A CRITICAL EXAMINATION OF
EXCLUSION OR LIMITING CLAUSES IN NIGERIA CONTRACT LAW

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GOU/U21/LAW/385

A LONG ESSAY PRESENTED TO THE FACULTY OF LAW, GODFREY OKOYE UNIVERSITY, ENUGU STATE, IN PARTIAL FULFILMENT OF THE REQUIREMENTS FOR THE AWARD OF THE DEGREE OF BACHELOR OF LAW (LL. B) OF GODFREY OKOYE UNIVERSITY.

JULY, 2026.

DECLARATION

I, John Obinna Maxwell, with registration number GOU/U21/LAW/385 do hereby confirms that this study was thoroughly and conscientiously carried out by me in the Faculty of Law, Godfrey Okoye University, Enugu.

The preliminary resources used to carry out this legal study, have been duly recognized and correctly referenced in this project, within this project. I affirm that this work is my original research and has not been submitted in part or in full for any other qualification or for the award of any degree in this or any other Faculty of Law within and outside Nigeria.

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CERTIFICATION

I, John Obinna Maxwell, with registration number GOU/U21/LAW/385 do hereby affirm that this thesis research was done by me, with the direct and diligent supervision of Doctor Keneth Ajibo, has been approved by the administrative and academic staff of the Faculty of Law, Godfrey Okoye University, Enugu. In partial fulfilment of the requirement for the award of Bachelor of Law (LL. B) Degree.

I affirm that this work is my original research and has not been submitted in part or in full for any other qualification or for the award of any degree in this or any other Faculty of Law within and outside Nigeria.

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External Examiner **Date**

DEDICATION

I first and foremost dedicate this research work to God Almighty, who has not only been my inspiration but also my strength throughout the period of writing. To my grandmother, the visionary, who envisage this vision on my behalf long before I took this bold step to embark on the journey of legal pursuit.

This work is dedicated to dad for all his struggles and unwavering support to my legal pursuits to ensure I become his first lawyer.

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To my friends in University, Johnpaul, Chibundu, Maxwell, Chukwuma, Excel, Bembe, Olaedo, Chiamaka, Hadassah, Glory, to name a few. You all have impacted in my life in one way or another and I will never forget the lessons. To my colleagues in the LAWSA mootcourt, thank you all for teaching me how to be a leader. To my roommates, the brothers I made on campus, Johnpaul (my best roommate), Chiagozie, Chibundu, Michael, David, Solomon and Charles I pray our bond stands the test of time. Thank you for being there all through this odious journey.

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LIST OF ABBREVIATION

ACBJ - Awka Capital Bar Journal

CAMA - Companies and Allied Matters Act

FCCPA - Federal Competition and Consumer Protection Act

FCCPC - Federal Competition and Consumer Protection Commission

LFN - Laws of the Federation of Nigeria

n.a. - not applicable

NALT - Nigerian Academic Legal Text (formatting guideline)

NWLR - Nigerian Weekly Law Reports

SC - Supreme Court

SI - Statutory Instrument

UCTA - Unfair Contract Terms Act

UNCLOS - United Nations Convention on the Law of the Sea

UTCCR - Unfair Terms in Consumer Contract Regulations

ABSTRACT

Exclusion and limitation clauses are now frequently included in modern contractual agreements. By limiting or eliminating liability resulting from negligence, breach of contract, or any other obligation, these are designed to divide risk among the contracting parties. Despite the advantages they offer in terms of guaranteeing commercial certainty and facilitating business transactions, their application is frequently rife with issues of fairness, particularly when there is disparity in the parties' negotiating positions. The functioning and enforcement of exclusion and limitation clauses in Nigerian law will be examined in this essay. The paper aims to critically examine the ways in which exclusion and limitation clauses are employed in contracts, their impact on contractual relations in Nigeria and the stance of courts in the interpretation of such clauses particularly where there is a fundamental breach of contract. The paper will use the doctrinal method of research, using primary and secondary sources. The author also employs a comparative method in analysing the legal regimes of exclusion clauses in countries such as the United Kingdom and South Africa. According to the analysis, exclusion and limitation clauses are typically upheld by Nigerian courts if they are properly included in the contract, written correctly, and do not conflict with public policy. The court considers criteria such as notice, rigorous construction, and contra proferentem to avoid misuse of these terms. The study also shows that Nigeria lacks a distinct legal framework that governs exclusion and restriction clauses, despite the Federal Competition and Consumer Protection Act 2018 providing some protection against unfair contractual conditions. As a result, the courts' interpretation plays a significant role in how certain clauses are regulated. The conclusion is that exclusion and limitation clauses which have legitimate purposes in business transactions may be abused to cause injustice, especially to consumers and weaker contracting parties. The paper suggests the enactment of comprehensive legislation governing these clauses, enhanced protection of consumers, tighter judicial control over their interpretation and giving greater weight to public policy in the interpretation of the contractual terms. These reforms will promote contractual justice and increase confidence in the contractual and commercial law of Nigeria.

CHAPTER ONE
Introduction
1.1 Background to the study

“Exclusion Clause” according to “Black’s Law Dictionary” is a contract term that excuses or exempts a party from liability under some circumstances. It is a sales-contract provision that limits the remedies available to a party if another party breaches the contract[1].

While “Limition Clause” according to “Black’s Law Dictionary” means a contract term that restricts the rights of the parties, especially for the types of remedies or damages available.[2]

An exemption clause may be a perfectly legitimate device in contracts between parties of equal bargaining power. But where such parties are of unequal bargaining power such might cause a level of injustice. This is evident in standard form contracts where the contracts are already made in printed forms, which are premade by powerful monopolistic business organizations which are given to those they contract with to acquiesce to. These kinds of contract are predominant in the field of Insurance, Hire-purchase, Air travel, Carriage of Goods by air, sea or railway, Laundering, Automatic sale of goods (Vending machine). This type of contract are most times referred to as “contracts of adhesion”.[3]

Contract law recognizes that parties to a contract are free to exclude or limit the obligations which are imposed upon them by the transaction.The instrument used by parties in achieving this is called the “exemption clause”. This clause is a term in contract which seek to exhonerate or exclude one of the parties from liability in the contract under certain circumstances. Sometimes, the term does not wholly exempt or exclude the parties from liability but merely limits the scope of the liability, this is called the “limiting clause” in contract.[4]

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[1] B.A Garner (ed.11th), Black’s Law Dictionary, (St. Paul Minnesota, Thomson Reuters) 2019 Eleventh Edition, p. 686
[2] Garner (n 1) p 1070.
[3] I.E Sagay, *Nigerian Law of Contract* (Sweet & Maxwell, Londochn, 1985)
[4] E.O Ezike, *Nigeria Contract Law* (LexisNexis 2015) p.135

This access the unequal bargaining powers between the monopolistic businesses who indirectly imposed unfair contract terms to their contracting clients, consumers or customers and intend to hide behind the protection of the law and rely on the principle of fair contract when there is a breach to totally exculpate themselves form liability or reduce their liability which is detrimental to the contracting clients, consumers or customers.

The importance of this study is to provide a framework for managing and allocating risk in contract, enhance commercial certainty for businesses, and highlight the crucial need for legal protection againt unfair contractual terms praticularly imposed against the consumers which some Acts and laws are promogated to protect [5]

The terms of contract used in a particular trade or the trade of a particular product or service will usually be the same. One positive object of form of contract is its time effectiveness which eliminates the time needed in drafting various contracts for various parties. 'The work of insurers, carriers and banks, for example, would become impossibly complicated if all the terms of every contract they made had to be newly settled for each transaction.'[6]

In addition to the contract, treaties and laws[7] may provide for limitations of damages against which the courts will hesitate to award damages exceeding provisions of the law. This in ,[8]

For travel to and from Canada, a Nigerian student bought a round-trip plane ticket. But the airline unjustly denied her access to the return aircraft when she tried to return to Nigeria. As a result, she filed a lawsuit to recover damages for the price of a substitute ticket, lodging costs, and other losses brought on by the airline's actions, such as the loss of her original return ticket. The Court of Appeal, which held that punitive, exemplary, or other non-compensatory damages are not recoverable under the Montreal Convention unless the claimant proves that the airline's

[5] Federal Competition & Consumer Protection Act 2018, United Kingdom and the Unfair Contract Term Act 1977, South Africa and the Consumer Protection Act 2008.

[6] E. Peel, G.H Treitel: *The Law of Contract* (12th edn, Sweet and Maxwell 2007) p. 238

[7]Convention for the Unification of Certain Rules for International Carriage by Air (the Montreal Convention)1999, art 29 as domesticated by the Nigerian Civil Aviation Act 2006, s 48(1)

[8] [2014] 9 NWLR (Pt 1413) 506-550

actions amounted to wilful misconduct, reduced the majority of the damages granted by the Federal High Court on appeal.

Standard form contracts are frequently used in modern business transactions in industries like banking, insurance, telecommunications, transportation, healthcare, and hospitality services.[9] There is typically little to no opportunity for bargaining because 'these contracts are written by the stronger party and offered to customers on a take-it-or-leave-it basis, because of this, exclusion and limitation clauses are often used to reduce or eliminate liability, even where damage is the consequence of carelessness or a breach of contract as Nigeria lacks a thorough legislative framework devoted to the regulation of exclusion and limitation clauses, in contrast to countries like the United Kingdom that have passed specific laws to control unfair exclusion clauses, such as the Unfair Contract Terms Act 1977 and the Consumer Rights Act 2015.'[10] Common law principles, judicial interpretation, and a small number of statutory laws are the main sources of regulation in Nigeria. The Federal Competition and Consumer Protection Act of 2018 does not fully handle all issues pertaining to exclusion clauses in commercial relationships, despite the fact that sections 120, 122, and 127 offer protection against unfair, unjust, and unreasonable contractual terms.

The topic of exclusion and limitation clauses has thus become a crucial field of legal research due to the increasing reliance on standard form contracts and the lack of comprehensive statutory control. This paper looks at how judges view these clauses, the practical difficulties in applying them in Nigeria, and the need for a more thorough legislative framework that would support consumer protection, justice, and predictability in contractual agreements.[11]

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[9] UpCounsel, 'Standard Form Contracts: Everything You Need to Know' < https://www.upcounsel.com/standard-form-contracts> accessed 15th June 2026

[10] A. Afolabi, H.A Bagudu and S.C Nzenwa, Comparative Analysis of The Enforcement of Fair and Unfair Contract Terms Under The Nigerian Federal Competition and Consumer Protection Act (Fccpa) 2018, {Awka Capital Bar Journal (ACBJ) Vol. 4 Issue 1 (2025)} <https://journals.ezenwaohaetorc.org/index.php/ACBJ/article/viewFile/3537/3668> accessed 15th June 2026

[11] I.R Osu, A Critical Analysis on "Exlusion and Limitation Clauses" in Commercial Contracts, (Osun State University, College of Law, Ifetedo 2025) <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5776502> accessed 15th June 2026

1.2 Statement of the Problem

Exclusion and limiting clauses have advantages and disadvantages in Nigerian contract law. This paper annalizes the complexities surrounding the exclusion and limitations of clauses in contract agreements. The problem is mainly caused by the imbalance of bargaining power between contracting parties, the ambiguity of drafting, and the distribution of risks among contracting parties. Usually, the stronger party imposes these clauses on the weaker party. Thus, there is little room for disagreement in the contract between the parties with unequal bargaining powers.[12] The exclusion or limitation of certain clauses that are so fundamental to the contract's sole purpose that the court would impose on the weaker party, who may or may not have voluntarily consented to them, is an act of injustice against the said party. It is critical that these concerns be addressed. It would ensure that exclusionary and limiting clauses in a contract are used effectively against the weaker party in order to ensure a fair agreement between both contracting parties. The majority of the time, exclusion or limiting clauses are added to contracts without the knowledge or consent of the party they are intended to be enforced against. An exclusion or limiting clause that was drafted incorrectly or improperly would be interpreted harshly against the party that offered it.[13] Furthermore, the inclusion of exclusion or limiting clauses in a contract may deter individuals from signing such agreements. There are advantages and disadvantages to exclusion and limiting clauses in Nigerian contract law. The complicated issues present in the exclusion and limitations of clauses in contract agreements are examined in this paper. The core problem originates from the act of imbalance of bargaining power among contracting parties, the ambiguity in drafting, and the risk dissemination among contracting parties. These clauses are mostly imposed into the contract

[12] O.C Oluwafunmilayo, Unconscionable Contract/Bargain in the Law Of Contract and in Man's Day-To-Day Operations, (Bilal Legal Nugget, 2023) <https://medium.com/@bilallegalnuggetgmail.com/57-unconscionable-contract-bargain-in-the-law-of-contract-and-in-mans-day-to-day-operations-ce02afae6d65> accessed 15th June 2026

[13] Learn Nigerian Law, 'Exclusion Clauses and Limiting Terms'< https://www.learnnigerianlaw.com/learn/contract-law/exclusion-clauses> accessed 15th June 2026

by the stronger party against the weaker party without room to dissent in the contract between the said parties of unequal bargaining powers.[14] The exclusion or limitation of certain clauses that are so fundamental to the sole purpose of the contract, which the court would impose against the weaker party who may or may not have consented to it voluntarily, is an act of injustice against the said party. It is imperative that these issues be addressed. It would guarantee the efficient use of exclusionary and limiting clauses against the weaker party in a contract to ensure a just agreement between both contracting parties.

Exclusion or limiting clauses are mostly incorporated into a contract without the consent or knowledge of the party against whom the clause is to be enforced on. The wrong or improper drafting of an exclusion or limiting clause would be interpreted stringently against the party that proffered it. Additionally, the use of exclusion or limiting clauses in a contract could discourage people from entering contracts where there are exclusion or limiting clauses.[15]

1.3 Research Questions

This study seeks to investigate the following:

1. What are the methods through which contractual clauses are properly incorporated into a contract.
2. What is the impact of using examption and limiting clauses in Nigeria contract law
3. What rule of interpretation of exclusion or limiting clauses with regards to fundamental breach in contract in Nigeria?

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[14] M. Helveston and M. Jacobs, 'The Incoherent Role of Bargaining Power in Contract Law', <https://www.wakeforestlawreview.com/wp-content/uploads/2025/11/49WakeForestLRev1017.pdf> accessed 15th June 2026

[15] A. M. Khawaldeh, A. M Masadeh and H.M Aldarawsheh, 'The Weaker Party in the Contractual Relationship, (Vol. 20 No. 1 (2024): Volume 20, Issue 1 (2024)) < https://jhumansecurity.com/menuscript/index.php/jhe/article/view/199> accesss 15th June 2026

1.4 Aim and Objectives of the Study

The aim of this study is to provide a comprehensive understanding of how parties distribute and manage contractual risks while also recognising the judicial and legal safeguards against power abuse, especially against consumers.

The objectives of this study are as follows:

1. To critically analyze how contracts that have exclusion or limiting clauses incorporated in them can be considered valid and enforceable by the courts.
2. To examine the effect of incorporating exclusion and limiting clauses in a contract agreement in Nigeria.
3. To unravel the procedure taken by court in the interpretation of a fundamental breach of a contract with exclusion or limiting clauses inculpurated in them.

