TITLE PAGE

EXAMINATION OF EXEMPTION CLAUSES UNDER THE NIGERIAN CONTRACT LAW

ANEKENWALI CHINWEOLU CALISTA

GOU/U21/LAW/337

A LONG ESSAY SUBMITTED TO THE FACULTY OF LAW, GODFREY OKOYE UNIVERSITY IN PARTIAL FULFILMENT OF THE OF THE REQUIREMENT FOR THE AWARD OF BARCHALOR OF LAWS DEGREE (LLB) OF GODFREY OKOYE UNIVERSITY

JULY, 2026

DECLARATION

I ANEKENWALI CHINWEOLU CALISTA declare that this essay is original research carried out by me as part of the requirements for award of bachelor of laws (LLB) during the 2025/2026 academic session.

All errors are entirely mine and not intended.

………………………

JULY 2026

ANEKENWALI CHINWEOLU CALISTA

CERTIFICATION

This is to certify that this research was carried out by **Anekenwali Chinweolu Calista,** an undergraduate student in the Faculty of Law, Godfrey Okoye University with Registration Number, U21/LAW/337, who has completed this long essay for the award of the degree of Bachelor of laws.

Save for reference which have been duly acknowledged, this work is original and has not been submitted in part or full for the award of any Degree in this or any other institution to the best of my knowledge.

……………………	**……………………**
Assoc. Prof. Kenneth Ikechukwu Ajibo **Supervisor**	**Date**
……………………………….	**…………………**
Dr. G.O. Omeh **Ag. Dean, Faculty Of Law**	**Date**
………………………………….	**……………………**
External Examiner	**Date**

DEDICATION

This research work is dedicated to Almighty God, whose grace and divine providence sustained me throughout this academic journey. It is further dedicated to my father, Mr. Celestine Anekenwali (Osinga) whose encouragement, support, and prayers contributed significantly to the successful completion of this study.

ACKNOWLEDGEMENT

First and foremost, I give my deepest gratitude to the God Almighty for his endless love, guidance, and strength. Without his blessings, this journey would not have been possible. This long essay would not have been accomplished without the support, assistance, prayers of my family, lecturer, friends and well-wishers.

I am immensely grateful to Asso. Prof. Ajibo Kenneth, my supervisor, for his invaluable guidance, insightful feedback, and continuous support throughout this research journey. His expertise and encouragement have been instrumental in shaping this work.

I would like to express my gratitude to my mum, Victoria Anekenwali, my aunty, Amaka Enewally, my uncle, Iyke Enewally, whose unwavering support has been a cornerstone of my academic journey. Their prayers, financial assistance, constant encouragement played a crucial role in the successful completion of this work.

Lastly, I wish to thank my best friends Chidera Azaga and Chinedu Mba for their words of encouragement and immeasurable support.

Table of contents

CHAPTER THREE: LEGAL REGIMES GOVERNING EXEMPTION CLAUSES IN NIGERIA

LIST OF CASES

LIST OF STATUTES

LIST OF ABBREVIATION

1. B2B…………………………………………………………………. Business-to-Business
2. B2C………………………………………………………………… Business-to-Consumer
3. UK……………………………………………………………………United Kingdom
4. FCCPA…………………………………. Federal Competition and Consumer Protection Act
5. FCCP Act………………………………. Federal Competition and Consumer Protection Act
6. CAMA…………………………………………………… Companies and Allied Matters Act
7. SGA……………………………………………………………...Sale of Goods Act
8. SGSA…………………………………………………… Supply of Goods and Services Act
9. UCTA……………………………………………………. Unfair Contract Terms Act
10. CRA……………………………………………………………. Consumer Rights Act
11. COGSA………………………………………………… Carriage of Goods by Sea Act
12. CBN………………………………………………………… Central Bank of Nigeria
13. BOFIA …………………………………………...Banks and Other Financial Institutions Act
14. NCC …………………………………………………Nigerian Communications Commission
15. SME …………………………………………………. Small and Medium-sized Enterprise
16. MR ……………………………………………………………..Master of the Rolls

