A CRITICAL EXAMINATION OF STANDARD FORM CONTRACTS AND ITS IMPACT ON CONSUMERS IN CAMEROON

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ABSTRACT

Standard form contracts (SFCs) have unique features which make them different from ordinary contracts. Although initially it was formed as an agent to facilitate market transactions, it is now seen as hindering the business process and increasing the cost of goods. Its practice in the daily consumer transaction has drawn attention due to its nature and characteristics. It is known as a contract which was prepared by one party without any negotiation between the parties and its formation is based on a "take it or leave it basis". Its contents often consist of unfair terms such as exclusion and limitation clauses which often give benefits and advantage to the one who prepares the contract. In this new era, standard form contract reflects a new dimension of oppression of the consumers. The rise of this type of contract has deprive consumers of their rights which has indeed inspired the laws in many countries and Cameroon in particular to react against the increasing decline of the individual's capacity to make a free choice and bargain. Hence, adopting the content analysis method, this paper aims at examining the special nature of standard form contracts and its impact on consumers in Cameroon.The paper concludes with some robust proposals which if effectively implemented and enforced will go a long way to breach the gap between theory and practice.

Keywords: Critical, Examination, Standard, Form, Contracts, Consumers, Impacts, Cameroon

INTRODUCTION

Standard form contracts (SFCs) are agreements that employ standardized, non-negotiated provisions, usually in printed forms.[i] These are sometimes referred to as "boiler plate contracts", "contracts of adhesion", or "take it or leave it contracts". The terms often portrayed in fine print are drafted by, or on behalf of one party to the transaction, the party with the superior bargaining power who routinely engages in such transactions with few exceptions, the terms are not negotiable by the consumer discretion to structure and draft their agreement as they see fit. Such freedom is basic to contract law. Thus, individual's.[ii]A standard form contract is prepared by one party to be signed by the party with a weaker position, usually a consumer who has little choice about the terms.[iii] A contract should be formed by the mutual agreement of the parties who have almost total contract can be tailored to the mutual desire of the parties.[iv] Yet, in Standard Form Contract, the terms of contracts created or traded on exchanges are not decided by the parties with equal bargaining power. A party with the superior bargaining power draft these contracts and impose terms therein, benefitting him and him alone while the consumer has no choice than to contract. It can be said that Standard Form Contracts are not freely entered into; the so-called consent taken of the consumer is not and cannot be said his true consent or a true manifestation of consumer will.[v] This lack of consent to bargain and make a free choice, the unequal bargaining power between providers of goods and services and consumers, the insertion of exclusion and limiting terms in small unclear prints makes consumers to be vulnerable and hence the need for their protection.

Against this backdrop, we intend to examine in this paper the various standard form contracts and its impact on consumers in Cameroon.A Remarkable knowledge of this objective therefore, justify the *raison d'être* of this research paper.

BASIC PRINCIPLES OF STANDARD FORM CONTRACTS

In this head we intend to examine the basic principles of standard form contract. These principles include the following:

There must be consensus ad idem (Meeting of the mind)

In order to decide whether a contract exists, there must be an agreement between two or more parties.[vi] Agreement by consent, or meeting of the minds (consensus ad idem), is the foundation

of the contract.[vii] Therefore, if the minds of the parties do not meet, there is no valid contract. In Cinema City (Pty) Ltd v Morgenstern Family Estates (Pty) Ltd and Others,[viii]Jansen JA observed that "as the generally accepted view is that our law of contract is (save in exceptional cases) based on real consensus, it is fully consonant with basic principles that in matters of interpretation the common intention of the parties should prevail".[ix] The court ascertains whether or not the contracting parties have reached a real agreement.

It is not possible to consider what is actually going on in someone's mind. So, for there to be a contract, there must be evidence to prove that the minds of the parties have met. Wessel's points out that, "although the minds of the parties must come together, courts of law can only judge from external facts whether this has or has not occurred. In practice, therefore, it is the manifestation of their wills and not the unexpressed will which is of importance".[x] Therefore, if the parties record their agreement in a written document and sign it, this document will indicate what their intention is.

However, in most instances, SFCs do not require meeting of minds which shows an obvious deviation from the basic contract law principle of consensus ad idem[xi] as one author said, from many decades, the vast majority of transactions between firms and consumers had been executed via standard form contracts; it is well known that standard form contract depart from the paradigm of contract law in various conspicuous ways and some of these departures are assumed to pose serious problems to traditional analysis of contract law.[xii] One can say without gain saying that standard form contracts cannot be said to be contracts in a classical sense.