1.5 Scope and Limitations of the Study

The scope of this research is the operation, enforceability and legal implications of exclusion and limiting clauses in the Nigerian contract law. It analyses the statutory and judicial approaches to the regulation of such clauses with particular reference to the Contract Law principles, the Nigerian Consumer Protection Framework, the Unfair Contract Terms provisions and relevant case law from superior courts of record. The study focuses on the protection of the weaker contractual party, the extent to which parties can validly exclude or limit liability and the interpretation of exclusion or limiting clauses by the Nigerian courts. The study employs a comparative methodology, drawing inspiration from major foreign jurisdictions such as the United Kingdom and a number of common-law countries which have influenced Nigerian jurisprudence with their contract law concepts, to provide a comprehensive doctrinal analysis.[16]

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[16] For instance, In the United Kingdom, unfair contract terms are regulated by the Unfair Contract Terms Act 1977 (UCTA) and the Unfair Terms in Consumer Contract Regulation 1999, SI 1999/2083 (UTCCR) which implements the European Union Directive on Unfair Terms in Consumer Contracts 93/13/EEC; In the republic

The comparative approach will be useful in identifying international best practices that can contribute to achieving greater equality and openness in Nigerian contractual dealings. The exclusion clauses in modern business practices such as electronic contracts and online consumer transactions will be considered. This will help in establishing the influence of modern-day business developments on the development and application of exclusion clauses in Nigerian contract law.[17]

There were certain limitations to the research process. Firstly, the restrictions of confidentiality and other institutional regulations made it difficult for the researcher to have access to several legal documents that would help the research, such as exclusive contracts for businesses, unpublished judgments, and arbitration awards that were not publicized. Such a limitation made it hard to use a wider number of empirical cases that could have improved the research process. The methodological problem arose from the fact that there were differences in the interpretation of law in Nigerian courts. It was also harder to synthesize and analyze data, as there were conflicting sources on the issue of enforcing the exclusion clauses. As a result, rather than a thorough sector-specific analysis, more focus was placed on fundamental doctrinal concerns and publicly available judicial rulings. Technological advancements are changing quickly, particularly in the drafting of digital contracts, electronic terms and conditions, and automated commercial agreements—are rapidly evolving. Even though the study makes an effort to address pertinent current topics, it was not feasible to address every new commercial and technological development that affects exclusion clauses.

of South Africa, Part G of Chapter 2 of the Consumer Protection Act, 2008; In the USA, Uniform Commercial Code, The German Standard Terms Statute of 1976; in Japan, The Consumer Contract Act, 2001, etc.

[17] I. Ilobinso, Protecting Consumers in the Online Market from Unfair Contract Terms: The Nigerian Perspective, (Nigerian Journal of Contemporary Law, Vol. 14, No. 1, 2018). <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3266439> accessed 15th June 2026

Lastly, the researcher's experience level and the scarcity of specialised contract-drafting resources had an impact on the study. These limitations may have impacted the study's depth in some technical areas, but they did not compromise the study's quality.

1.6 Significance of the study

Examining exemption and restriction clauses in Nigerian contract law are extremely important, especially in a business setting where power imbalances remain common. Sometimes at the expense of weaker contracting parties or customers, these clauses act as a means for economically or structurally stronger parties to incorporate terms that safeguard their interests. These weaker parties frequently have little to no genuine freedom to negotiate the conditions and are forced to accept the contract on a take-it-or-leave-it basis. As a result, a thorough analysis of these provisions becomes crucial to revealing any abuses and guaranteeing equity in contractual transactions.[18]

Furthermore, this research is critical to fostering clarity and certainty in contractual clauses. Exemption and limitation clauses are critical in outlining the scope of each party's obligations and the level of responsibility that may emerge in the event of a breach.[19] By examining how these clauses work, the study sheds light on the limits of contractual liability, particularly in cases of negligence and honest misrepresentation, or fundamental breach. Furthermore, knowing the judicial attitude towards exemption clauses, particularly the interpretative principles and legislative limitations adopted by Nigerian courts, sheds light on how the law combines contract freedom with consumer protection and public policy issues.[20] Overall, this study contributes to a better understanding of how exemption and limitation clauses function

[18] Khawaldeh, (n15) accessed 15th June 2026
[19]O. Asheychik, What are exemption clauses in contracts?, (PandaDoc Blog Nov 24, 2025) < https://www.pandadoc.com/blog/exemption-clauses/> accessed 15th June 2026
[20] I. Oluwosulu, 'Freedom of Contract, Exclusion Clauses and The Prohibition of Unfair, Unreasonable or Unjust Contract Terms Under The FCCPA'. (7 Nov, 2024) <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4982756> accessed 15th June 2026

within the larger context of Nigerian contract law, emphasising the need of openness, justice, and accountability in contractual arrangements.

1.7 Research Methodology

The present study used a doctrinal method in conjunction with an analytical and descriptive writing/research style to undertake a thorough investigation of pertinent primary and secondary sources.

Secondary sources included papers, journals, textbooks, and internet resources, while primary sources included legislation, case laws, and pertinent court rulings.

1.8 Literature Review

The notion, application, and impact of exclusion or limiting clauses in Nigerian contract law have been studied by a number of jurists, academics, and legal commentators. This research examines and evaluates pertinent academic viewpoints, court rulings, and legislative advancements on the area. Okonkwo and Ezejiofor examined exclusion and limitation clauses within the broader framework of freedom of contract.[21] They maintained that, as long as such provisions are included in the contract and made known to the other party, parties are normally free to divide risks as they see proper. They underlined that Nigerian courts have historically upheld the integrity of contracts and will uphold exclusion clauses in cases where the parties' intentions are evident. They did point out, though, that when such clauses are used unfairly or were imposed by unequal bargaining power, courts have been hesitant to uphold them.

Anson examined exclusionary clauses as contractual provisions intended to release one party from obligation resulting from a breach or carelessness. His writings have affected Nigerian contract jurisprudence.[22] He emphasised that such sections must be properly incorporated, constructed, and consistent with public policy in order to be effective. These standards are used

[21] C. O. Okonkwo, and G.Ezejiofor, *Cases and Materials on Nigerian Contract Law* (2nd edn, University of Ife Press Ltd 1986).
[22] W. R. Anson, Anson's Law of Contract (28th edn, Oxford University Press 2002).

by Nigerian courts to evaluate the legality of exclusion provisions, based on English common law principles. Additionally, he contended that uncertainty in exclusion clauses is typically interpreted against the party attempting to rely on them.

Sagay investigated Nigerian courts' views on exclusion clauses, especially in business contracts. He noted that although courts typically take a protective stance in contracts involving consumers or weaker parties, they maintain exclusion clauses at arm's length commercial transactions[23]. He emphasised that courts use the doctrine of contra proferentem as a crucial interpretive tool to limit the application of exclusion clauses written in ambiguous or coercive language.

Ogunye talked about fundamental violations and negligence in relation to exclusion clauses. [24]He pointed out that Nigerian courts no longer see fundamental violation as an automatic impediment to the execution of exclusion clauses, adopting the English stance in cases like *Photo Production Ltd. v. Securicor.*[25] Rather, the emphasis is now on the parties' intentions as stated in the contract. He maintained that while this strategy increases commercial certainty, if it is not properly regulated, it could expose weaker parties to unfavourable contractual terms.

Nwankwo examined how exclusion provisions are incorporated into standard form contracts. He noted that, frequently without the other party's awareness, exclusion provisions are incorporated into tickets, receipts, and online contracts in Nigeria.[26] He contended that in response, courts have mandated that reasonable notice be given prior to the enforcement of such terms. He claims that the clause is rendered ineffective if the impacted party is not made aware of it.

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[23] Sagay (n 3) p.

[24] J. O Ogunye, Introduction to Nigerian Contract Law (MIJ Professional Publishers 2013).

[25] (1980) AC 827

[26] P.F.U Nwankwo, 'Terms and Conditions Apply: The World of Exclusion Clauses in Contracts' (2024) Chukwuemeka Odumegwu Ojukwu University Law Journal, p. 15 < https://www.nigerianjournalsonline.com/index.php/COOULJ/article/view/2416?utm_source=chatgpt.com> accessed 16th June 2026

Asein looked at limitation and exclusion clauses in relation to government involvement. He pointed out that there is little statutory supervision over unfair contract conditions and that Nigerian contract law still primarily relies on common law principles[27]. Nigeria mainly relies on judicial discretion, in contrast to countries with consumer protection laws that limit exclusion clauses. He promoted legal changes to control exclusion clauses, especially in contracts pertaining to employment and consumers.

Odike focused on public policy and illegality as limitations on exclusion clauses. He argued that clauses seeking to exclude liability for fraud, wilful misconduct, or gross negligence are generally unenforceable as they offend public policy[28]. Nigerian courts, he noted, have consistently refused to enforce exclusion clauses that undermine justice or encourage wrongdoing.

Elias studied the origins of exclusion clauses in English common law and their historical evolution in Nigerian law. He highlighted how Nigerian judicial reasoning on exclusion clauses has been greatly influenced by the acceptance of English law[29]. He did, however, contend that Nigerian courts must modify these ideas to fit local circumstances, particularly in light of socioeconomic inequality and literacy rates.

Uwaifo examined how Nigerian case law interpreted exclusion clauses. He said that when reading exclusion provisions, courts frequently take a harsh stance, particularly in cases involving negligence[30]. He emphasised that a phrase must either address negligence or use language broad enough to embrace it in order to exclude it. Clauses that are unclear are interpreted to favour the party requesting relief.

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[27] J. O Asein, *Introduction to Nigerian Legal System* (2nd edn, Ababa Press Ltd 2010).

[28] E. I Odike, 'Public Policy and the Enforcement of Exclusion Clauses in Nigeria' (2014) University of Benin Law Journal, , p. 89

[29] T. O Elias, *The Nigerian Legal System* (Routledge & Kegan Paul, 1963).

[30] S. O Uwaifo, 'Judicial Interpretation of Exclusion Clauses in Nigerian Contract Law' (1997) Benin Journal of Public Law, p. 45

It is clear from the examined literature that Nigerian contract law still heavily relies on exclusion or limitation clauses. Courts impose restrictions using concepts including contra proferentem, reasonable notice, public policy, and legislative interpretation, even though they typically sustain such terms based on freedom of contract. Additionally, the literature shows that there is an increasing demand for legislative action to control discriminatory exclusion clauses, especially in contracts where there is unequal negotiating power.

Scholars have argued that the widespread use of exclusion and limitation clauses has facilitated 'the ability of dominant contracting parties to shield themselves from liability at the expense of weaker parties. This problem is particularly evident in standard form contracts, where consumers are compelled to accept pre-drafted terms without negotiation.' The inadequacy of existing statutory regulation and the absence of comprehensive legislation specifically addressing unfair contractual terms have further exacerbated the injustice occasioned by such contractual arrangements.[31]

[31] F.O Ukwueze, "Unfair Terms in Consumer Contracts in Nigeria: The Need for Stricter Statutory Control" (2007 p. 41). < https://www.researchgate.net/publication/277542266_Unfair_Terms_in_Consumer_Contracts_in_Nigeria_The_Need_for_Stricter_Statutory_Control?utm_source=chatgpt.com> accessed 16th June 2026

CHAPTER TWO

Conceptual and Theoretical Framework

2.1 Conceptual framework

A short explanation of the project's main idea will help people understand it better. The following words and ideas are the ones that this book uses the most.

2.1.1 Meaning & Historical development of Contract Law

Understanding the meanings of contract will be crucial to understanding this study. The topics covered by the project are many and include, among others, contract, exclusion, limitation and clauses.

'A contract is an agreement that specifies certain legally enforceable rights and obligations pertaining to two or more parties.[1] The definition of contract according to Black's Law Dictionary is that a contract is"an agreement between two or more parties creating obligations that are enforceable or otherwise recognizable at law. "It further explains that a contract consists of a promise or set of promises for the breach of which the law gives a remedy, or the performance of which the law in some way recognises as a duty.'[32]

In the Nigerian context, the learned Justice Nikki Tobi J.C.A defined contract in *Orient Bank (Nig.) Plc v. Bilante Int'l Ltd.*[33] as "an agreement between two or more persons which creates reciprocal legal obligations to do or not to do a particular thing"

In similar vein, Anson defines a contract as: "a legally binding agreement under which rights are acquired by one or more persons to acts or forbearances on the part of the other or others".[34] This definition emphasises the creation of reciprocal rights and obligations arising from the agreement of the parties.

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[32] Garner (n 1) p. 389

[33] [1997] 8 NWLR (Pt. 515) 37

[34] J. Beatson, A. Burrows and J. Cartwright, *Anson's Law of Contrac*t, (Oxford, Oxford University Press, 2016) p.2

According to Chitty on Contracts, a contract is "a legally enforceable agreement made between two or more persons by which rights are conferred and obligations imposed"

The learned author stresses that enforceability at law is what distinguishes a contract from a mere agreement.[35]

Prof. Itsejuwa Sagay defines a contract as "an agreement which the law will enforce, entered into by two or more parties with the intention of creating legal relations". [36] The learned author highlights intention to create legal relations as a fundamental element in determining whether parties have entered into a binding agreement Most people agree that not every agreement is a contract. For an agreement to become a contract, it must have certain important parts, such as an offer, acceptance, consideration, an intention to create legal relations, capacity, and a legal purpose. In a broad sense, these parts work together to turn private agreements into obligations that can be enforced by law.

In *BFI Group Corporation v. BPE,*[37] the Supreme Court held that a contract is "an agreement between two or more parties which creates reciprocal legal obligations enforceable by law."

The court further stated that parties are bound by the terms freely entered into.

Similarly, in *Orient Bank (Nig.) Plc v. Bilante Int'l Ltd.,,*[38] the court defined a contract as a 'voluntary agreement creating legal relations between parties with enforceable obligations and emphasized that once the elements of contract are present, the court will give effect to the intention of the parties.'

The social, commercial, and economic demands of society led to the gradual evolution of contract law rather than its full development. English common law, equity, and mercantile customs are the historical foundations of contract law. These elements subsequently found their way into Nigerian law through colonization and reception statutes. Therefore, the historical

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[35] H. Beale (ed.), *Chitty on Contract*s, (London, Sweet & Maxwell) 2021, p. 3
[36] Sagay (n 3), p. 1
[37] (2012) 18 NWLR (Pt.1332) 209 at 247
[38] (1997) 8 NWLR (Pt.515) 37 at 77

development of English law and its subsequent adaptation to local circumstances are inextricably linked to the evolution of contract law in Nigeria.

Early English society used strict forms of action like debt, covenant, and assumpsit to enforce obligations rather than the contemporary idea of a contract. In common law, a covenant only applied to agreements that were sealed, whereas a debt action was used to recover a fixed amount. These solutions, however, were constrained and frequently fell short of the demands of an expanding commercial society. Due to the shortcomings of these measures, assumpsit emerged, which eventually became the cornerstone of contemporary contract law by acknowledging informal commitments backed by consideration.[39]

English courts had solidified the concepts of offer, acceptance, consideration, and intention to establish legal relations as 'the foundation of enforceable agreements by the seventeenth and eighteenth centuries. As a result, the law of contracts shifted from formality to substance, emphasizing the parties' agreement. According to Pollock, the enforcement of promises that parties intend to be legally binding is the fundamental concept of contract law.'[40]

According to Elias, the reception of English law laid the foundation upon which Nigerian commercial and private law developed, including the law of contract, tort and property.[41]

Thus, Nigerian contract law is essentially English in origin, though modified by statutes and judicial decisions to reflect Nigerian realities.

Following the reception of English law, Nigerian courts began to apply English contract principles in resolving disputes between parties. However, the enhancement of contract law in Nigeria did not remain stable. With increased commercial activity and indigenous participation in trade, the courts gradually adapted these principles to suit local conditions. As Sagay notes,

[39] R. Stone, *The Modern Law of Contract,* (London, Cavendish Publishing, 2009) p. 7
[40] F. Pollock, *Principles of Contract*, (London, Stevens and Sons, 1950) p. 1
[41] Elias (n 29), p. 36

while Nigerian contract law is based on English law, it has evolved through judicial interpretation and local legislation to meet Nigerian socio-economic needs.[42]

Elias claims that the adoption of English law established the framework for the development of Nigerian private and commercial law, including contract, tort, and property law.[43] Therefore, although statutes and court rulings have altered Nigerian contract law to reflect Nigerian realities, it is fundamentally English in origin.