ABSTRACT

This study provides a critical analysis of the scope and nature of exemption clauses (or exclusion clauses) within the framework of Nigerian contract law. An exemption clause is a contractual term inserted into an agreement to completely exclude or limit the liability of one party in the event of a breach of contract or negligence. While rooted in the foundational English common law principle of freedom of contract, the application of exemption clauses in Nigeria has evolved significantly to balance individual autonomy with consumer protection and public policy. The study examines the nature of these clauses, highlighting the distinction between total exclusion and mere limitation of liability. It explores the stringent common law techniques adopted by Nigerian courts to restrict their misuse, specifically focusing on the rules of incorporation (signature, notice, and course of dealing) and the rule of construction (contra proferentem), which ensures that any ambiguity is resolved against the party seeking to rely on the clause. Finally, the study evaluates the statutory landscape regulating these clauses in Nigeria, particularly under the Federal Competition and Consumer Protection Act (FCCPA) 2018. The FCCPA fundamentally alters the "buyer beware" (caveat emptor) dynamic by introducing statutory safeguards against unfair, unreasonable, or unjust contract terms. The study concludes that while exemption clauses remain vital for risk allocation in commercial transactions, the modern Nigerian legal regime increasingly prioritizes equity and the protection of weaker bargaining parties from oppressive terms.

CHAPTER ONE

INTRODUCTION

1.1. Background of the Study

A contract is an agreement between two or more persons creating rights & duties and which is enforceable by law. According to Pollock, a contract is a promise or set of promises which the law will enforce.[1]

Offer, acceptance, consideration and capacity among others are the essential elements of a valid contract. It is the most important element of a contract that there must be an offer for the agreement and the other party accepts it. The person making an offer is called offeror while the person that accepts it is called an offeree. Example, M says to N that he will sell his phone to him for ₦50. it is an express offer. An offer is an expression of willingness to contract on certain terms made with the intention that it shall become binding as soon as it is accepted by the person to whom it is addressed.[2] Contract forms the foundation of commercial and private transaction, and they operate on the principle that parties are bound by the terms they voluntarily agree upon. Modern commerce, however, increasingly relies on standard-form contract, where terms are drafted by one party-often a stronger party-leaving the other with little or no opportunity to negotiate. One of the other contractual devices commonly used in such arrangement is the exemption clause, also referred to as an exclusion or limitation clause. An exemption clause is a contractual term by which one party attempts to cut down either the scope of his contractual duties or regulate the other parties right to damages or other possible remedies for breach of contract. It means that the exemption clause is a term in an agreement that gives a limitation towards contracting parties.

---

1 Fredrick pollock, *Principle of contract* (13th edn, Stevens 11950) 1

2 *Edwin Peel, Treitel: The Law of contract* (12th edn, sweet and Maxwell 2007) 9*; Storer v. Manchester CC [1974] 1 WLR 1403.*

Exemption clauses in contracts are terms that limit or exclude liability for breach of contract or negligence. Under the English law, these clauses serve to allocate risk between contracting parties. However, the law imposes controls to prevent abuse, especially where bargaining power is unequal. This essay analyses the nature and purpose of exemption clauses and examines the common law rules governing their incorporation and interpretation, including the doctrine of fundamental breach. It then discusses the statutory frameworks of the Unfair Contract Terms Act.[3]and the Consumer Rights Act.[4] highlighting differences in treatment between business-to-business.[5]and consumer contracts. Recent developments and judicial attitudes are also evaluated. In Nigeria law, exemption clause is recognized, but courts treat them with caution to prevent injustice or abuse of bargaining power. For exemption clause to be enforceable in Nigeria, courts must consider the following: incorporation, construction, legality. Some Nigerian statutes restrict the use of exemption clauses, including; (a). Consumer Protection Regulation: FCCPA 20118(b). sales of Goods Act and (c). insurance Laws.