Principle of caveat subscriptor

The caveat subscriptor rule means "let the signer beware".[xiii] According to this rule, a party who signs a written contract is bound by the terms of that contract, even if he or she was unaware of the terms of the contract.[xiv] In *George v Fairmead (Pty) Ltd*,[xv] the court held that "when a man is asked to put his signature to a document he cannot fail to realize that he is called upon to signify, by doing so, he assents to whatever words appear above his signature".[xvi] Innes, CJ accepted that this condition was hard and onerous; but he pointed out that if people signed such conditions they had to be held to them, unless they could show that there was fraud involved.[xvii] Therefore individuals should take reasonable steps to ascertain the meaning of the contract before they sign the agreement.

Turpin points out that the reason why the signatory is bound is because he or she creates the impression in the mind of the other party that he or she is agreeing to the contract.[xviii] Therefore, the signatory is liable whether or not he or she read the document or knew of its contents[xix] and even though unable to read,[xx] or ignorant of the legal meaning of the document.[xxi] The effect of the caveat subscriptor rule is that "a party who has signed a standard form contract will be bound to all terms of that contract, no matter how onerous, unreasonable or unexpected such terms may be".[xxii] It is not easy for a person to rebut this principle.

There are exceptions to this general principle of caveat subscriptor.[xxiii] These exceptions include fraud, undue influence and duress and if the signatory can show that it is not reasonable for the other person to believe that he or she was agreeing to the contract. Nevertheless, it is not easy for a signatory to get out of a contract. The principle which underlies this is known as pacta sunt servanda.

THE IMPORTANCE OF STANDARD FORM CONTRACTS

In this head we intend to examine the significance of standard form contracts.

One of the chief advantages of using standard term in a contract is that it helps the business in the exact calculation and allocation of risks. The business enterprise may exclude its responsibility for these risks which otherwise may not be excluded. For example, by using standard terms in the contract, liability arising from a foreseeable contingency, i.e., strikes, fire, lockout, transportation, etc. can be excluded. It can readily be seen that insurance business realized this and they expressly provided such clauses in the contracts of business since the 16th century. These clauses, which were invented by the insurance business, later on were made use of in other lines of business.

In the opinion of Prof. F, Kessler the standard form contracts have become an important means of excluding or controlling 'irrational factors' in litigation and thus represent 'a true reflection of the spirit of our time with its hostility to irrational factors in the judicial process'

Standard form contracts safe time

Standard form contracts allow for detailed contracts to be finalised within the minimum of time and by lay persons who only need to negotiate the specifics such as price, description of goods and services and delivery times. Over a period of time, people become familiar with the

contracts because they are standard and may encourage a general understanding of trading practice. The work of insurers, carriers and bankers for example would become impossible and complicated if all the terms of every contract they made had to be newly settled for each transaction. Thus, by drafting standardized terms on all consumers of the same goods and services, they safe time to draft as many contracts as there are consumers of the same goods and services.

Standard form contracts reduce transaction costs

The consumer in non-standard form contracts would have to pay more as the transaction cost increases in non-standard form contracts. Such increased costs would lead to an increase in the prices of the products thus depriving many consumers the opportunity to enter into the transaction. Therefore, standard form contracts ensure an efficient delivery of mass-produced products and benefits the consumer.[xxiv] Though generally mass production can be characterised by high specialisation, division of labour, the production of large amounts of standardized products which require quality control. The result of this is that the products and services become expensive. Then to reduce the cost of transactions, the standard form contracts are the alternatives which are used to keep a check on the price of the product by incorporating the standard terms and conditions in the contract. In standard form contracts, there is no need to settle terms and conditions afresh for each contract, time is saved, money is saved and this is more beneficial to providers of goods and services.

Assure uniformity and quality of the transactions

Pre drawn terms are often better adapted to the special needs of the particular bargain as sales persons and consumers are either able and, in some cases, not permitted to set out their own terms and conditions.[xxv] This of course ensures uniformity and quality of the transactions conducted through standard contracts.