As a result, Nigerian contract law evolved as a hybrid system that combined legitimate customary norms with English legal principles. Depending on the type of transaction and the parties involved, Nigerian courts were able to enforce agreements made under both statutory and customary regimes.

Thus, it is clear that Nigerian contract law developed historically from native customs to the adoption of English common law and equity, followed by judicial adaptation and statutory changes[44]. Nigeria now has a dynamic legal framework that can govern contemporary contractual relationships thanks to this evolutionary process.

2.1.2 Sources of Contact Law

Nigerian contract law is derived from a variety of historical, legislative, and judicial sources rather than from a single code or statute. Together, these sources govern the formation, interpretation, and enforcement of contracts in Nigerian law. Due to Nigeria's legal past, received English law, Nigerian legislation, court rulings, customary law, and, to a lesser extent, foreign commercial influences are the main sources of contract law.

a) Received English Law

Received English law, which includes common law, equity principles, and universal application statutes that were in effect in England as of January 1, 1900, is the primary source

[42] Sagay, (n 3), p. 34
[43] Elias (n 29), p. 36
[44] Sagay (n 3) p.3

of Nigerian contract law. Through a number of colonial laws, including the Supreme Court Ordinances, these were brought into Nigeria. These laws had the effect of introducing English private law, subject to local conditions, into Nigeria. Elias claims that Nigeria's legal system was established by the adoption of English law, which still has an impact on contractual relationships in the country.[45]

Nigerian jurisprudence was introduced to basic concepts including offer, acceptance, consideration, intention to establish legal relations, and capacity under the common law. By reducing the strictness of the common law and introducing concepts like estoppel, particular performance, and injunctions—all of which are today crucial to the enforcement of contracts—equity supplemented it. According to Sagay, Nigerian contract law has been modified to meet local circumstances while maintaining a mostly English form.[46]

b) Statutory Provisions

Statutes are another important source of contract law in Nigeria. The common law regulations governing contracts have been supplemented and altered by legislative actions. Certain contracts and business transactions are governed by these statutes. The Hire-Purchase Act, the Companies and Allied Matters Act (CAMA), the Bills of Exchange Act, the Sale of Goods Laws of several States, and consumer protection laws are prominent examples.[47] Nwogugu claims that 'because statutes offer clarity and govern specific contractual interactions, they are now an essential component of Nigerian contract law.'[48] In cases when common law concepts are inconsistent, statutory provisions may take precedence. For example, the Sale of Goods Law covers contracts for the sale of goods, but CAMA governs corporate ability to contract.

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[45] Elias (n 29) p. 34
[46] Sagay (n 3) p. 6
[47] Sagay (n 3) p. 6
[48] E.I. Nwogugu, *Commercial Law in Nigeria*, (Ibadan, Heinemann Educational Books, 2003) p. 22

c) Judicial Decisions

Another significant source of Nigerian contract law is court rulings. The stare decisis theory is applicable in Nigeria's common law legal system. Legal concepts are developed and subordinate courts are bound by the decisions of higher courts. Over time, Nigerian courts have developed, improved, and interpreted contract law. According to Sagay, Nigerian court precedent increasingly reflects Nigerian social and commercial situations rather than only mirroring English authorities.[49]

Courts have clarified matters like consensus ad idem, contract sanctity, contract freedom, and breach remedies through their rulings. As a result, Nigerian case law serves as a dynamic source for the advancement of contract law.[50]

d) Customary Law

In Nigeria, contract law can also be derived from customary law. Nigerian communities governed agreements using native conventions before colonial rule. Certain transactions are still governed by these norms, particularly when it comes to marriage, land transfers, and family arrangements. 'As long as it doesn't conflict with natural justice, equity, or good conscience, customary law even applies in contractual concerns if the transaction is governed by native law and custom. In addition to accepted English concepts, customary law continues to be a significant source of Nigerian private law,' according to Niki Tobi.[51]

Nigerian contract law has a pluralistic nature as a result of the coexistence of common law and statutory principles with customary contract concepts. This enables courts to uphold agreements made in traditional contexts in addition to contemporary business contracts.

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[49] Sagay (n 3) p. 7

[50] E.O. Ezike and E.O. Wingate, "Judicial Independence and Accountability in the Enforcement of Contracts against the Nigerian Government",(2016, p. 1.) <https://www.researchgate.net/publication/318768854_Judicial_Independence_and_Accountability_in_the_Enforcement_of_Contracts_against_the_Nigerian_Government?utm_source=chatgpt.com> accessed 16th June 2026

[51] Niki Tobi, *Source of Nigeria Law*, (Lagos. MIJ Professional Publishers Ltd, 1996) p. 113

e) International Commercial Practice And Treaties

International business practice and treaties, especially in areas like arbitration, electronic commerce, and cross-border transactions, are another new source of contract law in Nigeria. Nigeria's involvement in international trade has made the adoption of certain international standards necessary. For example, international standards are frequently reflected in banking contracts and arbitration procedures. Nigerian contractual connections are increasingly shaped by global commercial impact, as Nwogugu notes.[52]

2.1.3 Contract Terms

A contract is more than just an agreement; it is a set of commitments that specify the parties' rights and responsibilities. These commitments are known as contract terms. Contractual clauses specify what each party must do or not do, as well as the repercussions in the event that a breach occurs. The way these phrases are categorised is crucial because it influences the remedies that an aggrieved party can pursue. Nigerian contract law acknowledges various sorts of contractual terms, such as express terms, implied terms, innominate words, and basic terms, in accordance with the English common law tradition.[53]

A contractual term, according to Sagay, is a clause that establishes a legally enforceable obligation between the parties.[54] Whether an innocent party is entitled to damages merely or to terminate the contract entirely depends on the form and classification of these clauses. In this case, it is crucial to ascertain the scope of the duties created by the contract, even if it is evident that the parties have fulfilled all the conditions and created a legally binding agreement. There are three things that need to be done. First, it is necessary to ascertain whether of the provisions in the contract are legally binding on the parties. These are the contract's specific terms. Second, ascertain whether any additional provisions have been placed upon the parties by

[52] Nwogugu (n 48) p. 25
[53] Learn Nigerian Law, 'Terms of a Contract'<https://www.learnnigerianlaw.com/learn/contract-law/terms> accessed 15th June 2026
[54] Sagay (n 3) p. 189

statute, custom, usage, or the courts even though they were not stated by the parties. These are referred to as implicit terms of the contract when they are present. Thirdly, take into account if the parties have specifically chosen to exclude any express or implied clauses from the contract. These clauses make up the contract's exclusion or limitation clauses.[55]

a) Express Terms

'Express terms are those terms which the parties have specifically agreed upon and stated, either orally, in writing, or by conduct. They represent the actual intentions of the parties as at the time of contracting. These terms may be contained in formal written agreements, correspondence, receipts, tickets or even oral discussions prior to the conclusion of the contract. In Nigerian law, once a term is expressly agreed upon, the court's duty is to interpret and enforce it rather than rewrite it for the parties.'

The Nigerian courts have consistently upheld the sanctity of express contractual terms. In *Owoniboys Technical Services Ltd. v. UBN Ltd.,*[56] the Supreme Court held that 'where the terms of a contract are clear and unambiguous, the court must give effect to them and not embark on speculation.'

Express terms may also be incorporated by reference, such as where a contract refers to another document containing terms. Once validly incorporated, such terms become binding on the parties.

b) Implied Terms

Not every duty under a contract is made clear. Some are provided by law to offer the contract business efficacy. They are referred to as implicit terms. Implied terms are those that are considered by law to be a part of the contract even though they are not stated explicitly by the parties.

Statutes, customs, facts, and laws can all give birth to implied terms. The Sale of Goods Law,

[55] Ezike (n 4) p. 135,
[56] (2003) 15 NWLR (Pt.844) 545 at 586

for instance, stipulates requirements on fitness for purpose, title, and description. Common law concepts coexist with statutory implied provisions in Nigeria.

The Supreme Court in *Liverpool City Council v. Irwin*[57] (applied in Nigeria) outlined how implied terms are essential to the contract's viability and significance. In a similar vein, Nigerian courts acknowledge implied commitments where they are required to represent the parties' probable intent.

c) Innominate Terms

Contractual clauses were traditionally divided into two categories: conditions and warranties. However, a third type known as innominate or intermediate phrases was added by contemporary contract law. These terms are classified as either conditions or warranties based on the impact of the breach, not on the label.[58]

The principle was established in *Hong Kong Fir Shipping Co Ltd v. Kawasaki Kisen Kaisha Ltd.,*[59] when the court held that 'whether the breach deprives the innocent party of nearly all of the contract's benefits determines whether the right to terminate is granted. Sagay claims that the idea of innominate terms offers flexibility and avoids the inflexible outcomes that may result from tight classification.'[60]

d) Fundamental Terms

'A fundamental term is the foundation of the agreement. A breach of this crucial clause gives the innocent party the right to treat the contract as discharged.' Although these expressions highlight the importance and seriousness of the responsibility, they are strongly tied to conditions.

[57] (1977) AC 239

[58] A.J Alewo, "The Principle and Nature of Law of Contract in Nigeria: Formation of Binding Contract",(Journal of Politics and Law, Vol. 5, No. 4, 2012, p. 123). < https://www.researchgate.net/publication/272802683_The_Principle_and_Nature_of_Law_of_Contract_in_Nigeria_Formation_of_Binding_Contract> accessed 16th June 2026

[59] (1962) 2 QB 26

[60] Sagay (n 3) p. 201

A fundamental term, according to Pollock, is one that serves as the foundation for the agreement and without which it would not have been made.[61]

In Nigerian law, breach of a fundamental term amounts to a repudiatory breach. In *A.G. Federation v. Zebra Energy Ltd.,*[62] the Supreme Court ruled that an innocent person may terminate a contract and seek damages when one of the parties violates a basic clause.

2.1.4 Contractual Clauses in Nigerian Law

Contractual clauses, which specify the extent, nature, and boundaries of the obligations assumed by the parties, are the fundamental elements of any contract. These clauses are the main way that parties to a contract express and enforce their intentions under Nigerian law. Therefore, studying contract law requires a thorough conceptual grasp of contractual clauses. A specific clause in a contract that describes a right, obligation, condition, or restriction agreed upon by the parties is known as a contractual clause.

According to Anson, contractual terms constitute the substance of the agreement and determine the legal obligations arising from it.[63]

In this way, provisions serve as the foundation of contractual relationships rather than being purely accidental. Based on their type and purpose, contractual provisions in Nigerian law can be divided into a few categories. These consist of essential terms, innominate terms, exclusion clauses, limitation clauses, implicit clauses, and express clauses. 'The parties' rights and obligations are shaped differently by each group. Terms that are specifically agreed upon by the parties, whether orally or in writing, are known as express clauses. They are typically given top priority when interpreting contracts since they represent the parties' true intentions.'

Implied clauses, on the other hand, 'are terms that are introduced by law, custom, or the parties' inferred desire to give the contract business efficacy but are not explicitly mentioned. Chitty

[61] Pollock (n 40) p. 345
[62] (2002) 18 NWLR (Pt.798) 162 at 197
[63] Beatson, Burrows & Cartwright (n 34) p. 165

asserts that even in cases where some problems have not been explicitly addressed, implied conditions make sure that contracts are efficient and fair.'[64] According to Nwogugu, contract provisions have to be applied in a fair way and in accordance with the intention of the parties. From the above, it can clearly be seen that the provisions of a contract play an important part in the formation and execution of contracts in Nigeria.

2.1.5 Conceptualization of Exclusion and Limitation Clauses

'The contracting parties usually have liberty to determine the extent of their duties and liabilities. This can be done through the use of exclusion and limitation clauses in a contract. The aim of inclusion of such clauses in a contract is to exclude liability completely or to limit the extent of the liability which can arise in case of a breach of the contract. The understanding of risk division between the parties in contractual transactions in Nigeria will depend on its concept. An exclusion clause refers to a clause in a contract which seeks to totally relieve a party of liability for certain acts.' A restriction clause, on the other hand, 'limits liability rather than completely eliminating it. For example, it may limit the circumstances under which liability may emerge or cap the amount of damages recoverable.

Exclusion clauses are tools used by contracting parties to divide risks and prevent or lessen liability resulting from contractual duties,' according to Professor Sagay. [65]

While such clauses are normally lawful, the learned author underlines that careful adherence to recognised legal standards is necessary for their validity. When one side is in a weaker negotiating position, the law steps in to stop abuse, unfairness, and injustice. Exclusion and limitation clauses are legal under Nigerian law, but they are subject to specific restrictions. These safeguards make sure that these clauses aren't utilised as tools of fraud or tyranny. Incorporation, interpretation, and legislative control are the main tenets guiding their functioning.

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[64] Beale (n 35) p. 282
[65] Sagay (n 3), p. 217

'An exclusion or limitation clause must first be correctly included in the contract in order for it to be effective. This implies that the opposite party must be made aware of the clause at the time of contracting or earlier. The party wishing to rely on a clause in a document must demonstrate that appropriate measures were taken to highlight it.' This principle has been upheld by Nigerian courts. In *Owoniboys Technical Services Ltd. v. UBN Ltd.,,*[66] the Supreme Court ruled that 'parties are obligated to abide by the provisions of a contract they voluntarily agree into, including exclusion clauses, as long as such terms are not tainted by fraud, misrepresentation, or illegality.'

Second, 'exclusion clauses must be interpreted strictly. In cases where the wording is unclear, courts typically interpret such phrases contra proferentem, or against the party depending on them. Chitty claims that the contra proferentem rule guarantees that a party cannot avoid responsibility by using ambiguous or imprecise language.'[67]

Nigerian courts have adopted this principle. In *A.G. Federation v. Zebra Energy Ltd.,*[68]The Supreme Court stressed that exclusion clauses cannot be enforced unless they are explicit and unequivocal.

Thirdly, regulatory and public policy restrictions apply to exclusion clauses. The use of these clauses in particular transactions is restricted or regulated by certain statutes. Legislation pertaining to the sale of goods and consumer protection, for instance, implies specific terms that are difficult to exclude. Nwogugu contends that legislative action is required to stop the misuse of exclusion clauses in business dealings.[69]

Additionally, exclusion clauses that try to avoid accountability for basic breaches or that are against public policy may not be upheld by the courts. The Nigerian courts have continued to take keen interest in such clauses so that they may not render meaningless the essence of the

[66] (2003) 15 NWLR (Pt.844) 545 at 586
[67] Beale (n 35) p. 1045
[68] (2002) 18 NWLR (Pt.798) 162 at 197
[69] Nwogugu (n 48) p. 67

contract even though the law has shifted from the idea of fundamental breach. Moreover, 'the issue of the disparity in the bargaining power of the parties may affect the validity of such exclusion clauses. The court may intervene in case there is injustice where one party imposes excessive terms on the other party.'

In conclusion, it can be said that even though the law of Nigeria recognizes the concept of exclusion and limitation clauses, their enforcement will depend on following legal requirements in respect of incorporation, language of the clause, statutory requirements and issues relating to public policy.

2.1.6 Concept of Freedom of Contract and Consumer Protection

'The other principle of the law of contract is the freedom of contract doctrine. The rationale behind this doctrine lies in the premise that there is a possibility that the contracting parties may be able to freely agree on the terms of their contractual agreement without much difficulty. Freedom of contract implies that the individual is free to make choices regarding the party with whom he or she wants to make a contract and also the terms of such contract. Liberalism which is based on equality and sanctity of agreements forms the basis of this doctrine.'