1.2. Statement of the Problem

Despite the central role that exemption clauses play in commercial transactions, their operation continues to generate significant legal and practical challenges. In theory, exemption clauses are meant to facilitate the efficient allocation of risk between parties, especially in modern commerce where standard form contracts are common. However, in practice, they often function as instruments of imbalance, allowing stronger parties usually corporations, service providers, and employers to shield themselves from liability at the expense of weaker contracting parties who

---

[3]. *UCTA (*1977).
[4]. *CRA (2015).*
[5]. *(B2B).*

lack bargaining power or the opportunity to negotiate the terms.[6] A major problem arises from the widespread use of standard form or "take-it-or-leave-it" contracts, where exemption clauses are embedded in lengthy documents that ordinary consumers rarely read or understand. This raises difficult questions about genuine consent and the fairness of enforcing such terms, particularly where the weaker party had no realistic opportunity to influence the content of the agreement.[7] Courts are therefore frequently confronted with the dilemma of balancing the doctrine of freedom of contract against the need to prevent exploitation and injustice. The interpretation and enforcement of exemption clauses remain inconsistent. While common law principles such as contra proferentem and the requirement of clear notice exist, their application has not always produced predictable outcomes. The judicial shift from the rigid "fundamental breach" doctrine to a more flexible rule of construction has created uncertainty, making it difficult to determine the circumstances under which an exemption clause will be upheld or struck down.[8] This unpredictability undermines commercial certainty and complicates contractual drafting.

In Nigeria, the problem is compounded by fragmented statutory regulation. Unlike jurisdictions with unified legislation governing unfair contract terms, Nigeria relies on scattered provisions under the Sale of Goods Act, the Federal Competition and Consumer Protection Act, and sector-specific statutes. This creates gaps in protection, particularly in commercial contract, consumer and employment relationships, where unequal bargaining power is most acute.[9] The absence of a comprehensive statutory framework has therefore placed excessive reliance on judicial discretion, which is often subject to varying interpretations.

---

[6] . *G.H. Treitel, Law of Contract,14th ed. (London:Sweet & Maxwell,2015)*
[7]. *O. Okany, Nigerian Law of contract African first publisher* (2010).
[8]. *W.R. Anson, Principles of Contract Law* (Oxford: University press 2016).
[9]. *FCCPA* 2018.

Finally, there is the persistent challenge of ensuring that exemption clauses do not undermine public policy, justice, and accountability. Clauses attempting to exclude liability for negligence, personal injury, breach of fundamental obligations, or even fraud have appeared in various contracts, raising the question of how far the courts should allow parties to limit their legal responsibilities.[10] This tension highlights the need for clarity regarding the permissible scope of exemption clauses and the safeguards required to prevent abuse. In light of these issues, the central problem this research seeks to address is the extent to which exemption clauses should be enforced in contemporary contract law, and how courts and legislation can balance contractual freedom with fairness, consumer protection, and public policy.

1.3. Research Questions

1. To what extent should exemption clauses be enforced in contemporary contract law, particularly in situations of unequal bargaining power between contracting parties?
2. How effective are the existing common law principles and Nigerian statutory provisions in regulating the incorporation, interpretation, and validity of exemption clauses?
3. What legal safeguards are necessary to ensure that exemption clauses do not undermine public policy, justice, consumer protection, or accountability in contractual relationships?

1.4. Aim and Objective of The Study

The primary aim of the nature and scope of exemption clause under the contract law in Nigeria was to strike a balance between commercial efficacy and social justice. While contract law generally allows parties to agree to their own terms and allocate risks as they see fit, the study aims to ensure that economically stronger parties do not exploit this freedom by imposing unfair or

[10]. J., Chitty, *Chitty on Contracts*, 33rd ed., Sweet & Maxwell, London, (2019).

oppressive terms on weaker parties. To analyze why and how parties include these clauses to manage and allocate risk, limit liability, and avoid potential consequences from breaches or negligence. The objective of studying exemption clauses in Nigeria is to comprehensively understand the legal principles, judicial controls, and statutory frameworks that govern their use, ensuring a balance between the freedom of contract and the need to prevent unfair and oppressive contractual terms, especially in scenarios involving unequal bargaining power.

- To find out circumstances where these clauses are effective and the situations where they are not, such as in cases of fundamental breach, negligence, or fraud.
- To determine how Nigerian legislation, like the Federal Competition and consumer Protection Act 2018, affects the use of exemption clauses and protects consumers from potentially unfair terms.
- To understand the legal position in Nigeria, which may differ from other common law jurisdictions, and the extent to which Nigerian courts will uphold or strike down these clauses.
- To evaluate legal enforceability: To determine the legal framework governing exemption clauses in Nigeria and how courts interpret them in different contractual contexts.
- To analyze how the courts, consider the relative bargaining power between parties, especially in cases where one party may be in a stronger negotiating position.