Help to determine risk

Standard form contracts can be used to determine in advance who is to bear the expenses of insuring against risk and they also facilitate the quotation of differential rates, for example where carriers‟ form provides for goods to be carried either at his or at the customer's risk and the charge is adjusted accordingly. Between the business men, bargaining at arm's length, such uses of standard forms can be perfectly legitimate and this may be true even where the party to whom the standard terms are presented is a private consumer who has or is likely to leave

insured against the loss which has occurred. Thus, Kessler wrote that "the standard clauses in insurance policies are the most striking illustrations of successful attempts on the part of business enterprises to select and control risks assumed under a contract. The insurance business probably deserves credit… for having first realised the full importance of the so called „juridical risk"…"[xxvi] In short; businesses standardize their risks and reduce bargaining costs by offering one set of terms to all consumers.[xxvii]

After analysing 'the advantages, i.e., one side of the picture we can see the other side, which requires close scrutiny. Standard form contracts are used by enterprises with strong bargaining position and they can engage lawyers to make contracts on their behalf. When only one party is free to draft the contract, it is natural to insert provisions favorable to him. It is also known that the other party is unfamiliar with the subject matter of a contract and not in a position to take advice before entering into the contract and, in particular, he is unlikely even to read its provisions4 and even if he reads, he is not in a position to seek better terms because either the party offering the contract has monopoly or all competitors offer the same terms. These terms are used against the other contracting party when any claim is made due to a default which occurs in the goods sold which are subject to a standard terms and condition. For example, an insurance policy which has been taken under the presumption that it will provide sufficient coverage but due to standard terms and conditions of which the insured might have adhered, he may be subjected to financial burden, which can change the course of his life. Similarly, warranties which restrict buyer's rights have far reaching effect on society. The buyer not only suffers from inability of enforcing his rights but the presence of such warranties also encourages manufacturers to prepare defective products which may result in injuries as well as personal loss[xxviii]

THE SPECIAL NATURE OR CHARACTERISTICS OF STANDARD FORM CONTRACTS

Standard form contracts (SFCs) have unique features which make them different from ordinary contracts. The problem presented by many of these contracts can be summed up as unequal bargaining power between the consumer and the corporate entity that uses them. Corporations use these contracts to have uniformity and efficiency by reducing the costs of negotiating with consumers on an individual basis. Consumers sign these types of contracts routinely usually

never reading, less much understanding the fine print they contain. The party with superior power, the corporate entity that drafts the contract can use the fine print coupled with the knowledge that the consumer rarely, if ever, reads the terms to take advantage of the unsuspecting consumer in the underlying transaction.[xxix]

Consumers always make purchases based on price and quality, but there are a number of other factors in the fine print of these transactions that merit consumer attention. These provisions may, and often do work against consumer interests. Though some say consumers can always walk with their feet or dollars and choose not to engage in these transactions, often, the consumer, having not read the fine print, is completely unaware of these provisions until the corporation tries to enforce them against the consumer.[xxx] Worse, often entire industries have contracts containing these unfair provisions, thereby leaving the consumer with no meaningful alternate choice. Even worst, businesses often reserve for themselves the right to modify or change the terms of the contract making comparison shopping, pointless if the contract or the prospective contract is always subject to change.[xxxi]

To add insult to injury, these contracts often contain forced arbitration, venue/or choice of law provisions. So, resolution of disputes no longer even take place in a public court room forum, but in a private business dominated industry of arbitrators, who are neither required to follow the rule of law, nor is subject to its oversight. Contract law and consumer's day in court has been "privatized" to a process whose outcomes are often unknown and unchallengeable.[xxxii]

The modern-day reality with the fine print in SFCs is that there is no mutuality of assent and there is also no time for or inclination by the consumer to read the terms, or even an ability to cross comparison shop those terms.[xxxiii] And even if the consumer did try to comparison shop, it would not do much good if the sellers can always change their terms and insulate their provisions from meaningful judicial review. This adds up to a fiction in the law of contracts and makes a mockery of the idea of consumer freedom in a free market.

The wide spread of standard form contract shows that although the use of standard form has the advantages of saving time, trouble and expenses in any bargaining over terms, its practice in market transactions have now become a major problem due to its characteristics.[xxxiv] The use of a standard form contract to disadvantage the weaker party is particularly the case in respect of those enterprises doing business with the customer: the terms and price are rigidly

laid down, and the only choice available to the individual consumer is whether or not to contract at all.[xxxv]

These characteristics can be grouped into two: those inherent to the consumer and those inherent to the provider of goods and services.

Characteristics inherent to the consumer

These are characteristics directly applicable to the consumer. They are the disadvantages of SFCs which consumers are bound to incur because of their position vis-a-vis the providers of goods and services.