This doctrine of freedom of contract has always been acknowledged in Nigeria. In *B.F.I. Group Corporation v. B.P.E.*[70], the Supreme Court has upheld the principle that when entering into a voluntary agreement, parties are bound to comply with its terms, and that courts do not vary the terms at their own behest. The rule creates certainty in the commercial arena and respects contractual obligations. Contractual freedom is an absolute principle, however. It has been recognized in practice that, in modern commercial deals, the equal bargaining position enjoyed by the parties may not always be true. The existence of large consumer markets, trade in technologies, and standardized agreements has resulted in situations where one party dictates the terms and the other is left with no bargaining leverage. The notion of consumer protection,

[70] (2012) 18 NWLR (Pt.1332) 209 at 247

as an instrument of protecting consumers in commercial transactions, has arisen from this development. Preventing exploitation, maintaining openness, and encouraging equity in contractual transactions are the goals of consumer protection law.

The Federal Competition and Consumer Protection Act (FCCPA)[71] which creates the Federal Competition and Consumer Protection Commission (FCCPC),[72] is one of the main statutory frameworks that govern consumer protection in Nigeria. Consumer rights under the Act include protection from unfair contract terms, the right to fair treatment, and the disclosure of material information.

2.2 Theoretical Framework

The analytical basis of this study will be made clearer with a succinct description of the guiding theories. The main theoretical concepts that form the basis of this research are represented by the doctrines and principles that are underlined below.

2.2.1 The Doctrine of Freedom of Contract

A cornerstone of contract law is the doctrine of freedom of contract, which is based on the notion that parties are free to engage into agreements of their choosing and choose the conditions regulating such agreements without outside intervention. It embodies the sanctity of contracts and individual autonomy found in traditional legal theory. Freedom of contract, according to Pollock, is the ability of persons to make legally enforceable agreements voluntarily.[73]

In a similar vein, Anson clarifies that parties are assumed to be in the best position to decide on the conditions of their partnership. Liberal economic theory from the nineteenth century, which placed a great emphasis on the least amount of government intervention in private affairs, had a significant impact on the ideology. However, this traditional perspective has

[71] 2018
[72] Ibid
[73] Pollock (n 40) p. 8

come under fire for supposing that parties have equal bargaining strength. Atiyah contends that in contemporary society, when contracts frequently entail power imbalances, this presumption is impractical.[74]

Freedom of contract continues to be a fundamental tenet of Nigerian law. The Supreme Court upheld in *B.F.I. Group Corporation v. B.P.E.*,[75] that judges will not amend agreements that parties freely join into. This upholds the idea of contract sanctity. However, the doctrine is not infallible. It is constrained by things like public policy, statutory regulations, and unequal bargaining power.

2.2.2 The Doctrine of Inequality of Bargaining Power

The classical concept of contract freedom is significantly modified by the notion of inequality of bargaining power. It is based on the understanding that the presumption that agreements are freely and fairly entered into is undermined in many contractual transactions because the parties do not have equal negotiating power. According to the traditional view of contracts, parties willingly agree to contractual obligations and negotiate on equal terms. This premise, however, has drawn a lot of criticism. According to Atiyah, meaningful negotiation is difficult in contemporary contractual partnerships because of differences in economic might, knowledge, and access to alternatives.[76] In a similar vein, Lord Denning underlined that the law must step in to stop the stronger party from taking advantage of the weaker when there is an imbalance of negotiating power.

Therefore, the concept aims to deal with circumstances in which one party is in a position of dominance and forces terms on the other, who has little or no actual choice except to accept them. This is particularly evident in consumer deals, employment agreements, and standard form contracts, where the more powerful party tends to impose the terms of the agreement.

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[74] P. S. Atiyah, *The Rise and Fall of Freedom of Contract,* (Oxford, Oxford University Press, 1979) p. 23
[75] (2012) 18 NWLR (Pt.1332) 209 at 247
[76] Atiyah (n 74) p. 23

Also, Nwogugu finds that modern contract law must reflect the economic reality and protect the less powerful contracting party from the imposition of unfair terms.[77]

This concept is very much aligned with equity-related notions such as duress, unconscionability, and undue influence, which are the methods of legally setting aside contracts entered into on an unfair basis. In addition, it is the basis of governmental actions in consumer protection legislation. This system is reflected in the Federal Competition and Consumer Protection Act[78] which forbids exploitative contractual practices and promotes fairness. Therefore, it is clear that the theory of inequality of bargaining power acts as a crucial check on the abuses of contract freedom.

2.2.3 The Reasonableness and Fairness Theory

A recent advancement in contract law is the reasonableness and fairness approach, which aims to guarantee that conditions and obligations in contracts are not only just and equitable but also legally valid. By incorporating fairness principles into contractual relationships, this approach serves as a remedy for the strict application of the notion of freedom of contract. According to this idea, a test of reasonableness and justice applies to the enforceability of contractual obligations, especially exclusion and limitation clauses. It acknowledges that, in some situations, rigorous adherence to the parties stated goals may result in unfair outcomes, particularly where there is an imbalance of bargaining power. Therefore, the law steps in to stop terms that are harsh, unethical, or against public policy from being enforced.[79] McKendrick observes that in order to attain fair results, modern contract law is progressively subjecting contractual terms to criteria of reasonableness. In actuality, the notion of reasonableness necessitates that contractual clauses be equitable, open, and not unduly biased. The reasonableness test is not fully codified in Nigerian contract law like it is in some other

[77] Nwogugu (n 48) p. 72
[78] 2018
[79] Atiyah (n 74) p. 389

jurisdictions, but the concept is represented in both legislative provisions and judicial attitudes. Nigerian courts have shown a readiness to consider whether contractual clauses are fair, particularly where they seem oppressive or unfair. In *Sonnar (Nig.) Ltd. v. Partenreedri M.S. Nordwind,*[80] the Supreme Court emphasised that contractual terms must not operate in a manner that defeats justice.

F.O. Ukwueze argues that the introduction of fairness standards is essential for regulating modern contractual relationships and preventing abuse.[81] When interpreting contractual agreements, courts are increasingly using fairness and reasonableness principles, particularly when there is unequal bargaining power. By preventing contractual obligations from being enforced in a way that results in injustice, the reasonableness and fairness theory plays a critical role in contemporary contract law. By advancing equity, defending weaker parties, and coordinating contract enforcement with the larger goals of justice and public policy, this theory enhances current concepts within the Nigerian legal system.

2.2.4 The Doctrine of Fundamental Breach

A significant theoretical advancement in contract law, especially with regard to the regulation of exclusion and limitation clauses, is the doctrine of fundamental breach. It is predicated on the idea that a party should not be permitted to exploit contractual clauses, particularly exclusion clauses, to avoid culpability if they commit a major violation that goes to the heart of the agreement. According to this theory, a breach is deemed "fundamental" if it deprives the innocent party of nearly all of the benefits that the contract was supposed to provide. The law has historically stepped in to stop the defaulting party from using exclusion clauses as a way to escape accountability in such situations. Exclusion clauses are ineffectual in circumstances of substantial breach since the traditional approach treated fundamental breach as a rule of law. This strict approach was later changed, though. According to Atiyah, the concept has changed

[80] (1987) 4 NWLR (Pt.66) 520
[81] Ukwueze (n 31), p. 41

from being an absolute norm to a principle of construction in which the parties' intentions as stated in the contract determine whether exclusion clauses are applicable.[82]

In Suisse Atlantique case[83], the House of Lords rejected the notion that fundamental breach automatically nullifies exclusion clauses, holding instead that the issue is one of construction of the contract. This position was reaffirmed in *Photo Production Ltd. v. Securicor Transport Ltd.* [84], while the court stressed that, as long as the terms are properly stated, parties are entitled to divide risks however they see right. Courts in Nigeria have taken a similar stance, acknowledging that although exclusion clauses might be legitimate, they will be severely interpreted, especially in situations involving grave violations. In *Nigerian Maritime Services Ltd. v. Afolabi,*[85] the Supreme Court stressed that unless expressly stated, exclusion clauses must be interpreted carefully and would not help a party in situations involving serious or fundamental violations This is how the application of the principle is done to avoid discrimination. The principle is also very much linked to the broader principles of fairness and reasonableness as well as inequality in bargaining power, principles that guide the courts in determining whether the exclusion clauses should stand. This ensures that the clauses of the contract are not used to perpetuate injustice, especially when one of the parties has breached its part of the agreement.

It is therefore very clear that the principle of fundamental breach is very important in regulating the liability under contract although it cannot be used anymore as a strict legal principle. The principle acts as the principle of construction and fairness within the Nigerian legal system, ensuring that the exclusion clauses are not used in any form that violates the purpose of the contract.

[82] Atiyah (n 74) p. 177
[83] (1967) 1 AC 361
[84] (1980) AC 827
[85] (1978) 2 SC 79

2.2.5 The Theory of Public Policy and Equality

The concept of freedom of contract is largely restricted by the concept of public policy and equality, which states that a contract not only should reflect the intent of the parties to the agreement but also the wider interests of the society. It is predicated on the notion that contracts or agreements that violate public policy or encourage injustice and inequality will not be upheld by the law. Although it is difficult to define precisely, public policy generally refers to the values and norms that the courts consider to be in the best interests of the general public. According to Pollock, the courts will not uphold agreements that are detrimental to the general welfare under the principle of public policy.[86]This emphasises the need for private agreements to occasionally give way to social issues. This theoretical stance emphasises the necessity of striking a balance between social justice and individual liberty. In actuality, contracts or clauses that are unlawful, immoral, or against the public interest are rendered void by the theory. This includes accords that impede trade, encourage corruption, or jeopardise the administration of justice. Therefore, by evaluating whether a particular contract violates public policy, the courts play a critical role in establishing the bounds of enforceability. The idea of public policy is widely acknowledged in the Nigerian legal system.

In *Egerton v. Brownlow* [87], though an English case, it laid the foundation for the application of public policy in common law jurisdictions, including Nigeria. Nigerian courts have adopted similar reasoning. In *Sonnar (Nig.) Ltd. v. Partenreedri M.S. Nordwind*,[88] the Supreme Court highlighted that clauses in contracts cannot be applied in a way that is against the public interest or justice. Thus, it is clear that modern contract law is greatly influenced by the theories of equality and public policy. It guarantees that contractual relationships are not just legally binding but also socially acceptable and just by limiting the enforcement of

[86] Pollock (n 40) p. 328
[87] (1853) 4 HL Cas 1
[88] (1987) 4 NWLR (Pt. 66) 520 (SC).

contracts that are against societal values or that encourage inequity. This theory continues to direct legislative action as well as judicial reasoning within the Nigerian legal system, upholding the harmony between individual liberty and the common good[89].

[89]Ukwueze (n 31) p. 41 <https://www.researchgate.net/publication/277542266_Unfair_Terms_in_Consumer_Contracts_in_Nigeria_The_Need_for_Stricter_Statutory_Control?utm_source=chatgpt.com> accessed 16th June 2026

CHAPTER THREE

Legal Framework and Judicial Approach to Exclusion or Limitating Clauses in Nigeria Contract Law

3.1 The Legal Framework of Contractual Clauses in Nigeria

The principles of contract law, which acknowledge that parties are free to specify their rights and obligations and establish legally binding relationships through mutual agreement, serve as the legal basis for contractual provisions in Nigeria. As long as the necessary components of a valid contract—offer, acceptance, consideration, desire to establish legal relations, and legality—are present, contractual clauses derive their validity from the agreement of the parties.

In Nigeria, received common law, statutes, and court rulings are the main sources of law governing contractual agreements. The fundamental guidelines for the creation, interpretation, and enforcement of contractual clauses are found in common law. According to Anson, a contract's terms specify the parties' rights and responsibilities.[90] Another important factor is statutory provisions.

The Evidence Act of 2011 governs the proof of contractual terms, especially by enforcing the rule that oral testimony cannot be used to change the terms of a written contract unless certain conditions are met. This encourages contractual relations to be clear. Court rulings strengthen the legal foundation of contractual clauses. The Supreme Court affirmed in B*.F.I. Group Corporation v. B.P.E.*[91] that parties are bound by the terms of their contracts and that courts will not amend them. This exemplifies the sanctity of contract notion.

However, there are limitations on contractual clauses. Terms that violate public policy, are unlawful, or are impacted by vitiating circumstances like fraud or deception may not be enforceable. In order to avoid unfairness, Sagay observes that contract freedom must be

[90] Beatson, Burrows & Cartwright (n 34) p. 165
[91] (2012) 18 NWLR (Pt.1332) 209 at 247

regulated[92]. Therefore, it is clear that common law principles, statutory regulation, and judicial interpretation form the legal foundation of contractual terms in Nigeria. These elements combine to guarantee that commercial agreements are both enforceable and equitable.

3.1.1 Common Law Foundation of Contractual Clauses

In Nigeria, contractual terms are mostly based on common law, which provides the fundamental guidelines for their drafting, interpretation, and enforcement. Nigerian courts continue to use common law principles as part of the inherited English law to determine the legality and significance of contractual clauses.\

The idea of freedom of contract, which permits parties to choose the terms of their agreement, gives contractual agreements their binding force under common law. Such clauses are usually enforceable once they are properly included in a contract. According to Anson, a contract's terms specify each party's rights and obligations and make up the agreement's core.[93]

Additionally, the common law sets important guidelines for the inclusion and interpretation of contractual clauses. Before a clause can be relied upon, it must be correctly incorporated, either by signature, reasonable notice, or consistent practice of dealing. Additionally, courts use rules of interpretation like the contra proferentem rule and the literal rule, especially when dealing with exclusion clauses. Uncertain terms are interpreted against the party relying on them.[94]

Nigerian courts have adopted these concepts consistently. The Supreme Court ruled in *Union Bank of Nigeria Ltd. v. Ozigi* [95] that a party who forms a contract is obligated to abide by its terms.

But in order to avoid injustice, the common law places limitations. It may not be possible to enforce clauses that are unclear, gained by deception, or go against public policy.

[92] Sagay (n 3)p. 15
[93] Beatson, Burrows & Cartwright (n 34)
[94] Beale (n 35) p. 1045
[95] (1994) 3 NWLR (Pt.333) 385 at 404

3.2 Statutory Framework Governing Contracts in Nigeria

The Nigerian legal system for contracts is complementary to the common law as it provides specific rules for making, interpreting, and enforcing contractual obligations. In current business and consumer transactions, such rules are meant to provide predictability, fairness, and protection for parties involved.

Nwogugu asserts that statutory laws, which impose obligatory duties on contractual transactions, are essential in enhancing common law principles.[96]

Therefore,, the degree to which parties can depend on exclusion clauses is frequently restricted by statutory action, especially when such terms compromise justice or public policy.

3.2.1 Federal Competition and Consumer Protection Act 2018

The enactment of the Federal Competition and Consumer Protection Act (FCCPA) 2018[97] marks a significant development in the regulation of exclusion and limiting clause clauses in Nigeria. Prior to the Act, the control of exclusion clauses based largely on common law principles and judicial interpretation. The Act[98] currently provides statutory protection against unfair, unreasonable, and unjust contractual terms, notably in consumer transactions. As observed by Sagay, statutory action is necessary to avoid the misuse of contractual freedom by stronger parties[99]

The Federal Competition and Consumer Protection Commission (FCCPC) is designated by the Act as the primary regulatory authority in charge of defending consumer rights and stopping unfair corporate practices. The Commission has the authority to administer and enforce the Act's provisions pertaining to fair market practices and consumer protection.[100] . Additionally, FCCPA nullifies any notice or contractual clause that attempts to waive or deny consumers

[96] Nwogugu (n 48) p. 70
[97] Federal Competition and Consumer Protection Act 2018 (Act No. 1)
[98] Ibid
[99] Sagay,(n 3) p. 217
[100] See FCCPA 2018, s.17

their legal rights[101], while it also forbids unfair, unreasonable, or unjust contract conditions[102]. The Act also provides that customers are entitled to products and services that are free from flaws, of merchantable quality, and suitable for their intended use[103]. When products or services fall short of the necessary level, the clause stops suppliers or service providers from using unfair exclusion clauses to avoid obligation.