1.5 Scope and Limitation of The Study

The nature and scope of studying the exemption clauses under Nigerian contract law includes; analyzing their validity, incorporation methods such as: signature, notice, course of dealings, and the extent to which they can limit or exclude liability. The scope of an exemption clause is determined by a combination of common law rules like: incorporation and construction and statutory regulations, which aim to prevent unfairness, especially in situations with unequal bargaining power. Legislation significantly limits the scope of exemption clauses, particularly in business-to-consumer (B2C) relationships. In the UK, the primary statutes are the Unfair Contract Terms Act.[11] (for business-to-business or B2B contracts) and the Consumer Rights Act.[12] (for B2C contracts). [13]This study, like many legal researches works, relies heavily on judicial precedents and textual analysis of statutes, many of which originate from jurisdictions such as England where contract law is more extensively developed. While these authorities remain persuasive in Nigeria, differences in statutory frameworks and judicial attitudes may limit the direct applicability of some foreign decisions, this creates challenges in drawing uniform conclusions on the enforceability of exemption clauses.[14]

The study is constrained by the fragmented nature of Nigerian statutory regulation on exemption clauses. Unlike jurisdictions with unified unfair contract terms legislation, Nigeria's legal position is spread across multiple statutes including the Sale of Goods Act, the FCCPA 2018, the Insurance Act, and other sector specific regulations. The absence of a single comprehensive statute makes it difficult to conduct an exhaustive statutory analysis within the limited scope of this research.[15]

Another limitation arises from the restricted availability of recent Nigerian case law specifically addressing exemption clauses. While older common law authorities remain influential, recent Nigerian judicial pronouncements on the subject are relatively few. This scarcity of contemporary local decisions limits the ability to evaluate current judicial trends or the evolving stance of

---

[11] . ibid, 3, (1977).
[12]. Ibid, 4, (2015).
[13] . *The core different between B2B (manufacturer selling to distributor) and B2C (commercial business and an individual end-user) lies in their bargaining power and legal protection. The law assumes businesses are on equal footing, while consumers need to be protected from being exploited by bigger corporations.*
[14]. *Ibid, 8.*
[15]. Ibid, 9.

Nigerian courts on issues such as inequality of bargaining power, reasonableness, and consumer protection.[16] The study focuses primarily on contractual relationships in commercial and consumer contexts, and therefore does not extend to highly specialized contract regimes such as maritime law, international commercial arbitration, or government procurement. Finally, the study is limited by the reliance on accessible academic materials, textbooks, and journal articles. Some advanced academic literature, particularly foreign commentaries and specialized treatises, were inaccessible during the research period. This may affect the breadth of scholarly perspectives incorporated into the work.[17]

1.6 Significance of The Study

The study of the nature and scope of exemption clauses in Nigerian contract law is significant due to the increasing reliance on such clauses in commercial, consumer, employment, and service-related contracts. In modern Nigeria, exemption clauses appear frequently in standard-form contracts drafted by stronger parties, often without adequate negotiation or understanding by weaker parties. This study is particularly relevant to Nigerian society because exemption clauses directly affect everyday transactions such as transportation, banking telecommunications, insurance, and digital services. Many consumers enter into contracts without full awareness of exemption clauses that limit or exclude the liability of service providers. By clarifying the legal boundaries of such clauses, this research promotes consumer awareness and protection, thereby reducing exploitation and contractual injustice.[18]An informed society is better positioned to assert its rights and demand fair contractual terms. From a governmental perspective, this study assists policymakers in evaluating the adequacy of Nigeria's current legal framework regulating

---

16. *I.E, sagay, Nigeria law of contract 2nd ed. Ibadan: Spectrum Book Ltd (2010).*
17 . ibid, 6.
18. *Ibid,* 17.

exemption clauses. Unlike jurisdictions with consolidated legislation on unfair contract terms, Nigeria relies on scattered statutory provisions such as the Sale of Goods Act and the Federal Competition and Consumer Protection Act among others.[19] This research highlights gaps and inconsistencies within the existing framework, thereby providing a foundation for possible legislative reforms aimed at strengthening consumer protection and enhancing contractual fairness.[20]

