Types of exclusion clause law contract essay

Law

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Summary

It is a common mistake that we all have a carefree attitude toward term and conditions of contract we always we always enter into without considering the exclusion clause in such contract. A contract may be defined simply as a lawfully compulsory agreement. All contracts are agreements; but not all agreements are contracts. The report will explore Exclusion Clauses Regulation.

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Introduction

The law of contract has confirmed the simple foundations of any contract, irrespective of its difficulty and substance, that it must cover to make the agreement enforceable in law. In order to achieve a concrete contract there must be an offer that must be accepted to make an agreement. An offer can be made verbally, in writing or through conduct. Irrespective as to the method of the offer, the readiness of the offeree is of huge importance and clearly subjective. For example a TV with an offer of £100. 00 but then

mistakenly advertises it for £50, and that offer is accepted, then a legal agreement will be endorsed. Merely because there was an error in the bid, it does not nullify the contract. There was a drive to sell on the part of the offer. Contracts can be categorised as either independent or joint contract. A joint contract involves assurance by one party is exchanged for an assurance by the other. The exchange of assurance is enough to render them both enforceable. For example when dealing with sales of good where buyers assures to pay the seller the agreed price and the seller assures to deliver the goods. Unlike joint contract, an independent contract is one where one party assures the other party in return for an act of the other party, as contrasting to an assurance (usually pay a sum of money). A typical example is a reward case where party A assures a reward to anyone who will find his lost horse. The importance of an independent contract is that only one party, is guaranteed to do anything. It is not mandatory for anyone to search for the lost horse, but if the other party sees the offer and eventually finds the horse and returns it, that party is eligible to the reward.

Exclusion clauses

An exclusion clause is a section in a contract that defend one party to the contract of responsibility in situations protected by it. The term used in the contract can both be legal and illegal depending on the circumstances of the contract agreed. It is important to get familiar with any contract with clauses before signing and to challenge them, essentially, before agreeing to the contract. Even though an exclusion clause is interpreted strictly against the party depending on it, careful consideration is still required for the clause in question in order to establish whether it protect the breach in question.

Where the parties have specifically combined a clause in their contract, it is the duty of the court to give such clause a viable effect so as not to interpret it such clause in way that will dispossess one of the parties of any reasonable remedy for its claims. In a simple example, an exclusion clause can be seen on business, health, home and car insurance, outlining situations in which the insurer is not accountable. These types of clauses are considered legal because they protect the insurer from unreasonable risk.

Types of Exclusion Clause

True exclusion clause: It recognises a possible breach of contract, and find excuses responsibility for the breach. True exclusion clause is made in a way that it only protect the interest of one of the parties. Restriction clause: It places boundaries on the amount that can be sued for a breach of contract, irrespective of the real damage. Time limitation: The clause relates to claim that must be made or initiated within a certain period otherwise the cause of action becomes quenched.

Cases of Exclusion Clause

lnterfoto Picture Library v Stiletto Ltd [1988] 1 All ER 348:

The defendants, an advertising agency, ordered 47 photographic transparencies from the plaintiff operators of a photo library. The transparencies were accompanied by a distribution instruction with various conditions. Condition 2 provided that a holding fee of £5 per day was payable in respect of each transparency retained after 14 days. The defendants did not return the transparencies on time and the plaintiffs sued for the holding fee payable under Condition 2 which amounted to £3785. The

