
Fourth Session Second Parliament Republic of Trinidad
and Tobago



REPUBLIC OF TRINIDAD AND TOBAGO

Act No. 28 of 1985

[L.S.]

AN ACT respecting exemption clauses in contract or
for negligence.

[Assented to 23rd July, 1985]

ENACTED by the Parliament of Trinidad and Tobago as follows: Enactment

1. This Act may be cited as the Unfair Contract Terms Act, 1985 and shall come into operation on a date as the President may appoint by Proclamation. Short title and commencement

Interpretation

2. In this Act—

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

“goods” includes all chattels personal other than things in action and money; the term includes emblements, industrial growing crops, and things attached to or forming part of the land, which are agreed to be severed before sale or under the contract of sale;

“hire purchase agreement” means an agreement for the bailment of goods under which the bailee may buy the goods or under which the property in the goods will or may pass to the bailee, and where by virtue of two or more agreements, none of which by itself constitutes a hire-purchase agreement, there is a bailment of goods and either the bailee may buy the goods, or the property therein will or may pass to the bailee, the agreements shall be treated for the purposes of this Act as a simple agreement made at the time when the last of the agreements was made;

“negligence” has the meaning given by section 4(1);

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

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

PART I**APPLICATION, SCOPE**

Application

3. Nothing in this Act applies to contracts made before the date on which this Act comes into operation.

4. (1) For the purposes of this Part, “negligence” ^{Scope of Part I} 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;
- (b) of any common law duty to take reasonable care or exercise reasonable skill, but not any stricter duty.

(2) This Part is subject to Part II; and in relation to contracts, the operation of sections 5, 6, 7 and 10 is subject to the exceptions made by the First Schedule. ^{First Schedule}

(3) In the case of both contract and tort, sections 5 to 10 apply (except where the contrary is stated in section 9(4)) only to business liability, that is 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);
or
- (b) from the occupation of premises used for business purposes of the occupier;

and references to liability are to be read accordingly.

(4) In relation to any breach of duty or obligation, it is immaterial for any purpose of this Part whether the breach was inadvertent or intentional, or whether liability for it arises directly or vicariously.

5. (1) A person cannot by reference to any contract term or to a notice given to persons generally or to particular persons exclude or restrict his liability for death or personal injury resulting from negligence. ^{Negligence liability}

(2) In the case of other loss or damage, a person cannot so exclude or restrict his liability for negligence except in so far as the term or notice satisfies the requirement of reasonableness.

(3) Where a contract term or notice purports to exclude or restrict liability for negligence a person’s agreement to or awareness of it is not of itself to be taken as indicating his voluntary acceptance of any risk.

Liability
arising in
contract

6. (1) This section applies as between contracting parties where one of them 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 the breach; or

(b) claim to be entitled—

(i) to render a contractual performance substantially different from that which was reasonably expected of him, 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 above in this subsection) the contract term satisfies the requirements of reasonableness.

Unreasonable
indemnity
clauses

7. (1) A person dealing as consumer cannot by reference to any contract term be made to indemnify another person, whether a party to the contract or not, in respect of liability that may be incurred by the other for negligence or breach of contract, except in so far as the contract term satisfies the requirement of reasonableness.

(2) This section applies whether the liability in question—

(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 to someone else.

"Guarantee"
of consumer
goods

8. (1) In the case of goods of a type ordinarily supplied for private use or consumption, where loss or damage—

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

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

liability for the loss or damage cannot be excluded or restricted by reference to any contract term or notice contained in or operating by reference to a guarantee of the goods.

(2) For these purposes—

- (a) goods are to be regarded as “in consumer use” when a person is using them, or has them in his possession for use, otherwise than exclusively for the purposes of a business; and

- (b) anything in writing is a guarantee if it contains or purports to contain some promise or assurance, however worded or presented, that defects will be made good by complete or partial replacement, or by repair, monetary compensation or otherwise.

(3) This section does not apply as between the parties to a contract under or in pursuance of which possession or ownership of the goods passed.

9. (1) Liability for breach of the obligations arising from—

- (a) section 14 of the Sale of Goods Act (seller’s implied undertakings as to title, etc.); Sale and hire-purchase Chap. 82:30

- (b) section 10 of the Hire Purchase Act (conditions and warranties to be implied in hire purchase agreements), Chap. 82:33

cannot be excluded or restricted by reference to any contract term.

(2) As against a person dealing as consumer, liability for breach of the obligations arising from—

- (a) section 15, 16 or 17 of the Sale of Goods Act (seller’s implied undertakings as to conformity of goods with description or sample, or as to their quality or fitness for a particular purpose); Chap. 82:30

Chap. 82:33

(b) section 10 of the Hire Purchase Act; cannot be excluded or restricted by reference to any contract term.

(3) As against a person dealing otherwise than as consumer, the liability specified in subsection (2) can be excluded or restricted by reference to a contract term, but only in so far as the term satisfies the requirement of reasonableness.