The study is also valuable to regulatory bodies such as the Federal Competition and Consumer Protection Commission.[21] By examining the scope and enforceability of exemption clauses, the research provides guidance on identifying unfair, unreasonable, or unconscionable contract terms. This supports regulators in enforcing compliance, monitoring market practices, and protecting consumers from abuse by dominant market player.[22] Legal practitioners, including lawyers and judges, will benefit from this study as it offers doctrinal clarity on the interpretation and enforcement of exemption clauses under Nigerian law. By analyzing judicial principles such as incorporation, construction, reasonableness, and public policy, the study aids practitioners in drafting enforceable contracts, advising clients effectively, and predicting judicial outcomes in contractual disputes.[23] This study contributes to Nigerian contract law scholarship by critically analyzing the nature and scope of exemption clauses within a local context. It bridges the gap between English common law principles and Nigerian statutory realities, providing a more contextual understanding of the subject. For students of law, the study serves as a valuable learning

---

[19]. Ibid,15, 2018.
[20]. *Ibid* 19.
[21]. *ibid.*
[22]. *C.O., Okonkwo, Nigerian Commercial Law,Ibadan: Spectrum Books Ltd., 2020.*
[23]. ibid, 14.

resource that simplifies complex doctrines and demonstrates their practical application in Nigerian courts.[24]

1.7 Research Methodology

The method of this research is doctrinal legal approach. This approach is where the legal rules and codes are analyzed and discussed as it relates to the topic. It involves systematically analyzing legal rules, principles, and judicial decisions to understand how courts interpret and apply exemption clauses. Both primary and secondary sources were utilized;

The primary sources are; statutes and legislation; (FCCPA, Sales of Goods Act, Sale of Goods Law Lagos State, Revised Law of Contract on Enugu State 2004), judicial decision (case laws), subsidiary legislation. The secondary sources are; textbooks, journal articles, law reports, legal encyclopedias and dictionaries, internet and online legal databases. The purpose of this method is to gather, organize, and prescribe the law, provide commentary on the sources used.

1.8 Literature Review

The concept of exemption clauses has long occupied a central place in the law of contract, particularly because of its tension with the principles of fairness and accountability. In Nigeria, scholarly writings and judicial decisions have sought to explain the nature, scope, and limits of exemption clauses within the framework of contractual freedom and judicial control. This review examines the existing literature on exemption clauses in Nigeria by analyzing the views of leading scholars, judicial approaches, and statutory interventions, with a view to identifying gaps that necessitate further research.

[24]. ibid, 16.

Most Nigerian writers are agreed on the basic definition of an exemption clause. According to Cheshire, Fifoot and Furmston, an exemption clause is a term in a contract by which one party seeks to exclude or restrict his liability for breach of contract, negligence, or other obligations that would otherwise arise under the contract.[25] Nigerian scholars such as Sagay and Okany adopt a similar position, emphasizing that exemption clauses are devices for allocating risks between parties in a contractual relationship.[26]

In Consumer Protection Law in Nigeria, F. Monye explains that exemption clauses, though traditionally accepted under freedom of contract, often operate unfairly against consumers because they are usually imposed through standard form contracts. She argues that common law safeguards alone are inadequate to curb abuses associated with such clauses. Monye highlights the FCCP Act 2018 as a major development that limits the use of unfair exemption clauses in consumer contracts. Overall, her work shows that the scope of exemption clauses in Nigeria is increasingly restricted by statutory consumer protection principles.[27] The plaintiff purchased a bottle of Coca-Cola manufactured by the defendant. While drinking the beverage, the bottle exploded and caused serious injuries to her. Nigeria Bottling Company relied on a disclaimer printed on the bottle which stated that the company would not be liable for any injury arising from the consumption of its products. The Supreme Court held that the exemption clause could not protect the defendant from liability. The Court reasoned that the disclaimer was not part of any contractual agreement between the parties and, in any event, public policy would not allow a manufacturer to exclude liability for

[25]. *G. C. Cheshire, C H S Fifoot & M P Furmston, Law of Contract (16th edn, OUP 2012).*
[26] . I.E. Sagay *Nigerian Law of Contract. 2nd Edition, Spectrum Books* (2000).

