these reasons rules on notice are strictly in favor of the affected party. An affected party cannot be given notice of an exemption clause directly by referring to it on some piece of paper. The affected-party will be limited whether they know that the using document to give them notice inclusive contractual terms. Effectively,whether notice is going to be given by document it must have contractual effect. InChapelton v/s Barry UDC((1940) 1 KB 532), exemption clauses written on the reverse of a ticket for the hire of a deckchair was not interpolated in the contract. The Court of Appeal decided that the ticket was a "mere receipt", given out so that a deck chair user could

demonstrate that he had paid for his. The test for the document being predestined to be contractual is objective.[11]

The exemption clause may have existed in an unsigned document such as a ticket or a notice. Signs or unsigned documents provide the main problems in relation to interpolation. As there is no signature, it should be asked what other means can be used to constitute that the clauses on the document or sign are part of the contract. There is no problem where there is actual knowledge of the clause. It will then clearly be part of the contract.[12] It is the circumstance when this knowledge is absent which requires being considered. In Thornton v/s Shoe Lane Parking((1971) 2 Q.B. 163 at 173), Mr. Parker outlaid to leave his luggage in the Railroad Company'scheckroom; however, it was lost or stolen. He received a paper ticket which mentioned the company was not liable for lost or stolen property. Lord Brambell held that; if the claimant didn't read that, they were equally bound that if they had read it and not protested. The prior concluded from this case explains that exemption clauses can be accommodated into the parties agreement even whether the affected-party has not read the term and conditions. It is reasonable to expect consumers to take responsibility for their own contractual agreements. BrambellL.J held that it would be unscrupulous for consumers not to take liability for their contracts made.

Exemption clause cannot be inserted from signs or unsigned documents if those documents or signs are not provided into the bargainlong after the contract have been concluded. In Olley v/s Marlborough Court Ltd.((1949) 1 KB 532), Mrs. Olley and her husband made a contract to stay in the hotel. The contract was made at the reception on their arrival. There was a sign in the room which purported to exclude the hotel's responsibility for the stolen of guests' property unless consigned to the managers for safe keeping. Mrs. Olley came back to her room one day to discover that her furs had been stolen as a result of the hotel's default. The hotel sought to depend upon its exemption clause to exclude its responsibility for her loss. The Appeal Court held that the clauses on the sign in the bedroom could not form part of the contract between the hotel and Mrs. Olley. The contract had been made at the reception before there had been any chance to see the sign.

The fundamental rule for interpolation of a clause existed in an unsigned document or sign is that such a clause is part of the contract if there has been an adequate notice of it. The test of notice is an objective test, not requiring the consumer to be capable of reading the terms and conditions. In parker case; the judge at first sample has misrepresented the board on the test for interpolation. The court held that the basic test to determine whether insertion has happened in this type of circumstance is that of an adequate notice. A clause can only be inserted as an unsigned agreement whether that affected-party seen of its being before the agreement has expired. An exemption clause cannot be presented by one party after the conclusion of the contract, in order to provide the affected party unaware of its being at the time of entering the contract. In Sproule v/s Triumph Cycle Co. ((1927) NI 83), the limitation agreement was contained in a document given to the purchaser of a motorcycle after the contract has been concluded. Thus the exemption clause was inefficient and void as it was presented after the completion of the contract.[13]

A higher degree of notice is necessary when the term is unusual. In case Carroll v/s post((1996) 1 IR 443),Carroll j confirmed that the rule of not reading the document. Hence, where an unreasonable term is introduced in a contract it is the liability of the party depending on the clause to do more than simply present the document to the affected party.[14] In contrast to the case ofClarke((1976) CLJ 51) protested that the courts turned to announcing a clause not inserted because they had rejected the power of announcing it void for being unreasonable, an invalid rule of public policy has been reinstated as a rule based on a conclusion from the intentions of the parties; the plaintiff is only deemed to know of and agree to terms that are usual.