Inequality of bargaining power

The formation of standard form contract is clearly shown as not been created based on equal bargaining power of each party. The practice of standard form contract nowadays does not suit the idea of an ideal competitive market place due to the footing of inequality of bargaining power of both parties. In the ideal competitive market place, buyers and sellers have equal bargaining power so that their decisions to buy and sell are freely without coercion or undue advantage.[xxxvi] However, the perfectly competitive market of economic theory has yet to exist. There are multiple imbalances between buyers and sellers in both information and ability to make choices and purchases. Thus, where the use of standard form contract is accompanied by inequality of bargaining power, there is a greater likelihood of them being used as instruments of economic pressure because their terms can be weighted in favour of the interest of the stronger parties who prepared them.[xxxvii]

This, Kessler[xxxviii] reiterates that standard form contracts are typically used by enterprises with strong bargaining power. The weaker party in need of the goods or services is frequently not in a position to shop around for better terms, either because the author of the standard contract has a monopoly or because all competitors use the same clauses. His contractual intention is but a subjection more or less voluntary to terms dictated by the stronger party, terms whose consequences are often understood only in a vague way if at all. [xxxix]The same concern was demonstrated by Donaldson J. in *Kenyon, Son & Craven Ltd v. Baxter Hoare & Co.* [xl]as follows; “if the exemption clause occurred in a printed form of contract between parties of unequal bargaining power, it would be socially most undesirable …”

Under the doctrine of unequal bargaining power, the courts will negate any contract where one party uses his superior bargaining power so as to extract an unfair contract from the other party. In the case of *Clifford Davis Management Ltd v. W.E.A Records*[xli], it was held that a party is seen to be exercising superior bargaining power if he can say "…if you want these goods or service, these are the only terms on which they are obtainable. Take it or leave it." The doctrine was successfully invoked in both Clifford Davis Case and in *Macaulay v. Schroeder Publishing Co. Ltd,* [xlii] where the contract, a complex legal document constructed by lawyers, was signed by the parties without it having been fully explained to them by their manager who stood in a peculiarly strong bargaining position vis-à-vis the songwriters was held to be contracted by parties with unequal bargaining power.

The point to be emphasised is that people regularly enter into standard form contracts without reading them whether the opportunity to bargain exist or not and it is due to this fact that onerous exculpation clauses for example are unfair, the offerees never knew that they were there. In fact, it is precisely with the question with the offeree's ability to read, understand and consent to the specific terms of a contract that the whole discussion on standard form contracts ought to begin: for this, and not bargaining power is the novel element that has been injected into the 20th century contract.[xliii]

The scenario presented by these contracts is that of a large and powerful offeror taking advantage of a small offeree by virtue of the fact that the latter is told to take it or leave it. The notion of bargaining power is an essential component of a freely entered contract and the powerful offeror of standard form contracts use their strength to prevent bargaining.[xliv]

Prepared in advance by one party on a 'take it or leave it' bases

The standard form contracts are contracts in standard form on a „take it or leave it" basis. This „take it or leave it" attitude places purchasers of goods and services in a difficult or unfavourable circumstance in which he either has to agree to the terms of the contract or forgo the product or service.

Realising the current dynamics of global market, parties to any contract cannot afford to waste time, money and effort negotiating details of ordinary transactions. In this context, the speed of transactions is more essential to make the market more efficient. Hence, parties with dominant position in market with profit-aimed target will come forward to draft terms and conditions of each contract to be used in their dealings.[xlv] This makes the standard form contract

well known as contracts prepared in advance by only one party who is often the organisation or the seller. In consumer transaction, consumer contracts are often prepared by or on behalf of suppliers of goods and services on "a take it, or leave it" bases.[xlvi] Such contracts are not arrived at through a process of negotiation between both parties but it is based on a „take it or leave it" basis. Negotiating each and every dealing will only defeat the purpose of its nature of saving and reducing costs and time of each party. [xlvii]

Lord Reid has expressed some worries in Suisse *Atlantique Societe d'Armament Maritime S.A v. NV Rotterdamsche Kolen Centrale* (infra) that exemption clauses differ greatly in many aspects probably the most objectionable are found in the complex standard conditions which are now so common. In the ordinary way, the customer has no time to read them and if he read them, he would probably not understand them. And if he did understand or object to any of them, he would generally be told he could take it or leave it. And if he went to another supplier, the result would be the same. Lord Denning M.R further expressed in George Mitchel v. Finney Lock Seeds Ltd[xlviii] that "the freedom was all on the side of the big concern…the big concern said „take it or leave it". The little man had no option but to take it."