(4) The liabilities referred to in this section are not only the business liabilities defined by section 4(3), but include those arising under any contract of sale of goods or hire-purchase agreement.

Miscellaneous
contracts
under which
goods pass

10. (1) Where the possession or ownership of goods passes under or in pursuance of a contract not governed by the law of sale of goods or hire-purchase, subsections (2), (3) and (4) apply as regards the effect, if any, to be given to contract terms excluding or restricting liability for breach of obligation arising by implication of law from the nature of the contract.

(2) As against a person dealing as consumer, liability in respect of the goods' correspondence with description or sample, or their quality or fitness for any particular purpose, cannot be excluded or restricted by reference to any such term.

(3) As against a person dealing otherwise than as consumer, that liability can be excluded or restricted by reference to such a term, but only in so far as the term satisfies the requirement of reasonableness.

(4) Liability in respect of—

(a) the right to transfer ownership of the goods, or give possession; or

(b) the assurance of quiet possession to a person taking goods in pursuance of the contract,

cannot be excluded or restricted by reference to any such term except in so far as the term satisfies the requirement of reasonableness.

11. (1) Where for reliance upon it a contract term has to satisfy the requirement of reasonableness, it may be found to do so and be given effect accordingly notwithstanding that the contract has been terminated either by breach or by a party electing to treat it as repudiated. Effect of breach

(2) Where on a breach the contract is nevertheless affirmed by a party entitled to treat it as repudiated, this does not of itself exclude the requirement of reasonableness in relation to any contract term.

12. A person is not bound by any contract term prejudicing or taking away rights of his which arise under, or in connection with the performance of, another contract, so far as as those rights extend to the enforcement of another's liability which this Part prevents that other from excluding or restricting. Evasion by means of secondary contract

13. (1) In relation to a contract term, the requirement of reasonableness for the purposes of this Part is that the term shall have been 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. The "reasonableness" test

(2) In determining for the purposes of section 9 or 10 whether a contract term satisfies the requirement of reasonableness, regard shall be had in particular to the matters specified in the Second Schedule; but this subsection does not prevent the court or 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 the contract. Second Schedule

(3) In relation to a notice (not being a notice having contractual effect), the requirement of reasonableness under this Act is that it should be fair and reasonable to allow reliance on it, having regard to all the circumstances obtaining when the liability arose or, but for the notice, would have arisen.

(4) Where by reference to a contract term or notice a person seeks to restrict liability to a specified sum of money, and the question arises, under this or

any other Act whether the term or notice satisfies the requirement of reasonableness, regard shall be had in particular, but without prejudice to subsection (2) in the case of contract terms, to—

- (a) the resources which he 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 him to cover himself by insurance.

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

Dealing as
consumer

14. (1) 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 does make 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, or by section 10 of this Act, the goods passing under or in pursuance of the contract are of a type ordinarily supplied for private use or consumption.

(2) But on a sale by auction or by competitive tender the buyer is not in any circumstances to be regarded as dealing as consumer.

(3) Subject to this, it is for those claiming that a party does not deal as consumer to show that he does not.

Varieties of
exemption
clause

15. (1) To the extent that this Part prevents the exclusion or restriction of any liability it also prevents—

- (a) making the liability or its enforcement subject to restrictive or onerous conditions;
- (b) excluding or restricting any right or remedy in respect of the liability, or

subjecting a person to any prejudice in consequence of his pursuing any such right or remedy;

- (c) excluding or restricting rules of evidence or procedure;

and, to that extent, sections 5, 8, 9 and 10 also prevent excluding or restricting liability by reference to terms and notices which exclude or restrict the relevant obligation or duty.

(2) But an agreement in writing to submit present or future differences to arbitration is not to be treated under this Part as excluding or restricting any liability.

PART II

MISCELLANEOUS

16. (1) The limits imposed by this Act on the extent to which a person may exclude or restrict liability by reference to a contract term do not apply to liability arising under such a contract as is described in subsection (3). International supply contracts

(2) The terms of such a contract are not subject to any requirement of reasonableness under section 6 or 7.

(3) Subject to subsection (4), that description of contract is one whose characteristics are the following:

- (a) either it is a contract of sale of goods or it is one under or in pursuance of which the possession or ownership of goods passes; and
- (b) it is made by parties whose places of business or, if they have none, habitual residences, are in the territories of different States.

(4) A contract falls within subsection (3) only if--

- (a) the goods in question are, at the time of the conclusion of the contract, in the course of a carriage, or will be carried, from the territory of one State to the territory of another;

- (b) the acts constituting the offer and acceptance have been done in the territories of different States; or
- (c) the contract provides for the goods to be delivered to the territory of a State other than that within whose territory those acts were done.