Interpolation of Exemption Clause by Previous Course of Dealing

An exception clause is not necessarily being interpolated into a contract by the previous course of dealing between the same parties on similar conditions. But such a clause may be inserted where each party led the other reasonably to believe that it intended that their rights and responsibilities should be determined by reference to the conditions of a document which had been consistently and regularly used by them in previous transactions.Where the clause is a conventional one in the trade, and the parties are of equal bargaining power in the same transaction, less will be needed in terms of the order of the previous course of dealing for it to be

included in the contract. In fact, it may be better due to such a clause as inserted not so much because of the course of dealing but rather because of the usual understanding of the parties based on the practice of the business to which they belong.[15]

Such implied interpolation is effective only if there has been the consistent course of dealings. It does not, therefore, follow there have been only a few transactions extended a long period of time. Neither does it use if steps necessary to interpolation of standard terms have never been taken at any stage of the dealings between the parties. Any deviation from the term inserted by means of a consistent course of dealing need that proper actions should be taken to draw attention to such alteration by the other party who is reasonably entitled to assume that the course of dealings is being continued on the usual conditions.[16]

It is possible for a court to insertterms, containing exemption clauses, where there has been a previous course of dealing between the parties. There is some overlapping here with the other manners of interpolation in that the document including the contractual terms and conditions, containing the exemption clause, will have been inserted in previous dealings either by signature or by notice.[16] In Spurling v/s Bradshaw((1956) EWCACiv 3), the parties, who had dealt with each other for many years, made a contract under which the claimant was to store barrels of the defendant's orange juice. When the defendant later came to collect the barrels they were empty. The defendant ready for pay the storage charges and the claimant sued. The defendant counterclaim for default but the plaintiffs successfully depended on a clause exempting them from responsibility for damage or loss sometimes by negligence or wrongful act. The defendant had not received the document including this clause until after the contract was concluded but he confessed to receiving a similar document often in the past.

The Appeal Courtaltogether held that the defendant was restricted by the exemption clause. Once again it ought to be noted that the above circumstance is now affected by legislation and the related exemption clause purporting to exclude responsibility for default would be subject to a test of reasonableness. In Hollier v/s Rambler Motors (AMC) Ltd.((1972) 2 QB 71), Mr. Hollier terms were not interpolated into the contract by their previous course of dealing. It appears that the course of dealing ought to be more suitable and longer than that three or four times over five

years.[17]The terms of exemption also expand to common industry most known in the case of British crane hire v/s Ipswich plant hire((1975) Q.B. 303)where Lord. Denning declared; parties into anagreement of lease were both of equal bargaining power and in the business, the normalterms apply.[18]Hence all previous dealings must have been consistent; the parties must always have contracted on the same this rule condition has resulted from the judgment in McCutcheon v/sMacBrayn((1964) 1 WLR 165).

Conclusion

Theexemption clausesareordinary in the area of contract law. They are applied to allocate risks between the parties to a contract. It is provided that the appropriate approach topursuing in most cases is one which authorizes courts jurygovernment to avoid the proceeds of clauses they supposedunfair and unreasonable. Exemption clause, as pre-arranged can be accommodated by signature, reasonable notice, the course of dealing or trade custom.[18]It is worth mentioning much of these clauses run in parallel to new consumerism and the areas of business and profit gain. The general concern with clause includingthese is their impressive application, which is agreeingto fair acts and legal proceedings to support not just the freedom of contract but the consumers'protection and traders from one another.

In the UK, Unfair Contract Terms Act,1977 severely restricts the rights of the contracting parties to limit or exclude their responsibility by exemption clauses in their contracts. Responsibility for personal injury or death cannot be excluded or limited by a condition in the notice or contract. In addition, the distributor or the manufacturer cannot exclude their responsibility arising out of faulty goods or for their negligence, as due to goods supplied for consumption or private use.[19]
Unlike the UK, there is no peculiar legislation in India in connection with the exclusion of contractual responsibility. There is a possibility of significant unreasonable bargains either under section 16 of the Indian Contract Act in the area of undue influence or under section 23 of that Act, as being against of public policy (Lily White v/s Munuswamy) ((1966) A.I.R. Mad.3). In the case of Central Inland Water Transport Corp. Ltd v/sBrojoNath((1986) SCR (2) 278), the Supreme Court stated a clause in service contract by the service of a permanent employee could be terminated by giving him a threemonths' salary or three months' notice. It was held that such

clause was unconscionable and opposed to public policy and void under section 23 of Indian Contract Act.

The Law Commission of India in the103rd report[20], on Unfair Terms in Contract, has recommended the insertion of a new chapter IV-A comprising of section 67-A of Indian Contract Act, 1872. Due to this recommendation where the court on the terms of contract or evidence deduced by the parties, comes to the conclusion that contract or any part that it holds to be unreasonable. A contract due to this provision is considered to be unreasonable if it exempts any party thereto from either the responsibility for intentional breach of contract or as a result of negligence.[21]

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