As a result, the FCCPC plays a significant regulatory role in monitoring contractual transactions and guaranteeing that exclusion clauses do not oppress customers. In order to ensure fairness in contractual agreements, McKendrick notes that exclusion clauses are increasingly susceptible to legislative scrutiny under modern consumer protection legislation[104].

3.2.2 Sale of Goods Law of Lagos State 2014 on Standard Form Contract

A significant legal framework governing commercial transactions and the application of exclusion clauses in standard form contracts in Lagos State is the Sale of Goods Law of Lagos State 2014[105]. By incorporating specific terms and guarantees into agreements for the sale of goods, the law aims to shield consumers from deceptive business practices. The degree to which sellers can utilise exclusion clauses to shield themselves from liability is restricted by these implied requirements. In commercial transactions, sellers are subject to mandatory requirements under the law for merchantable quality, fitness for purpose, and sale by description. In particular, goods supplied in the course of business must be of merchantable quality and reasonably fit for their intended purpose, according to section 15[106].

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[101] Ibid, s.211
[102] Ibid, s.120
[103] Ibid, s. 106
[104] E. McKendrick, *Contract Law: Text, Cases, and Materials,* (Oxford, Oxford University Pres, 2020), p. 387
[105] Sale of Goods Law of Lagos State 2014, Laws of Lagos State of Nigeria, Cap. S1, Vol. 8, 2015.
[106] Ibid

In a similar vein, section 13[107] stipulates that products offered by description must match that description. These rules limit the use of exclusion clauses intended to limit responsibility for substandard or faulty products.

Additionally, the law expresses judicial concern about the misuse of standard form contracts, particularly in situations when negotiating power is unequal. The Supreme Court acknowledged legislative restrictions on the application of exclusion clauses in situations of fundamental violation in *International Messengers (Nig) Ltd v. Pegafor Industries Ltd.*[108]

3.2.3 Revised Contract Law on Enugu State 2004 on Contractual Capacity and Other Obligations

This Law is part of the statutory framework that governs contractual agreements and duties in Enugu State. [109] The law addresses the issue of contractual capacity, enforceability of agreement, and limitations of exclusion clause, especially where the exclusion clause is used unfairly against the other party. The objective of the law is to uphold justice, good faith, and accountability in any contractual dealings. It recognizes the fact that only people with the necessary capacity can make contracts. For this reason, contracts made by a minor, mentally deranged person, or an incompetent party could be declared null and void. The legislation [110] acknowledges that only people who have the requisite legal capacity to do so can make valid and enforceable contracts. It means that any contract made by minors, mentally unstable people, or individuals without contractual capacity might not be binding in law. Parties involved in a contract are also supposed to act in good faith, perform their obligations, and be responsible for any breach.

[107] Ibid
[108] (2005) 15 NWLR (Pt.947) 1 (SC).
[109] Contract Law, Cap. 26, Revised Laws of Enugu State, 2004.
[110] Ibid

Additionally, law demands performance, good faith, and liability for any breach. Section 190[111], "which implies that a party committing a fundamental breach of contract cannot claim refuge from liability through an exclusion clause," becomes particularly pertinent. The above clause conforms to the traditional rule of law theory and offers legislative defense from abuse of exclusion clauses. The importance of Section 190[112] was recognized by the Supreme Court in *International Messengers (Nig) Ltd v. Pegafor Industries Ltd*[113], is a fundamental statute that influences Nigerian contract and sales law. The Act formalised common law principles governing contracts for the sale of goods and included implied conditions to protect customers from faulty goods and unfair commercial practices. Its provisions had a considerable impact on Nigerian sales of goods legislation and the judicial approach of exclusion clauses.The Act implies specific conditions and guarantees into contracts for the sale of products.

3.2.4 Sale of Goods Act 1893 (United Kingdom)

This Act[114] is a fundamental law that has an effect on the Nigerian contract and sale laws. This Act established the common law rules regarding contract for the sale of goods and also created implied warranties so that customers can avoid getting defective goods and engage in fair trading practices. The law had a significant effect on the Nigerian sales of goods law and the doctrine of exclusion clauses. Section 13[115] particularly provides that where there is a sale of the item by description, the item shall conform to that description, except where Section 14(1)[116] sets out a criterion of merchantability and suitability for use of the commodities sold in the course of business. Such statutory provisions make it difficult for exclusion clauses designed to exonerate a party from liability for defective items to be effective. Moreover, Section 55[117] permits modification of the implied obligations by express terms, course of

[111] Ibid
[112] Ibid
[113] (2005) 15 NWLR (Pt.947) 1 (SC)
[114] Sale of Goods Act 1893 (56 & 57 Vict. c. 71)
[115] Ibid
[116] Ibid
[117] Ibid

dealing or use, recognizing the principle of freedom of contract but subjecting exclusion clauses to legal interpretation. The principles enshrined in the Act were enforced judicially in cases like *Andrews Bros Ltd v. Singer & Co. Ltd,* [118], where it was held that an exclusion clause cannot negate an express obligation of the contract.

3.2.5 Unfair Contract Terms Act 1977 (United Kingdom) -B2B

This Act[119] is one of the most important regulations governing exclusion and limitation clauses in the United Kingdom, notably in business-to-business (B2B) transactions. The Act was created to prevent the exploitation of exclusion clauses and to ensure fairness in contractual interactions in which parties attempt to prevent liabilities using standard form contracts. Although Nigerian law does not have an exact equivalent , the Act gives strong guidelines for regulating exclusion clauses in Nigeria. Certain liabilities cannot be excluded under the Act, while others must be proven reasonable. Particularly, section 2(1)[120] states that liability for death or personal damage caused by negligence cannot be eliminated or limited. Furthermore, section 2(2)[121] allows for the restriction of liability for other losses resulting from negligence only if the term meets the condition of reasonableness. In B2B contracts, section 3[122] prohibits the use of exclusion clauses in standard form contracts where one party deals on another's written standard terms. The provision subjected such clauses to judicial review based on fairness and rationality. The reasonableness concept under the Act was judicially applied in *George Mitchell (Chesterhall) Ltd v. Finney Lock Seeds Ltd*[123], in which the House of Lords declined to enforce an exclusion clause because it was unreasonable in the circumstances. The Unfair Contract Terms Act of 1977 remains a significant comparative framework for Nigeria,

[118] [1934] 1 KB 17
[119] Unfair Contract Terms Act 1977 (c. 50)
[120] Ibid
121 Ibid
122 Ibid
123 [1983] 2 AC 803

particularly for regulating exclusion clauses in B2B transactions using statutory fairness and reasonableness standards.

3.2.6 Consumers Right Act 2015 -B2C

The Consumer Rights Act 2015[124] is an important regulation that governs exclusion and limitation clauses in business-to-consumer contracts. The Act strengthens and improves the consumer protection statutes through fairness, transparency, and accountability in contracts made between the trader and consumer. Even though it is not applicable in Nigeria, it provides very useful guidelines for the regulation of unfair exclusion clauses. As stated by Sagay, statutory oversight is critical in preventing stronger commercial partners from exploiting weaker consumers through burdensome contractual conditions.[125]The Act places significant constraints on exclusion clauses in consumer contracts. Section 31 of the Consumer Rights Act 2015, in particular, voids any clause that seeks to exclude or limit liability deriving from the Act's statutory assurances relating to goods.

Similarly, section 57[126] bans the exclusion or limitation of liability for carelessness resulting in death or personal harm, and section 62[127] states that an unfair term in a consumer contract is not enforceable on the customer. The Act also includes a fairness test, which requires courts to evaluate whether a contractual term creates a major imbalance to the harm of the consumer. The judicial use of fairness principles under consumer protection legislation was demonstrated in *ParkingEye Ltd v. Beavis*.[128] Similarly, McKendrick states that the Consumer Rights Act of 2015 represents the modern move from unlimited contractual freedom to statutory consumer protection and fairness regulation.[129]

124 Consumer Rights Act 2015 (c. 15)
125 Sagay (n 3) p. 221
126 Consumer Rights Act 2015 (c. 15)
127 Ibid
128 [2015] UKSC 67
129 McKendrick (n 104) p. 394

3.2.7 Supply of Goods Act 1982 (United Kingdom)

The Act was created to safeguard consumers and contracting parties by incorporating statutory requirements into contracts, especially where one party attempts to exclude or restrict liability using standard form agreements. Although not directly relevant in Nigeria, the Act gives useful information for regulating exclusion clauses under Nigerian contract law. The Act places significant implicit responsibilities on suppliers of goods and services. section 13 specifically requires a provider to carry out services with reasonable care and skill, although section 14 implies that where the period for performance is not fixed, the service must be delivered within a reasonable time. Furthermore, section 4 implies conditions concerning title and ownership in contracts involving the transfer of goods.

These regulations reduce the effectiveness of exclusion clauses that seek to shield suppliers from liability for negligence or substandard performance.

The Unfair Contract Terms Act of 1977 further regulates the functioning of exclusion clauses under the Act, subjecting such clauses to the reasonableness test. Photo *Production Ltd v. Securicor Transport Ltd*[130] demonstrated judicial implementation of these concepts, with the House of Lords emphasising that exclusion clauses must be construed in accordance with the contract's design and applicable statutory regulations.

3.2.8 Law Reform (Contract) of Lagos State 2015

The Law[131] was adopted to modify portions of the common law of contracts by incorporating legislative principles governing fairness, good faith, and contractual enforcement. It also includes statutory guidelines on exemption clauses and basic breach. One of the Law's most important clauses is section 4[132], which imposes a responsibility of good faith and fair conduct on contracting parties. This aims to deter oppressive contractual behaviour and the unfair

[130] [1980] AC 827
[131] Law Reform (Contracts) Law, Cap. L49, Laws of Lagos State 2015
[132] Ibid

application of exclusion clauses in standard form contracts. Section 6[133] adopts the principle relating to fundamental breach, stating that a party guilty of fundamental breach may not rely on an exemption clause to avoid liability. These provision enhance the judicial authority over exclusion and limitation clauses in Lagos State.

3.3 Classification of Exclusion and Limitation Clauses

The limitation and exclusion clauses are very important elements in a contract used to limit liability of the contracting parties. The extent of reduction of the party's liability due to the breach of the contractual terms or other obligation forms the basis for the identification of such clauses.

The exclusion clause is a clause that intends to completely exempt the liability for some actions or breaches. The exclusion clauses may be subdivided into clauses excluding liability in relation to some risk or event, carelessness and breach of contract. In order for an exclusion clause to be enforceable, it has to be effectively incorporated into the contract and formulated precisely. The intention to exclude liability especially negligence is always demanded to be clearly stated by the court.

The limitation clause, in its turn, does not exclude liability, but only limits its scope. Examples of the limitation clauses include financial limitation, which imposes a limit to the amount of compensation to be paid, and time limitation restricting the period during which a claim can be lodged. The limitation and exclusion clauses are recognized in the Nigerian courts, but are strictly interpreted. This is because, according to the Supreme Court, such clauses must first be clear and unmistakable before they are enforceable, in *A.G. Federation v. Zebra Energy Ltd* [134].This cautious attitude by the courts on abuse is illustrated by the above.

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[133] Ibid

[134] (2002) 18 NWLR (Pt.798) 162 at 197

As stated by Sagay, exclusion and limitation clauses are legitimate ways of distributing risk, but they should be scrutinized in order to ensure fairness.[135]While these two categories of clauses regulate liability, their enforceability depends on strict adherence to legal principles of fairness, clarity, and inclusion.

3. 4 Approaches in Incorporating and Constructing of Exclusion Clauses

Under contract law in Nigeria, the viability of exclusion clauses rests heavily on two main areas: incorporation of such clauses in the contract and proper interpretation of such clauses by the courts. It is through this that these clauses can be enforced against the parties.

3.4.1 Incorporation of Exclusion Clauses

The incorporation of exclusion clauses refers to the procedure of including exemption or limitation clauses in a legally binding contract. In contract law, an exclusion clause is only enforceable if it is properly included into the parties' agreement. The common law principles generally recognise three fundamental methods of incorporation.

a) By Course of Dealing

Incorporation by course of dealing arises where there have been consistent and regular prior transactions between the parties on similar terms. In such cases, the court may infer that the exclusion clause forms part of the contract even if it is not expressly stated in the current transaction. This principle was recognised in *Spurling Ltd v. Bradshaw,* [136] where prior consistent dealings were sufficient to incorporate the clause. However, the course of dealing must be regular and consistent, as an inconsistent pattern will not suffice, as held in *McCutcheon v. David MacBrayne Ltd.*[137]

[135] Sagay (n 3) p. 217
[136] (1956) 2 All ER 121
[137] (1964) 1 All ER 430.

b) By Notice:

Exclusion clauses can also be incorporated into a contract through notice. Where a document is not signed, an exclusion clause will only be incorporated if reasonable notice is given before or at the time of contracting with the other party.

i. Nature of the Document

The clause must be contained in a document intended to have contractual effect, not a mere receipt.In *Chapleton v. Barry UDC,*[138] a clause on a ticket was ineffective because the ticket was merely a receipt.However, a document may still be contractual depending on the circumstances, as seen in *Watkins v. Rymill.*[139]

ii. Degree of Notice

The party relying on the clause must take reasonable steps to bring it to the other party's attention. In *Parker v. South Eastern Railway,*[140] the court held that the test is whether reasonable notice was given, not whether the clause was actually read.

iii. Time of Notice

Notice must be given before or at the time of contract formation, not after.This principle was supported by the court in *Olley v. Marlborough Court Ltd*[141], an exclusion clause displayed in a hotel room was ineffective because the contract had already been concluded at the reception.

c) By Signature

Incorporation by signature occurs where a party signs a contractual document containing an exclusion clause. In such circumstances, the party is generally bound by the terms of the document, whether or not he has read or understood them. This principle was firmly established in *L'Estrange v. Graucob,*[142] where the court held that a signature signifies assent to all the

[138] (1940) 1 KB 532
[139] (1883) 10 QBD 178.
[140] (1877) 2 CPD 416
[141] (1949) 1 KB 532
[142] (1934) 2 KB 394

terms contained in the document. The same position has been applied in Nigeria in John Holt Ltd v. Ezeani,[143] However, this rule will not apply where the signature was obtained through fraud, duress or misrepresentation, as illustrated in *Curtis v. Chemical Cleaning & Dyeing Co.*[144], where the clause was held unenforceable due to misrepresentation.

The inclusion of exclusionary clauses requires unambiguous proof—such as a signature, sufficient notice, or a consistent pattern of dealing—that the clause was included in the contract. In order to maintain equity and keep parties from being bound by clauses that were not properly brought to their attention, the courts rigidly enforce these regulations.

