

Understanding that Enforceability of Contract Terms Limiting Liability May Be Unenforceable



Often businesses will attempt to impose a 'limited liability clause' within contractual agreements. To the party against whom such a clause is against, such a clause can appear ominous at first glance. In some, and perhaps most, circumstances, a 'limited liability clause' will be valid; however, in many circumstances, such a clause may be deemed invalid by the courts.

The Precedent Law, jurisprudence

The law relating to limited liability clauses restricts the validity of such clauses to circumstances that are specifically clear and exact. Essentially, a broad blanket style limited liability clause fails to negate liability. For a clause to apply, the specific concern that actually arises must be identified within the clause. Attempts to exclude liability for general concerns such as, "defects" or "errors" will likely fail. This is especially applicable where the contract containing a purported limited liability clause is a standard form contract known as a 'contract of adhesion' in which the non-drafting party is without opportunity to negotiate the terms of the contract and must either accept the contract 'as it is' or avoid the business transaction altogether. In regards to limited liability clauses, the Supreme Court said, in *Bauer v. The Bank of Montreal*, [\[1980\] S.C.R. 102 at 108](#):



Exemption clauses may broadly be divided into three categories. First, there are clauses which purport to exempt one party from a substantive obligation to which he would otherwise be subject under the contract, for example, by excluding express or implied terms, by limiting liability to cases of wilful neglect or default, or by binding a buyer of land or goods to accept the property sold subject to "faults", "defects" or "errors of description". Secondly, there are clauses which purport to relieve a party in default from the sanctions which would otherwise attach to his breach of contract, such as the liability to be sued for breach or to be liable in damages, or which take away from the other party the right to repudiate or rescind the agreement. Thirdly, there are clauses which purport to qualify the duty of the party in default to indemnify the other party, for example, by limiting the amount of damages recoverable against him, or by providing a time-limit within which claims must be made.

Contracts falling within these categories are said to be subject to special rules of construction. In construing such a clause, the court will see that the clause is expressed clearly and that it is limited in its effect to the narrow meaning of the words employed and it must clearly cover the exact circumstances which have arisen in order to afford protection to the party claiming benefit. It is generally to be construed against the party benefiting from the exemption and this is particularly true where the clause is found in a standard printed form of contract, frequently termed a contract of adhesion, which is presented by one party to the other as the basis of their transaction.

Summary Comment

Clauses that limit liability, or appear and purport to limit liability, are common within many types of contracts; however, the enforceability of such contract clauses will often be limited to a very specific circumstance. Clauses that are generally vague or state that broad liabilities are limited are likely unenforceable.