It was large and monopolistic or quasi monopolistic companies (for example insurance companies) which fully exploited the benefits of the standard form contracts. The companies" monopolistic positions allowed them to offer a „take it or leave it" stance which could not be left because there was no second option available. Even in the absence of monopolistic situations, companies offered such similar terms that the offeree still had little choice but to accept the contract.[xlix]

The inclusion of choice of law provisions

SFCs will contain a choice of law provision that subjects the parties to a specific law or legal system be enforceable. An internationally accepted principle is that the parties to a contract have the autonomy to choose the law that governs their contract and the choice so made should be respected. The question then is whether the choice of law clause in SFCs that is provided by one party is a natural fruit of the autonomy of the parties.[l] According to Ehrenzweig, the party autonomy rule is inapplicable because SFCs did not result on equal bargaining power. Thus, in order to restore freedom of contract, rather than freedom to adhere, it is important to realize that whatever the status of the principle of party autonomy of the conflict of law of contracts in general, this principle has no place in the conflicts of law of SFCs.[li]

In Carnival Cruise Lines Inc. v. Shute[lii], the court took a position in favour of a forum selection clause in a SFC through a ticket. Although the court emphasized that forum selection clauses contained in form passage contracts were subject to judicial scrutiny for fundamental fairness. The court ruled that a non-negotiated forum selection clause in a form ticket contract is never enforceable simply because it is not the subject of bargaining. Instead, the court held that the forum selection clause in the form contract ticket was reasonable and enforceable.[liii]

Limited freedom of contract

SFCs are prepared by one party. This dictates that the concept of freedom of contract is no longer in practice. Where there is total freedom of contract, that is, freedom of a party to choose to enter into a contract on whatever terms he may consider advantageous to its interest or choose not to enter into a contract. But freedom of contract also refers to the idea that as a general rule, there should be no liability without consent embodied in a valid contract. This notion of freedom of contract was influential in narrowing the scope of those parts of the law of obligation which deal with liability imposed by law: tort and restitution. Today, the position of freedom of contract is seen as a reasonable social ideal only to the extent that equality of bargaining between contracting parties can be assumed, and no injury is done to the economic interest of the community at large. A contract must be voluntary in order to be valid in the eyes of the law as it was held that "a contract is essentially an agreement that is freely entered into on terms that are freely negotiated. If there is obligation… to enter into a form of agreement the terms of which are laid down, at any rate in their most important respects, there is no contract".[liv]

The doctrine of freedom of contract has two key aspects: that every person of majority of age and otherwise competent to contract is free to enter to a contract with any person he chooses and to contract on any terms he wants. It could also be said that a person has also the freedom to refuse to enter into a contract if either the terms of the contract or the party is not suitable to him. According to Aronstam, [lv] the pure doctrine of freedom of contract exists in four distinct senses which inter alia are the following:

- Each person should be free to negotiate the terms of their contract without legislative interference;

- Where a contract has been entered, the provisions of that contract should not be interfered with and should be given full legal effect;

- A person should be free to select the person with whom he contracts; and
- A person should be free not to contract

Although the above senses constitute the important element of freedom of contract as a basis in any contract formation, in reality, the practice of SFCs does not adopt freedom of contract as its characteristic.[lvi]The standardization of contract greatly restricts the freedom of the weaker party.[lvii]In standard form contracts particularly in consumer contracts, where the use of this type of contract is accompanied by inequality of bargaining power, there is a greater likelihood of their being used as instruments of economic operation because their terms can be weighted in favour of the interests of the stronger parties who prepares them. Consumers often have no freedom of choice but to accept all the terms prepared for them. In this context, freedom of choice as to the contractual terms has in many situations ceased to exist.[lviii]

The true indication of free entrance into a standard form contract is the offeree‟s opportunity to make an informed decision among alternative options. Thus, it is possible for a person freely to enter into a contract which has already been drawn up if the offeree had had the opportunity to read, understand and consent to its terms, or, if he so desired was able to read and compare other standard form contracts and choose the one that gave him the best deal.[lix]

Small print

Standard form contracts are commonly used in small print. The derogatory phrase of „small print‟ describes the most common and familiar use of standard terms, which is where a business produces its own standard terms and tries to incorporate them into all of its business transactions or in its dealings with consumers.[lx] It is undeniable that most standard form of consumer contracts are using small print which, as one of its characteristics, the use of it gives perception that the effect of the small print is to undermine or even to contradict the terms expressly agreed between them.[lxi]

Mostly, the terms and conditions in standard form contracts are in small print and written in such language and style often seems irrelevant and unnecessary to a person. The prospect of an individual finding any useful or important information from reading such terms is very low and even if such information is discovered, the individual is in no position to bargain. Very often, large amount of time is needed to read the terms, the expected payoff from reading the contract is low and few people would be expected to read it. Access to the full terms may be difficult or impossible before acceptance; the consumer is told that the rest of the terms are in

another location. This reduces the likelihood of the terms being read and, in some situations, such as contracts through the internet; the terms of the contract can only be read after they have been notionally accepted by purchasing the goods or services.