3.4.2 Construction of Exclusion Clauses

This is the process through which judicial principles created to lessen the severe consequences of unequal bargaining power between parties—particularly when consumers are forced to accept onerous terms—serve as a guide for the creation of exemption clauses. As demonstrated in *L'Estrange v. Graucob,*[145] the idea of sanctity of contract permits the implementation of such clauses; nonetheless, courts have developed interpretive guidelines to guarantee equity..

a) Strict interpretation of exemption clause

According to the courts' stringent interpretation of exemption clauses, these clauses must be written in a clear, exact, and unambiguous manner. The liability that the phrase aims to exclude must be covered in detail; imprecise or ambiguous language will not do. Courts will not go beyond what is expressly stated in exemption clauses; instead, they will construe them in accordance with their ordinary meaning. This principle was affirmed in *UBA v. Vertex Agro Ltd,*[146] and further illustrated in cases such as *Hardwick Game Farm v. Suffolk Agricultural Poultry Producers' Association,*[147] *Andrews Bros Ltd v. Singer & Co. Ltd,*[148] and *Baldry v.*

[143] (1990) 2 NWLR (Pt.133) 520 at 536
[144] (1951) 1 KB 805
[145] (1934) 2 KB 394
[146] (2020) 17 NWLR 475
[147] (1968) 3 WLR 10
[148] (1934) 1 KB 17

Marshall, [149] In a similar vein, the court determined that generic terms do not absolve negligence liability in *Price v. Union Lighterage Co.*[150]

i. The Contra Proferentem Rule

The Contra Proferentem Rule,[151] which states that any ambiguity in an exemption language would be interpreted against the party attempting to rely on it, is another crucial concept. It serves as the foundation for this rule. It is applicable when a clause is ambiguous or has multiple meanings, and the court interprets the ambiguity in the opposite party's favour. In *John Lee (Grantham) Ltd v. Railway Executive,*[152] the court limited the application of an unclear phrase by applying this concept. In a similar vein, the insured party prevailed in *Houghton v. Trafalgar Insurance Co. Ltd*.[153] due to the ambiguity in the language.

b) Liability for Negligence

When it comes to negligence responsibility, the courts take a cautious stance and need very explicit language before a party can be released from obligation. The court will consider whether the general clause is broad enough to include carelessness. According to the ruling in *Alderslade v. Hendon Laundry Ltd,*[154] generic language may be adequate to exclude negligence when it is the only potential ground for responsibility. However, as shown in *White v. John Warwick & Co. Ltd,*[155] carelessness must be specifically mentioned when liability may arise on other grounds. However, if written explicitly, highly general terms like "howsoever arising" may be useful in eliminating culpability for carelessness.

In conclusion, the strict and protective interpretation of the exception clauses requires the use of accurate wording that can exclude any liability in case of negligence, resolution of

[149] (1925) 1 KB 260
[150] (1904) 1 KB 412
[151] Verba chartarum fortius accipiuntur contra proferentem, which states that words are interpreted more firmly against the party who drafted them
[152] (1919) 2 All ER 681
[153] (1954) 1 QB 247 (CA)
[154] (1945) KB 189 (CA)
[155] (1953) 1 WLR 1285

ambiguous phrases in favor of the proferens, and clarity. The application of such principles ensures that exception clauses are not being abused in contractual agreements.

3.5 Rule of Law Approach and interpretation

The traditional judicial view towards the exemption clauses, particularly in case of breach of contract at its core, is the rule of law. Under this method, the law adopts the stance that, regardless of how broadly or explicitly a clause is phrased, a party that violates a fundamental aspect of the contract is automatically barred from relying on any exemption or limitation clause. The fundamental justification is that a party should not be able to avoid accountability through contractual clauses intended to shield them if they have neglected to fulfil the fundamental duties of the agreement. This method was well-established and used in a number of different types of contractual relationships.

The core tenet of the rule of law approach is that, rather than being a matter of interpretation, the invalidation of exemption clauses in times of fundamental breach operates automatically as a rule of law. But after the House of Lords questioned the validity of this strict approach in *Suisse Atlantiqueỹ d'Armement Maritime S.A. v. N.V. Rotterdamse Kolen Centrale.* [156] However, in *Harbutt's Plasticine Ltd v. Wayne Tank and Pump Co. Ltd.,*[157] Lord Denning firmly endorsed the strategy, ruling that a party guilty of a fundamental violation could not rely on an exemption clause.

3.6 Rules of Construction Approach and Interpretation

The current judicial stance on the applicability of exemption clauses in circumstances of contract violation is represented by the rule of construction approach. This method treats the question of whether an exemption clause applies—even in circumstances of fundamental breach—as an issue of contract interpretation rather than a strict legal rule. The court's main responsibility is to determine the parties' intent from the contract's wording and, in cases where

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[156] (1967) 1 AC 361

[157] (1970) 1 QB 447

the terms are clear and unambiguous, to give effect to that intention. The House of Lords rejected the automatic invalidation of exemption clauses in cases of fundamental breach in the seminal case of Suisse *Atlantique Société d'Armement Maritime S.A. v. N.V. Rotterdamse Kolen Centrale,*[158] which marked the beginning of this departure from the conventional rule of law approach. The court determined that these clauses' applicability is a matter of interpretation rather than a legal requirement. In that instance, the shipowners were restricted to the agreed-upon demurrage since the contract expressly stipulated such a limitation, even if significant delays amounted to a fundamental breach. *Photo Productions Ltd. v. Securicor Transport Ltd.*[159] solidified the rule of construction approach, despite divergent interpretations of the Suisse Atlantique ruling. In that instance, the plaintiff's factory was destroyed by a fire that was purposefully started by a defendant security firm employee. Despite the fundamental nature of the violation, the House of Lords determined that the exemption clause was legitimate and enforceable due to its clarity and unambiguity. The House of Lords ruled in *Mitchell (Chesterhall) Ltd v. Finney Lock Seeds Ltd.,*[160] that an exclusion clause's application relies on how it is construed. The court pointed out that it would be equivalent to resurrecting the abandoned rule of law theory "through the back door" if a plainly written clause were to be restricted on the grounds of fundamental breach. Nigerian courts have embraced this contemporary methodology. The Supreme Court dismissed the claim that a party must first abide by the terms of the contract before relying on an exemption clause in *A.G. Bendel State v. UBA Ltd,*[161] The court clearly supported the interpretation theory above the rule of law idea in *Akinsanya v. UBA Ltd*,[162]which strengthened this stance. Similarly, the Supreme Court relied largely on the ruling in Photo Productions to hold in *Narumal & Sons Ltd v. Niger Benue*

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[158] (1967) 1 AC 361
[159] (1980) AC 827
[160] (1983) 2 AC 803
[161] (1986) 4 NWLR (Pt.37) 547 (SC)
[162] (1986) 4 NWLR (Pt.35) 273 (SC)

Transport Co. Ltd,[163] that the validity of exemption clauses depends on the parties' intention as gleaned from the contract.

Therefore, the key tenet of the rule of construction approach is that exemption clauses are still enforceable and lawful even when there is a fundamental breach, as long as the clause expressly and unambiguously addresses the breach in question. Nevertheless, statutory intervention could affect this strategy. In *International Messengers (Nig) Ltd v. Pegafor Industries Ltd,*[164] for example, the Supreme Court demonstrated that legislative control may supersede contractual aim by applying statutory requirements to restrict reliance on an exemption clause in circumstances of fundamental breach.

3.7 Standard Form Contract in Various Industries

Standard form contracts are commonly utilised in modern business transactions, and they typically include exclusion or limitation clauses prepared unilaterally by one party with more bargaining power. These contracts are widespread in areas including banking, insurance, hospitality, and healthcare, where consumers have few options for negotiating contractual terms. Nigerian courts have therefore taken a careful approach to interpreting such terms, particularly where they work adversely against consumers.

a) Banking Sector

Standard form contracts in banking sectors are frequently used in account opening forms, loan agreements, and electronic banking services. Banks commonly include limitation clauses that exclude liability for unauthorised transactions or system faults. However, courts urge that such terms be explicit and unequivocal before being enforced. The Federal Competition and Consumer Protection Act,[165] including section 120 and 127,[166] forbids unfair, unreasonable, or

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[163] (1989) 2 NWLR (Pt.106) 730 (SC)
[164] (2005) 15 NWLR (Pt.947) 1 (SC)
[165] Federal Competition and Consumer Protection Act 2018 (Act No. 1)
[166] Ibid

unjust contractual conditions for customers. The court also held same in *Akinsanya v. UBA Ltd.*[167]

b) Insurance Sector

Insurance companies frequently utilise standard policy agreements with exclusion clauses that limit liability for specific risks. Although ambiguity is interpreted against the insurer under the contra proferentem rule, Nigerian courts typically apply these terms precisely in accordance with their text. In *Houghton v. Trafalgar Insurance Co. Ltd,*[168] this idea was demonstrated. The highest level of good faith in insurance transactions is also required by the Insurance Act of 2003, specifically section 54 of the Act.[169]

c) Hospitality Sector

In the hospitality industry, hotels, guest houses, restaurants, and event venues often employ standard form contracts. These agreements sometimes include exclusion clauses that attempt to discharge management from responsibility for theft, loss, or damage to visitors' belongings. These notices are typically printed on booking forms and receipts, or they are posted in hotel rooms and reception areas. However, Nigerian courts maintain that sufficient notice must be provided to the client either prior to or at the time the contract is signed in order for such clauses to be enforceable. In *Olley v. Marlborough Court Ltd.,*[170] the court established this concept by ruling that a notification posted in a hotel room following payment could not be considered a part of the contract. According to Sagay, consumer contract exclusion clauses shouldn't be used as tools of oppression against weaker parties with less negotiating power.[171]

d) Health Sector

[167] (1986), 4 NWLR (Pt.35) 273
[168] [1954] 1 QB 247
[169] Insurance Ac,t 2003 Cap. I17, Laws of the Federation of Nigeria (LFN), 2004
[170] [1949] 1 KB 532
[171] Sagay (n 3) p. 198

Healthcare service agreements, medical permission forms, and hospital admission forms frequently use standard form contracts. These agreements sometimes include exclusion or limitation clauses that aim to lessen hospitals' and doctors' liability for carelessness, patient property loss, or unanticipated medical issues. However, due to the delicate nature of healthcare services and the duty of care provided to patients, Nigerian courts are typically cautious when implementing such terms. Unless the language is explicit, precise, and unambiguous, an exclusion clause will typically not shield a hospital or medical professional from responsibility resulting from professional negligence. Consumers are protected from unfair, unjust, or unreasonable contractual terms, including oppressive medical care agreements, by the Federal Competition and Consumer Protection Act,[172] specifically sectiins 120 and 127.[173]

Additionally, the National Health Act,[174] particularly section 23,[175] acknowledges the patient's right to informed consent prior to medical treatment, requiring healthcare practitioners to appropriately communicate serious hazards. Therefore, under the contra proferentem rule, courts are likely to interpret unclear exclusion clauses against hospitals. The necessity to strike a balance between contractual freedom, public policy, and patient protection is reflected in the judicial mindset. 'Exclusion clauses shouldn't be used as tools of injustice against weaker parties who lack bargaining power,' as Sagay pointed out.[176]

[172] Federal Competition and Consumer Protection Act 2018
[173] Ibid
[174] National Health Act, 2014 (Act No. 8)
[175] Ibid
[176] Sagay (n 3) p. 198

CHAPTER FOUR

Critical Examination of Judicial Attitude and Practical Challenges and Reform in the Application of Exclusion Clauses in Nigeria

4.1 Judicial Attitude Toward Exclusion Clauses

The Nigerian judiciary's approach to exclusion clauses demonstrates a careful balancing act between the necessity to prevent injustice and the notion of contract freedom. Exclusion clauses are generally accepted by Nigerian courts as long as they are correctly integrated, worded clearly, and do not conflict with any laws or public policies. As noted by Sagay, while parties are free to contract, such freedom is not absolute and is subject to judicial control to prevent abuse.[177]

Courts take a rigorous approach to interpretation when deciding enforceability. According to the contra proferentem rule, exclusion provisions are interpreted narrowly, and any uncertainty is decided against the party attempting to rely on them. In A.*G. Federation v. Zebra Energy Ltd,*[178] the Supreme Court emphasised that such clauses must clearly and precisely cover the liability in question. Courts are hesitant to enforce agreements clauses that may produce unfair results.[179]

Additionally, rather than immediately rejecting exclusion clauses in times of breach, Nigerian courts have embraced the current rule of construction approach, which focuses on the parties' intentions. This was judicially recognized in *Narumal & Sons Ltd v. Niger Benue Transport Co. Ltd*[180] and reaffirmed in *Akinsanya v. U.B.A. Ltd.*[181]

4.1.1 Historical Development of Judicial Approach

A shift from stringent regulation to a more accommodating interpretive framework can be seen in the historical evolution of Nigeria's judicial attitude to exclusion clauses. Following English

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177 Sagay (n 3), p. 217
178 (2002) 18 NWLR (Pt.798) 162 at 197
179 Beale (n 35) p. 1045
180 (1989) 2 NWLR (Pt.106) 730 (SC)
181 (1986) 4 NWLR (Pt.35) 273 (SC)

common law, Nigerian courts initially embraced the rule of law approach, which prohibited a party guilty of a basic breach from relying on an exclusion clause. This strategy was used to stop injustice resulting from unequal bargaining power and was informed by rulings like *Karsales (Harrow) Ltd v. Wallis*.[182] According to Sagay, the concept of fundamental breach functioned as a legal tool to regulate unethical business practices.[183]

But as English law evolved, this inflexible stance started to change. The Supreme Court's departure from the rule of law approach in 1966[184] marked a turning point in Nigerian jurisprudence. The idea that a party must fulfil its responsibilities before relying on an exemption provision was rejected by the court in *A.G. Bendel State v. U.B.A. Ltd,*[185] The Supreme Court adopted the rule of construction approach in *Akinsanya v. U.B.A. Ltd.*[186] maintaining that the parties' intentions as stated in the contract determine whether exclusion clauses are applicable. The Nigerian position has been influenced by statutory initiatives despite this judicial change. The Supreme Court reinstated aspects of the previous protective approach in *International Messengers (Nig) Ltd v. Pegafor Industries Ltd,*[187] by using legislative restrictions to prevent reliance on an exclusion clause in circumstances of fundamental breach.

4.1.2 Contemporary Judicial Trends in Nigeria

The interpretation and execution of contractual clauses are becoming more balanced and policy-oriented, according to current judicial patterns in Nigeria. Instead of taking a strict stance, modern Nigerian courts prioritize fairness, term clarity, and the parties' intentions while also taking into consideration the realities of unequal negotiating power in business

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182 (1956) 1 WLR 936
183 Sagay (n 3) p. 219
184 Y. O Ali, 'Exemption Clauses in Contractual Obligations Need for a Judicial Rethink' < https://yusufali.net/article/Exemption_Clauses_In_Contractual_Obligation_Need_For_A_Judicial_Rethink.pdf> accessed 16th June 2026
185 (1986) 4 NWLR (Pt.37) 547 (SC)
186 (1986) 4 NWLR (Pt.35) 273 (SC)
187 (2005) 15 NWLR (Pt.947) 1 (SC)

transactions. Nigerian courts adopted the English court rulings in *Photo Productions Ltd v. Securicor Transport Ltd.,*[188] where the court applied the rule of construction in its interpretation of the contractual clause..

Treitel claims that rather than using strict theories, contemporary courts concentrate on interpreting contractual provisions in accordance with the parties' intentions. [189] Strict interpretation of exclusion clauses, especially when the contra proferentem rule is applied, is another significant tendency. These days, courts insist that before such clauses may be enforced, they must be specific, unequivocal, and explicit. This stance is in line with scholarly opinions that exclusion clauses should be interpreted narrowly in order to avoid unfair benefit[190]

The interpretation of ambiguous terms against the party depending on them is another example of this in Nigerian judicial practice.[191] Nigerian courts, however, have recently abandoned this strict stance and adopted the rule of construction methodology. *Niger Benue Transport Co. v. Narumal & Sons Ltd,.*[192] the Supreme Court ruled that the impact of a fundamental violation on an exemption clause is contingent upon the parties' intentions as stated in the contract.