Court of Appeal held that Condition 2 had not been integrated into the contract. Interfoto had not taken reasonable steps to bring such an unusual, unreasonable and onerous term to Stiletto's notice. The plaintiffs were awarded £3. 50 per transparency per week on a quantum meruit basis. Astrazeneca UK Limited v. Albemarle International Corporation and another [2011] EWHC 1574 (Comm): A contract becomes unfeasible because of changes to the economic or other conditions. If as a result of this one of the party decides to walk away or not fulfil it obligations in the agreed or try to cancel the entire contract, that party is in breach of the agreed contract allowing the other party to claim damages also known as a repudiatory breach of contract. A party will be in repudiatory breach if it proves that such party has no intension to fulfil its commitments under the contract or deliberately cancel such contract. If such contract contains an exclusion clause, the issue is then whether that clause is operational to rule out the retrieval of damages completely. Curtis v Chemical Cleaning Co [1951] 1 KB 805: The defendant was misinterpreted the exclusion clause in the contract between her and the complainant about her wedding dress for cleaning. She signed a piece of paper headed 'Receipt' and was later told that there was an exemption on the contract that has exempted the cleaners from liability from any damage. Because the defendant did not read the receipt properly, she did not see it that the receipt contained a clause excluding liability " for any damage". When the dress was returned, it was badly stained. It was held that the cleaners could not escape liability for damage to the material of the dress by depending on the exemption clause because the defendant’s assistant had misrepresented its scope. British Crane Hire v Ipswich Plant Hire [1974] QB 303: Both parties were companies engaged in hiring out

earth-moving equipment. The complainants supplied a crane to the defendants without mentioning conditions of hire because the arrangement was made over the telephone. The complainants sent the copy of the contract conditions but before the defendants could endorse them, the crane sank in swampy ground. The conditions, which were similar to those used by all companies doing the same business, which explained that the hirer should insure the owner for all expenditures in connection with use. The court held that the terms would be incorporated into the contract, not by a course of dealing, but because there was a common understanding between the parties, who were in the same line of business, that any contract would be on these standard terms. The defendants were liable for the expense involved in recovering the crane. R & B Customs Brokers v United Dominion Trusts Ltd [1988] 1 WLR 321: The plaintiff company, which was a shipping agency, bought a car for a director to be used in business and private use. It had bought cars once or twice before. The sale was arranged by the defendant finance company. The contract excluded the implied conditions about merchantable quality. The car leaked badly. It was held by the Court of Appeal that where a transaction was only incidental to a business activity, a degree of regularity was required before a transaction could be said to be an integral part of the business carried on and so entered into in the course of that business. Since here the car was only the second or third vehicle acquired by the plaintiffs, there was not a sufficient degree of regularity capable of establishing that the contract was anything more than Smith v Eric Bush [1989] 2 All ER 514

The Unfair Contract Terms Act 1977

The Unfair Contract Terms Act (UCTA) restrictions companies' ability to avoid responsibility in their contracts. UCTA is only concerned with exclusion clauses, and does not observe whether a contract is generally imbalanced. An 'exclusion clause' is not completely defined in UCTA, but can include any clause attempting to: Confine or exclude liability; Make a liability, or the enforcement of a liability, subject to restrictive conditions; Limit the rights and remedies of the wronged party; orrestrict rules of evidence or procedure. Exclusion clauses that are subject to these provisions will either be void in all cases, or void where they fail a test of 'reasonableness'. UCTA does not apply to international supply contracts. An exclusion clause can never exclude remedies for: death or personal injury; breach of statutory implied terms in consumer contracts. Different provisions of UCTA apply depending on which type of exemption clause is used and on whether the other party is a consumer or another business. Many construction contracts are concluded between two business entities. In these cases, under English law a party's attempts to limit liability will usually be subject to a test of reasonableness – that is, they will be found by a court to be void if the court considers that they are unreasonable.

Regulating Exclusion Clause

The decision by the Court of Appeal recently explained that an exclusion clause should not be interpreted as excluding liability for lost profits where this would have left the injured party without a remedy for non-performance: Kudos Catering (UK) Ltd v Manchester Central Convention [2013] EWCA Civ 38. The exclusion clause provided that "… the Company shall have no

liability whatsoever in contract, tort (including negligence) or otherwise for any loss of goodwill, business, revenue or profits...". Whilst this might be thought to be a widely drafted exclusion of liability, it was found by the Court of Appeal that the parties cannot have intended that it would cover all lost profits. Such a construction would mean that there was no sanction for non-performance and effectively devoid the agreement of contractual content. This would not be consistent with business common sense. The Court of Appeal therefore preferred a much narrower construction, which meant that the clause was inapplicable.