CHARACTERISTICS INHERENT TO THE PROVIDERS OF GOODS AND SERVICES

Inexperienced consumers might fail to realise the efficiencies of standard terms, but experienced consumers know that much allocations allow them to keep prices low.[lxii] Despite of the disadvantages in standard form contracts, these contracts undeniably have several advantages to traders engaging numerous transactions. First, SFCs save cost of individual drafting and hence time and money. Second, the standard form contracts have been used to exploit economic advantage [lxiii]as Kessler puts it; standardized contracts have also been to control and regulate the distribution of goods from producers all the way down to the ultimate consumer. [lxiv]They have become one of the main devices to build up and strengthen industrial empires. In so far as the reduction costs of production and distribution thus achieved is reflected in reduced prices, society as a whole ultimately benefits from the use of standard form contracts.[lxv]

The uniformity of terms of contracts typically recurring in a business enterprise is an important factor in the exact calculation of risks. Thanks to standard form contract, risks which are difficult to calculate can be excluded all together. Unforeseeable contingences affecting performance such as strikes; fire and transportation difficulties can be taken care of.[lxvi] The standard clauses in insurance policies are the most striking illustrations of successful attempt on the part of business enterprises to select and control risk assumed under a contract. In so far as the reduction of costs of production and distribution thus achieved is reflected in reduced prices, society as a whole ultimately benefits from the use of standard form contracts. And there can be no doubt that this has been the case to a considerable extent.[lxvii] These advantages can be grouped under the following headings.

CONCLUSION AND RECOMMENDATIONS

It has been shown that SFCs are beneficial to manufacturers than consumers; the advantages presented by these contracts are advantageous only to the party who drafted the standard terms while the disadvantages of these contracts are disadvantageous only to the vulnerable consumer. Thus, the nexus between SFCs and consumer protection lies within the characteristics of SFCs which makes them special types of contracts different from ordinary contracts. The most common of these characteristics is the unequal bargaining power between the companies that draft these contracts and the consumers. This inequality which makes consumers vulnerable is the need for their protection. The vulnerability of consumers in SFCs can be summarised thus; the consumer is the king of the market but up to the time he did not enter into SFCs. His position is same as of a lion in the jungle, but after word, when he enters into SFCs, he finds himself in a peculiar situation, entangled in the tentacles of terms and conditions which are there in tandem in the contract, and in the cobweb of intrigues made by the supplier of the goods and services. Then, he becomes a lion in the cage of ringmaster; he has no option but to dance to the tunes of the supplier.

Consumers in Cameroon need judicial and legislative protection from exclusion and limiting terms in standard form contracts. There need to be valid rules governing standard form contracts in Cameroon which will protect all consumers. In constructing such rules, the courts must consider both the necessity of SFCs and their possible dangers. For greater consumer protection, the courts should go beyond the concepts of reasonable notice to the reasonableness of the clause itself, beyond reasonable expectations and unconscionability. Before binding consumers to a clause in SFCs, the courts should require a proof of actual and not constructive notice.

Legislatively, both the CIMA Code, the 2011 Framework law on Consumer Protection and CO.B.A.C laws be amended to solve the afore mentioned weaknesses. Article 5(2) of the 2011 Framework Law on Consumer Protection should be amended by making it mandatory for courts to annul unreasonable terms in contracts that exclude or limit liability for defects caused to consumers. Article 2 of the Framework law should include definitions of unjust, unfair, unreasonable and oppressive contractual terms. A provision which obliges providers of goods and services to explain the terms of the contract to consumers should be included in the Law. Furthermore, the control of unfair, restrictive and anti-competitive business practices should

not leave to the courts alone but should also extend to consumer associations and the Centralised and decentralised services of the Ministries of Trade and Justice. Article 7 of the 2011 Framework Law should also be amended with the aim of streamlining conditions in which consumers should return goods after the signature or execution of the contract. Particularly the 14 days "time frame should be reduced while taking into consideration perishable goods.

ENDNOTES

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