The court underlined that the applicability of such clauses is a question of interpretation rather than a strict rule of law as held in *Akinsanya v. UBA Ltd.,*[193] which strengthened this view. Moreover, the Supreme Court upheld the contemporary method in A.*G Bendel State v. UBA Ltd*[194] by rejecting the claim that a party must fulfil its obligations before relying on an exemption clause. In *International Messengers (Nig) Ltd v. Pegafor Industries Ltd,*[195] the court

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188 [1980] AC 827 (HL)
189 G.H Treitel, *The Law of Contract*, (London, Sweet & Maxwell, 2015), p. 202
190 McKendrick (n 104) p. 379
191 Sagay (n 3) p. 219
192 (1989) 2 NWLR (Pt.106) 730 (SC)
193 (1986) 4 NWLR (Pt.35) 273 (SC)
194 (1986) 4 NWLR (Pt.37) 547 (SC)
195 (2005) 15 NWLR (Pt.947) 1 (SC)

declined to permit a party guilty of fundamental breach to rely on a limitation clause, citing statute law as justification.

Therefore, although Nigerian courts no longer consider fundamental breaches to automatically invalidate exemption clauses, they still carefully interpret such clauses to make sure that their enforcement is consistent with the parties' intentions, statutory provisions, and the demands of justice. Judicial opinions are increasingly being shaped by statutory regulation and consumer protection.

4.1.3 Judicial Interpretation and Enforcement in Nigeria

In Nigeria, established standards that guarantee certainty, equity, and respect for the parties' intentions govern judicial interpretation and execution of contractual agreements. Nigerian courts typically take an objective approach to interpretation, applying the plain and ordinary meaning of the contract's provisions as long as they are unambiguous and explicit. In *B.F.I. Group Corporation v. B.P.E.*,[196]the Supreme Court upheld this stance, ruling that courts will enforce contracts as agreed rather than rewrite them for parties. The courts require that the conditions contained in contracts, particularly exclusion and limitation clauses, must be adequately drafted and included to make them enforceable. In the presence of any ambiguity, the courts will interpret the drafting against the party relying on it using the contra proferentem principle. This concept has been illustrated in *A.G. Federation v. Zebra Energy Ltd*[197], where the Supreme Court held that the condition under discussion must be expressly exempted by the exemptions clauses. Academics support this approach since courts interpret these clauses very strictly[198].

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[196] (2012) 18 NWLR (Pt.1332) 209 at 247
[197] (2002) 18 NWLR (Pt.798) 162 at 197
[198] Baele (n 36)

4.2 Practical Challenges in the Enforcement of Exclusion Clauses

There are several challenges that exist with regard to the enforcement of an exclusion clause in Nigeria, most of which arise due to the struggle between the flexibility of contract and the need for the protection of the weak party involved.

1. Inequality of bargaining power: This is one problem, especially in standard form contracts, since the client does not have the ability to bargain on the conditions. Studies conducted recently reveal that companies have included the exclusion clauses in a way that provides immunity against lawsuits and denies customers any remedy.[199] The equity of contractual relationships is compromised by this reality
2. Complexity and technicality of the exclusion clause: The complexity and technicality of the exclusion clauses, which can be drafted in a confusing manner at times, is yet another hurdle that exists. It becomes difficult for the court to determine whether there was proper incorporation of such clauses and whether they properly cover the obligation in question. As per McKendrick, disputes about meaning and scope are often caused due to the complexity of the contractual language.[200] In a similar vein, Sagay highlights that ambiguous wording continues to be a significant barrier to the successful implementation of exclusion clauses.[201]
3. A sense of comprehensive statutory regulation: Furthermore, Nigeria has historically faced difficulties due to the lack of thorough statutory regulation. Despite the introduction of protections against unfair conditions by the Federal Competition and Consumer Protection Act,[202] its implementation is still evolving. The need for more robust legislative control over unjust contract conditions is still a challenge for Nigerian law, according to

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199 <https://www.researchgate.net/publication/370093103_Exclusion_Clauses_the_Federal_Competition_and_Consumer_Protection_Act_FCCPA_2018_to_the_Rescue_Chukwuma_v_Peace_Mass_Transit_Ltd> accessed 2 May 2026

200 McKendrick (n 104) p. 381

201 Sagay (n 3) p. 217

202 Federal Competition and Consumer Protection Act, 2018

academics.[203] Additionally, Treitel notes that courts are forced to rely largely on interpretation in the absence of explicit statutory involvement, which may result in inconsistent conclusions.[204]

4. Judicial Inconsistency: Judicial inconsistency is another issue, especially when it comes to striking a balance between strong enforcement and fair concerns. Even though courts follow the rule of construction method, different interpretations could make it unclear how exclusion clauses are applied. According to Beale, contemporary courts make an effort to balance contractual freedom with justice, but this frequently leads to inconsistent judicial decisions.[205]

It is observed that unequal bargaining power, complicated drafting, a lack of statutory oversight, and inconsistent interpretation all contribute to the practical difficulties in enforcing exclusion clauses in Nigeria and continue to influence judicial decisions in this regard.

4.2.1 Unequal Bargaining Power and Standard Form Contracts

In standard form contracts, when terms are pre-drafted by one party and presented on a "take-it-or-leave-it" basis, unequal bargaining power is a significant issue when it comes to enforcing exclusion clauses. In these circumstances, the weaker party—typically the consumer—has little to no chance to negotiate the terms, including liability-limiting or exclusion clauses. Unfair contractual outcomes could result from this disparity. Standard form contracts are frequently exploited by stronger parties to force burdensome restrictions on weaker parties, weakening actual consent, as noted by Sagay.[206] This mismatch is acknowledged by modern contract law, which has created mechanisms to lessen its impact. There has been an increased scrutiny by courts of the exclusion clauses in the standard form contracts to ensure that they are properly drafted and executed. According to McKendrick, the unwillingness of the judges

[203] Treitel (n 189) p. 203
[204] Ibid
[205] Beale (n 35) p. 1052
[206] Sagay (n 3) p. 217

to enforce exclusion clauses strictly is primarily due to the imbalance of the power in bargaining.[207]

4.2.2 Lack of Awareness and Access to Legal Remedies

Ignorance and lack of access to legal recourse, especially by consumers and novice contracting parties, constitute a formidable impediment to the enforcement of the exclusion clauses in Nigeria. Most people enter into contract not understanding fully the implications of exclusion clauses, more so when such exclusion clauses have been embedded in long and complicated standard form contracts. This goes hand in hand with the issue of the lack of access to justice which tends to discourage aggrieved parties from challenging unjust exclusion clauses. The cost of going to court constitutes one of the major reasons for discouraging people from seeking justice.

Furthermore, claims are frequently discouraged by the technical nature of exclusion clauses and the difficulty of legal processes, especially in low-value transactions where the potential benefit is outweighed by the cost of enforcement.

4.2.3 Absence of Comprehensive Statutory Regulation

The lack of a thorough legal framework that expressly addresses unjust contract conditions is a significant obstacle to Nigeria's regulation of exclusion clauses. Common law concepts like incorporation and interpretation have always played a major role in Nigerian contract law, leaving courts to predominantly govern exclusion clauses through judicial doctrines. According to Sagay, the courts now bear a heavy burden of ensuring fairness in commercial transactions due to the absence of comprehensive statutory regulation.[208]

There are statutory provisions, however they are dispersed and have a narrow scope. As demonstrated in *International Messengers (Nig) Ltd v. Pegafor Industries Ltd,*[209] section 190

[207] McKendrick (n 104) p. 38
[208] Sagay (n 3) p. 217
[209] (2005) 15 NWLR (Pt.947) 1 (SC)

of the Sale of Goods Law (applicable in certain States) states that a party guilty of fundamental breach cannot rely on an exemption clause to escape punishment. In a similar vein, section 120–122[210] aim to outlaw contract provisions that are unfair, irrational, or unjust, including exclusion clauses that restrict consumer rights. Nevertheless, not all types of contractual agreements are now covered by these regulations.

This disparity is further reflected in judicial authority. Results from this reliance on interpretation could be inconsistent. According to Treitel, courts are left to use generic principles that might not sufficiently handle contemporary commercial realities in the absence of a uniform regulatory regime.[211]

4.3 Enforceability of Exclusion Clauses under Nigerian Law

The enforceability of exclusion clauses under Nigerian law is a subject of considerable legal importance, as it involves balancing the principle of freedom of contract with the need to prevent injustice and unfair dealing. While parties are generally free to determine the terms of their agreement, including provisions that exclude or limit liability, such clauses are not automatically enforceable. Their validity depends on compliance with established legal principles developed under common law, equity and statutory intervention.

An exclusion clause, though valid in principle, will only be enforceable where certain conditions are satisfied. These conditions have evolved through judicial decisions and legal scholarship and include incorporation, proper construction, absence of vitiating factors, and consistency with public policy and statutory provisions.[212]

The first requirement for enforceability is incorporation. An exclusion clause must form part of the contract before it can be relied upon. This means that the clause must be brought to the notice of the other party at or before the time of contracting. Where the clause is contained in

[210] Federal Competition and Consumer Protection Act 2018
[211] Treitel (n 189) p. 203
[212] LawTeacher, 'Exclusion Clauses Lecture' (LawTeacher, November 2018)

a signed document, the general rule is that the party is bound by it, whether or not they have read its contents. This principle reflects the objective theory of contract. According to Anson, a person who signs a contractual document is bound by its terms in the absence of fraud, misrepresentation or non est factum.[213] Nigerian courts have adopted this position. In U*nion Bank of Nigeria Ltd v. Ozigi,*[214] the Supreme Court held that a party who signs a document is bound by its contents.

Where the contract is not contained in a signed document, reasonable notice of the exclusion clause must be given. The clause must be clearly communicated, and the more onerous the clause, the greater the degree of notice required. According to Chitty, the enforceability of exclusion clauses depends largely on whether reasonable steps were taken to bring them to the attention of the other party. [215] The second requirement is proper construction. Even where an exclusion clause is incorporated, the court must interpret its scope and determine whether it covers the breach in question. Courts generally apply the rule of strict construction, particularly where the clause seeks to exclude liability for negligence or fundamental obligations. The rule of contra proferentem is particularly relevant in this regard. Where there is any ambiguity in the wording of an exclusion clause, it will be construed against the party relying on it. As stated by Chitty, this rule ensures that a party cannot rely on vague language to escape liability.[216] Nigerian courts have consistently applied this principle. In *A.G. Federation v. Zebra Energy Ltd*[217], the Supreme Court emphasised that exclusion clauses must be clear, precise and unambiguous to be enforceable. Where the language is uncertain, the clause will be interpreted in favour of the innocent party. A further requirement for enforceability is the absence of vitiating factors such as fraud, misrepresentation, mistake or undue influence. An exclusion

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[213] Beatson, Burrows and Cartwright, (n 34) p. 142
[214] (1994) 3 NWLR (Pt.333) 385 at 404
[215] Beale (n 35), p. 1042
[216] Beale (n 35), p. 1045
[217] (2002) 18 NWLR (Pt.798) 162 at 197

clause cannot protect a party from liability arising from its own fraud. This is a well-established principle of law. According to Sagay, any clause that seeks to exclude liability for fraud is void and unenforceable.[218]

In addition, the presence of misrepresentation may render an exclusion clause ineffective. Where a party is induced into a contract by a false representation, the clause cannot be relied upon to avoid liability arising from that misrepresentation.

Another important consideration is public policy. Nigerian courts will refuse to enforce exclusion clauses that are contrary to public policy or that undermine the fundamental purpose of the contract. Although the strict doctrine of fundamental breach has been relaxed, courts still scrutinise clauses that attempt to exclude liability for serious breaches going to the root of the contract. In *A.G. Federation v. Zebra Energy Ltd*[219] t The Supreme Court appreciated that exclusion clauses should never be relied upon to frustrate the main purpose of the contract. Therefore, if the enforcement of such clauses results in injustice or frustrates the primary intention behind the making of such agreements, then the court will not enforce such exclusion clauses.

Secondly, statutory regulation has been found to have a big impact in relation to the enforceability of exclusion clauses in Nigeria. Different statutes regulate the exclusion of liability by parties. For example, under the Sale of Goods Law, there are implied terms and warranties that cannot easily be excluded, especially in the context of consumer contracts. As noted by Nwogugu, statutory interference acts as a remedy for the abuse of exclusion clauses, especially in situations of inequality of bargaining position.[220]

Another consideration regarding enforceability is inequality of bargaining power. Though Nigerian law protects the right of parties to make their own contractual arrangement, courts

[218] Sagay (n 3) p. 221
[219] (2002) 18 NWLR (Pt.798) 162 at 197
[220] Nwogugu (n 48), p. 68

have become more concerned about the cases of one party imposing undue obligations on the other. Such situation occurs mostly in case of an adhesion contract where the courts step in to redress the matter and ensure fairness. From a wider angle, the enforceability of exclusion clauses can be seen as the balance of commercial efficiency and legal fairness. While exclusion clauses are critical to the risk management in commercial transactions, such clauses should not become means of exploitation. It is clear from the above discussion that though exclusion clauses in Nigeria are not void clauses by their nature, they are enforceable only when certain criteria are met.

4.4 Limitation of Liability and Fundamental Breach

Contractual terms that limit the amount or scope of damages recoverable in the event of a breach, as opposed to completely dismissing liabilities, are known as limitation of liability agreements. These clauses are crucial instruments for allocating risk in business contracts, but when there is a serious contract violation, their legality is called into question. According to the conventional rule of law approach, a party cannot utilise a limitation clause to avoid liability if they commit a fundamental breach, which is a breach that goes to the root of the contract. This stance was demonstrated in *Karsales (Harrow) Ltd v. Wallis,*[221] and it was also used in *Alexander v. Railway Executive,*[222] where the seriousness of the violation rendered limitation restrictions inapplicable.

However, the current rule of construction approach holds that the parties' intentions as stated in the contract determine whether limitation clauses are applicable. The House of Lords ruled in *Photo Productions Ltd v. Securicor Transport Ltd,*[223] that if the language is clear and explicit, such clauses may nevertheless be enforceable even in circumstances of fundamental breach.

4.4.1 The Doctrine of Fundamental Breach in Nigerian Jurisprudence

[221] (1956) 1 WLR 936
[222] (1951) 2 KB 882
[223] (1980) AC 827

In the past, a fundamental breach was regarded as making any exclusion or limitation clause inapplicable since a party should not be permitted to depend on protective measures if they fail to fulfil the core requirements of the contract. Previous rulings like Karsales *(Harrow) Ltd v. Wallis*[224] reflected this viewpoint, which had an impact on Nigerian courts' early treatment of exemption clauses. The concept functioned as a judicial check mechanism against misuse of contractual freedom, as Sagay pointed out. [225]

However, in contemporary Nigerian law, the doctrine's strict application has undergone substantial modification. Nigerian courts moved toward the rule of construction approach in 1966 in response to changes in English law,[226] including *Photo Productions Ltd v. Securicor Transport Ltd,*[227] The Supreme Court ruled in *Narumal & Sons Ltd v. Niger Benue Transport Co. Ltd*.[228] that the impact of a fundamental breach on an exemption clause depended on the parties' intentions as stated in the contract rather than being automatic.[229] However, parts of the concept may still be preserved by statutory measures. The Supreme Court held in *International Messengers (Nig) Ltd v. Pegafor Industries Ltd*.[230] that a party guilty of a fundamental violation could not rely on an exemption provision based on statutory law. This shows that despite the doctrine's judicial weakening, legislative action and public policy considerations have kept it relevant.