Choice of
law clauses

17. (1) Where the proper law of a contract is the law of Trinidad and Tobago only by choice of the parties, and apart from that choice would be the law of some country other than Trinidad and Tobago, sections 5 to 10 do not operate as part of the proper law.

(2) This Act has effect notwithstanding any contract term which applies or purports to apply the law of some country other than Trinidad and Tobago, where (either or both)—

- (a) the term appears to the court, or arbitrator or arbiter to have been imposed wholly or mainly for the purpose of enabling the party imposing it to evade the operation of this Act; or
- (b) in the making of the contract one of the parties dealt as consumer, and he was then habitually resident in Trinidad and Tobago, and the essential steps necessary for the making of the contract were taken there, whether by him or by others on his behalf.

Temporary
provision
for sea
carriage of
passengers

18. (1) This section applies to a contract for carriage by sea of a passenger or of a passenger and his luggage where the provisions of the Athens Convention (with without modification) do not have, in relation to the tract, the force of law in Trinidad and Tobago.

(2) In a case where—

- (a) the contract is not made in Trinidad and Tobago; and
- (b) neither the place of departure nor the place of destination under it is in Trinidad and Tobago,

a person is not precluded by this Act from excluding or restricting liability for loss or damage, being loss or damage for which the provisions of the Athens Convention would, if they had the force of law in relation to the contract, impose liability on him.

(3) In any other case, a person is not precluded by this Act from excluding or restricting liability for that loss or damage—

(a) in so far as the exclusion or restriction would have been effective in that case had the provisions of the Athens Convention had the force of law in relation to the contract; or

(b) in such circumstances and to such extent as may be prescribed by the Minister by Regulations subject to affirmative resolution of Parliament, by reference to a prescribed term of the contract.

(4) For the purposes of subsection (3)(a), the values which shall be taken to be the official values in Trinidad and Tobago of the amounts, expressed in gold francs, by reference to which liability under the provisions of the Athens Convention is limited shall be such amounts in Trinidad and Tobago dollars as the Minister may after consultation with the Central Bank by Order specify.

(5) In this section—

(a) the references to excluding or restricting liability include doing any of those things in relation to the liability which are mentioned in section 15;

(b) “the Athens Convention” means the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974.

19. (1) Nothing in this Act removes or restricts the ^{Saving} effect of, or prevents reliance upon, any contractual provision which—

(a) is authorised or required by the express terms or necessary implication of a written law; or

(b) being made with a view to compliance with an international agreement to which Trinidad and Tobago is a party, does not operate more restrictively than is contemplated by the agreement.

(2) A contract term is to be taken for the purposes of Part I, as satisfying the requirement of reasonableness if it is incorporated or approved by, or incorporated pursuant to a decision or ruling of, a competent authority acting in the exercise of any specific jurisdiction or function conferred by a written law and is not a term in a contract to which the competent authority is itself a party.

(3) In this section "competent authority" means any court, arbitrator or arbiter, government department or public authority.

FIRST SCHEDULE

Section 4(2)

Scope of sections 5, 6, 7 and 10

1. Sections 5, 6, 7 of this Act do not extend to—
 - (a) any contract of insurance, including a contract to pay an annuity on human life;
 - (b) any contract so far as it relates to the creation or transfer of an interest in land, or to the termination of such an interest, whether by extinction, merger, surrender, forfeiture or otherwise;
 - (c) any contract so far as it relates to the creation or transfer of a right or interest in any patent, trade mark, copyright, registered design, technical or commercial information or other intellectual property, or relates to the termination of any such right or interest;
 - (d) any contract so far as it relates to the formation or dissolution of a company which means any body corporate or unincorporated association and includes a partnership, or its constitution or the rights or obligations of its corporators or members;
 - (e) any contract so far as it relates to the creation or transfer of securities or of any right or interest in securities.
2. Section 5(1) extends to—
 - (a) any contract of marine salvage or towage;
 - (b) any charterparty of a ship; and

(c) any contract for the carriage of goods by ship; but subject to this, sections 5, 6, 7 and 10 do not extend to any such contract except in favour of a person dealing as consumer.

3. Where goods are carried by ship in pursuance of a contract which either—

- (a) specifies that as the means of carriage over part of the journey to be covered; or
- (b) makes no provision as to the means of carriage and does not exclude that means;

then sections 5(2), 6 and 7 do not, except in favour of a person dealing as consumer, extend to the contract as it operates for and in relation to the carriage of the goods by that means.

4. Section 5(1) and (2) do not extend to a contract of employment, except in favour of the employee.

SECOND SCHEDULE

Section 13(2)

“Guidelines” for Application of Reasonableness Test

The matters to which regard is to be had in particular for the purposes of sections 9(3), 10(3), and (4) 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.

Passed in the Senate this 13th day of November, 1984.

R. L. GRIFFITH
Clerk of the Senate

Passed in the House of Representatives this 28th day of June, 1985.

J. E. CARTER
Clerk of the House