Therefore, it is clear that in Nigerian jurisprudence, the theory of fundamental breach functions within the larger framework of contractual interpretation, subject to statutory limitations and the needs of fairness, rather than as an automatic rule rejecting exemption clauses.

[224] (1956) 1 WLR
[225] Sagay (n 3) p. 219
[226] Y. O Ali (n 183) accessed 14th June 2026
[227] (1980) AC 827
[228] (1989) 2 NWLR (Pt.106) 730 (SC)
[229] I.K Ilobinso, 'Protecting Consuments In The Online Market From Unfair Contract Terms: The Nigerian Perspective (2018)' (Nigerian Journal of Contemporary Law (2018) Vol.19 (1) 51-69) < https://api-ir.unilag.edu.ng/server/api/core/bitstreams/931f7cc8-188f-4d26-a2f0-66f8e46ccc6c/content> accessed 14th June 2026
[230] (2005) 15 NWLR (Pt.947) 1 (SC)

4.5 Comparative Insight and Lessons for Nigeria

In order to safeguard consumers and weaker contracting parties, contemporary legal systems have shifted from strict contractual flexibility to more statutory regulation of exclusion clauses, according to a comparative analysis of other jurisdictions. Exclusion clauses in the UK are subject to criteria of rationality, justice, and transparency under laws including the Consumer Rights Act 2015,[231] and the Unfair Contract Terms Act 1977.[232] The legislator in other modern legal systems have also enacted statutes which regulates the application of unfail contract terms.[233]

In particular, section 62 of the Consumer Rights Act 2015 makes unreasonable contract terms unenforceable against consumers, and section 2 of the unfair Contract Terms Act 1977 limits the exclusion of liability for negligence. These statutory protections provide the basis for judicial control of oppressive business conditions.

On the contrary, Nigeria has continued to rely on the common law approach to govern exclusion clauses. There are no existing legislative laws governing exclusion clauses or restriction clauses in contractual agreements, despite the Federal Competition and Consumer Protection Act[234], especially Sections 120 and 127[235], offering protection against oppressive contracts. This is the key lesson to be learnt from the UK model for Nigeria, which requires legislation to regulate such contracts to ensure consumer protection and reduce the exploitation caused by the unequal bargaining position of the consumers. According to Sagay, an excessive use of the exclusion clause can cause injustice where the consumers lack bargaining power.[236]

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[231] Consumer Rights Act 2015 (c.15)

[232] Unfair Contract Terms Act 1977 (c.50)

[233] "For instance, In the United Kingdom, unfair contract terms are regulated by the Unfair Contract Terms Act 1977 (UCTA) and the Unfair Terms in Consumer Contract Regulation 1999, SI 1999/2083 (UTCCR) which implements the European Union Directive on Unfair Terms in Consumer Contracts 93/13/EEC; In the republic of South Africa, Part G of Chapter 2 of the Consumer Protection Act, 2008; In the USA, Uniform Commercial Code, The German Standard Terms Statute of 1976; in Japan, The Consumer Contract Act, 2001, etc.

[234] Federal Competition and Consumer Protection Act, 2018

[235] Ibid

[236] Sagay (n 3), p. 221

4.5.1 Adapting Comparative Lessons to Nigerian Realities

Through the Federal Competition and Consumer Protection Act 2018, Nigeria has started implementing comparable consumer protection laws, particularly sections 120, 122, and 127[237], which prohibit unfair, unjust, and unreasonable contractual terms. Nevertheless, Nigeria currently lacks a thorough law that expressly governs exclusion and restriction clauses in all contractual agreements, in contrast to the United Kingdom. Nigerian courts thus continue to depend heavily on judicial interpretation and the rule of construction approach. Strengthening statutory control of standard form contracts and consumer transactions while considering local economic realities and business practices is the key lesson for Nigeria.

4.5.2 The Role of the Judiciary in Ensuring Contractual Fairness

By controlling the use and execution of exclusion provisions, the judiciary plays a crucial role in guaranteeing equity in contractual agreements. To stop stronger parties from exploiting exclusion provisions as tools of injustice against weaker parties, Nigerian courts have continuously embraced the contra proferentem rule, strict interpretation, and reasonableness. Therefore, before exclusion provisions can be enforced, the courts make sure they are precise, explicit, and correctly incorporated. In contractual transactions, this judicial approach encourages fairness and responsibility. Nigerian courts have used both legislative laws and common law grounds in carrying out this function. Sections 120 and 127[238] give courts the authority to declare unfair, unjust, or unreasonable commercial provisions unenforceable.

In order to prevent misuse resulting from unequal bargaining power in standard form contracts, Sagay notes that judicial control over exclusion provisions is required[239].

[237] Federal Competition and Consumer Protection Act, 2018
[238] Federal Competition and Consumer Protection Act, 2018
[239] Sagay (n 3), p. 22

4.5.3 Balancing Freedom of Contract and Public Interest

Parties may freely choose the conditions of their contractual arrangement, including exclusion and limiting clauses, under the freedom of contract principle. This idea has historically been upheld by common law courts under the sanctity of contract theory. However, when larger parties use standard form contracts to force restrictive terms on weaker consumers, unrestrained contractual freedom may lead to injustice. Therefore, Nigerian courts aim to strike a compromise between the public interest, consumer protection, and contractual freedom. Courts use the contra proferentem doctrine, reasonable notice, and strict interpretation principles to strike this balance and stop the misuse of exclusion clauses. The Federal Competition and Consumer Protection Act of 2018 prohibits unfair, unjust, and unreasonable contractual provisions that work against consumers in sections 120 and 127.[240] The necessity to safeguard the public interest while maintaining contractual freedom is often reflected in judicial rulings. In *Olley v. Marlborough Court Ltd,*[241] the court declined to uphold an exclusion clause that had not been properly disclosed prior to the contract's conclusion. Similarly, in *International Messengers (Nig) Ltd v. Pegafor Industries Ltd,*[242] the Supreme Court rejected the use of an exemption clause in cases involving a fundamental breach of contract. Nigerian courts continue to strike a balance between the public interest and contract freedom by making sure that exclusion clauses are construed fairly and do not oppress weaker contracting parties.

4.5.4 Promoting Predictability and Fairness in Judicial Decisions

In Nigeria, judicial interpretation and enforcement of exclusion clauses depend heavily on the concepts of predictability and justice. In order to guarantee predictability in

240 Federal Competition and Consumer Protection Act, 2018
241 [1949] 1 KB 532
242 (2005) 15 NWLR (Pt.947) 1 (SC

business transactions and shield weaker parties from oppressive contractual provisions, courts are obligated to apply contractual principles consistently. Therefore, Nigerian courts uphold justice by strictly interpreting exclusion clauses and by refusing to enforce clauses that are unclear, irrational, or against public policy. Judicial attempts to ensure consistency and fairness in contract disputes have been reinforced by statutory provisions.[243] More specifically, the use of inequitable, unfair, and unreasonable conditions of contracts by consumers is forbidden under Section 120 and 127 of the Federal Competition and Consumer Protection Act 2018.[244]

[243] I.K. Ilobinso, (n 17) accessed 16th June 2026
[244] Ibid

CHAPTER FIVE

Summary of Findings, Recommendations and Conclusion

5.1 Summary of Findings

This study sought to examine the applicability and enforcement of exclusion and limitation clauses in the contract laws of Nigeria.

1. This study critically examined the concept, legal nature and operation of exclusion and limitation clauses in Nigerian contract law. It began by discussing the historical development of contract law, the concept of contractual terms and the place of exclusion clauses within contractual relationships. The study explained that exclusion and limitation clauses are legitimate contractual devices used to allocate risks and liabilities between contracting parties. However, their enforceability depends on whether they have been properly incorporated into the contract, clearly drafted and interpreted in accordance with established principles of law. The study further examined the evolution of judicial interpretation from the rule of law approach to the modern rule of construction approach, particularly in cases involving fundamental breach, and concluded that Nigerian courts now focus primarily on the intention of the parties as expressed in the contract rather than automatically invalidating exclusion clauses because a fundamental breach has occurred.
2. The study further analysed the relationship between the doctrine of freedom of contract and the need to protect weaker contracting parties. It observed that while parties are generally free to determine the terms of their agreements, this freedom is often abused in modern commercial transactions involving standard form contracts. Businesses with superior bargaining power frequently impose exclusion and limitation clauses on consumers who have little or no opportunity to negotiate the terms. Consequently, consumers are compelled to accept unfair contractual provisions on a "take-it-or-leave-it" basis. The study therefore highlighted the need to strike a balance between preserving

contractual freedom and ensuring fairness by protecting consumers and other vulnerable contracting parties from oppressive contractual terms.

3. The research also examined the legal requirements governing the incorporation and interpretation of exclusion clauses. It considered the various methods by which exclusion clauses may be incorporated into contracts, including signature, reasonable notice and previous course of dealings. The study further explained that Nigerian courts continue to apply principles such as contra proferentem, strict construction and reasonable notice in determining the validity of exclusion clauses. It was observed that many contractual disputes arise because exclusion clauses are drafted in technical, vague or ambiguous language, thereby creating uncertainty regarding the intention of the parties. The study therefore concluded that clarity and precision in drafting remain essential to ensuring that exclusion clauses are interpreted fairly and consistently by the courts.
4. Another major aspect of this research was the examination of the legal and institutional framework regulating exclusion and limitation clauses in Nigeria. The study reviewed relevant statutes, including the Federal Competition and Consumer Protection Act 2018, the Sale of Goods Law, the Revised Contract Law of Enugu State and relevant judicial authorities. Although these laws provide some degree of protection against unfair contractual terms, the study found that Nigeria still lacks a comprehensive legislative framework specifically regulating exclusion and limitation clauses across all contractual relationships. As a result, Nigerian courts continue to rely heavily on common law principles and judicial discretion in resolving disputes involving exclusion clauses, leading to inconsistencies and uncertainty in some cases.
5. Finally, the study undertook a comparative analysis of the legal position in jurisdictions such as the United Kingdom and examined how dedicated legislation, including the Unfair Contract Terms Act 1977 and the Consumer Rights Act 2015, has significantly improved the regulation of exclusion clauses and enhanced consumer protection. The

comparative analysis demonstrated that these jurisdictions provide clearer statutory standards for determining the fairness and reasonableness of exclusion clauses than currently exists under Nigerian law. The study concluded that while exclusion and limitation clauses remain valuable commercial tools for allocating contractual risks and promoting commercial certainty, they must operate within a legal framework that equally promotes fairness, transparency and justice. Consequently, Nigeria should continue to reform its contract law by adopting suitable international best practices that are compatible with its legal system and socio-economic realities.

5.2 Recommendations

1. Comprehensive legislation is needed in Nigeria to provide exact regulation of exclusion and limitation clauses in particular in standardized agreements based on the research results. Although there were attempts to introduce protections against unfair contractual practices in the Federal Competition and Consumer Protection Act of 2018, they do not provide sufficient regulations in relation to the numerous problems associated with exclusion clauses in modern business contracts. In various sectors such as banking, insurance, transportation, medical services, and hospitality industry, when consumers usually cannot negotiate the terms of their agreement, standardized agreements are widely used. Therefore, stronger party can use exclusion and limitation clauses and thus reduce or totally exempt themselves from liability leaving risks to consumers. There is much that Nigeria can adopt from the United Kingdom where acts such as Consumer Rights Act of 2015 and Unfair Contract Terms Act of 1977 regulate exclusion clauses on the basis of criteria such as fairness and reasonableness. It is recommended that similar legislation be enacted by Nigeria to regulate standard form contracts, prohibit unfair exclusion clauses, and establish fair criteria for assessing the fairness of the contract. This will ensure that

contractual freedom is exercised within certain limits, develop a spirit of fairness within contractual relationships, and enhance consumer protection.

2. Furthermore, it is recommended that the Nigerian courts employ the Rule of Law doctrine when construing contract terms, or at least give the rule more consideration. The doctrine does not allow one party to make use of an exclusion clause to minimize his or her responsibility in case of a fundamental breach of contract.In cases like *Narumal & Sons Ltd v. Niger Benue Transport Co. Ltd* and *Akinsanya v. UBA Ltd*, the Rule of Construction is now considered superior. The Rule of Construction allows courts to decide whether exclusion clauses should apply based on interpretation of the contract. While the method supports the principle of freedom of contract, it could produce an unjust outcome where one party suffering from material breach of contract is protected under exclusion clauses. The reversion to the Rule of Law method would guarantee that exclusion clauses are not used as tools of injustice and deter contractual misconduct.
3. Businesses and legal practitioners should be encouraged, and where necessary required, to draft exclusion and limitation clauses in plain, clear, and unambiguous language. Technical legal jargon often prevents consumers from understanding the implications of contractual terms. Plain language drafting will improve transparency, reduce litigation arising from ambiguous clauses, and promote informed consent in contractual relationships.
4. The Federal Competition and Consumer Protection Commission (FCCPC) should be empowered to proactively review and monitor standard form contracts used in high-risk sectors such as banking, insurance, telecommunications, transportation, healthcare, and e-commerce. The Commission should also be given clear authority to issue compliance guidelines, investigate unfair exclusion clauses, and impose administrative sanctions where businesses persistently include oppressive contractual terms.

5. Consumer education programs and regulatory supervision should raise public understanding of contractual rights. Particularly with standard form contracts, many consumers accept contractual provisions without being aware of their legal implications. A more equitable and well-rounded contractual system in Nigeria would be greatly aided by greater awareness as well as more robust legal protection and judicial oversight. Regular training and continuing legal education should be organized for judges, legal practitioners, arbitrators, and contract drafters on emerging developments relating to exclusion and limitation clauses. As commercial transactions continue to evolve, particularly with electronic contracts and cross-border agreements, judicial officers and practitioners must remain abreast of international best practices and comparative jurisprudence. This will promote consistency, certainty, and fairness in judicial decisions.

5.3 Conclusion

The reversion to the rule of law approach in the interpretation of contractual clauses in Nigeria legal system would guarantee that exclusion clauses are not used as tools of injustice and deter contractual misconduct. Such an approach would make it impossible for the other party to rely on exclusion clauses in order to evade liability in the case of a breach of contract. The introduction of new legislation, which will regulate contract clauses, would help in controlling standard form contracts, enhance consumer protection and reduce abuses arising from imbalance in negotiation power. This study critically examined the operation and enforceability of exclusion and limitation clauses under Nigerian contract law. It established that while these clauses are legitimate contractual tools for allocating risks and promoting commercial certainty, their enforcement must always be balanced with the principles of fairness, justice and public policy. Nigerian courts generally uphold exclusion clauses where they are properly incorporated, clearly drafted and consistent with the intention of the parties, while also applying judicial principles such as reasonable notice, contra proferentem and strict construction to prevent abuse.

The study further revealed that the widespread use of standard form contracts, unequal bargaining power and the absence of comprehensive legislation continue to expose consumers and other weaker contracting parties to unfair contractual terms. Although the Federal Competition and Consumer Protection Act 2018 provides some protection, there remains a need for more comprehensive regulation of exclusion and limitation clauses in Nigeria.

Accordingly, this study concludes that meaningful reform requires more than legislative intervention. There is also a need for continuous training of judges and legal practitioners, the adoption of clear and simple drafting standards for contractual clauses, and a stronger regulatory role for the Federal Competition and Consumer Protection Commission in monitoring unfair contractual practices. These measures will ensure a better balance between freedom of contract and consumer protection, promote greater certainty in commercial transactions, and strengthen confidence in the Nigerian law of contract.

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