[27]. *F. Monye Consumer Protection Law in Nigeria.* 2nd Edition, Malthouse Press. (2021).
28. *ibid 26* (2000).

personal injuries caused by its own negligence.[28] Scholars generally define an exemption clause as a term in a contract that seeks to exclude or limit the liability of a party for a breach of contract or negligence. Sagay posits that the fundamental nature of these clauses is rooted in the "freedom of contract" doctrine, where parties are presumed to be the best judges of their own interests.[29] From these writings, it is clear that exemption clauses are not illegal per se under Nigerian law. Rather, they are recognized as valid contractual terms rooted in the doctrine of freedom of contract. However, scholars also note that because exemption clauses are often found in standard form contracts, they are susceptible to abuse, especially where there is inequality of bargaining power. This concern forms the basis of judicial and legislative intervention in their enforcement.[30] A significant body of literature focuses on the scope of exemption clauses and the manner in which Nigerian courts interpret them. The dominant scholarly view is that exemption clauses are construed strictly contra proferentem, that is, against the party seeking to rely on them. This position is supported by judicial decisions of the Supreme Court of Nigeria, which scholars frequently analyze to demonstrate the cautious attitude of the courts. In *African Continental Bank Ltd v Nigerian Shipping Lines Ltd,*[31] the Supreme Court held that an exemption clause must be clear, unambiguous, and properly incorporated into the contract before it can avail the party relying on it. Scholars such as Nwabueze argue that this strict approach reflects the courts' attempt to balance contractual freedom with justice and fairness.[32] Another major area of scholarly debate concerns the relationship between exemption clauses and fundamental breach. In earlier Nigerian cases,[33] it was interpreted by some writers as suggesting that a party guilty of a fundamental breach could

29. *Nigeria Bottling Co. Ltd v. Ngonadi* [1985] 1 NWLR (Pt. 4) 739.

30. *E McKendrick, Contract Law* (14th edn, Palgrave Macmillan 2020).
31 . (1977) 5 SC 77.
32 . B O Nwabueze, *The Machinery of Justice in Nigeria* (Butterworths 1985).
33. *Narandas Karsondas v Military Governor of Lagos State* (1971) 1 NMLR 313.

not rely on an exemption clause. This position was welcomed by many commentators as a tool for preventing abuse.[34]

However, later judicial reasoning, influenced by modern English law, shifted away from this rigid approach. In *Photo Production Ltd v Securicor Transport Ltd*,[35] the House of Lords rejected the doctrine of fundamental breach as a rule of law. Nigerian scholars note that subsequent Nigerian cases, such as *Eagles Super Pack (Nig) Ltd v ACB Plc*,[36] show a movement towards treating exemption clauses as matters of construction rather than automatic invalidation. This evolution has generated controversy in academic writing, with some scholars arguing that it weakens consumer and weaker-party protection.[37]

The scope of exemption clauses is no longer purely a matter of common law in Nigeria. The enactment of the Federal competition Consumer Protection Act,[38] has fundamentally altered the landscape. Despite these developments, scholars point out that judicial reliance on statutory control remains inconsistent. Some studies criticize the limited engagement of courts with the FCCPA, noting that many decisions still rely heavily on common law principles without sufficient statutory analysis. Monye,[39] observes that Section 127 of the FCCPA prohibits "unfair, unreasonable, or unjust contract terms." This creates a statutory "gap" in older literature; whereas previous studies focused on the construction of the clause, modern research must focus on the fairness of the clause. The FCCPA effectively restricts the scope of exemption clauses in B2C (Business to Consumer) transactions, making many traditional exclusion clauses legally "dead on arrival" if they negate

[34] . A T Elias, *Nigerian Land Law and Custom* (Routledge 1971).
[35]. [1980] AC 827.
[36] . (2006) 19 NWLR (Pt 1013) 20.
[37] . ibid 36.
[38] . ibid,19.
[39] . ibid, 27.

the consumer's core rights. While the existing works of Sagay and Yerokun,[40] provide a brilliant foundational analysis of the common law position, there is a visible gap in recent literature regarding the synergy between the FCCPA 2018 and the established judicial precedents on fundamental breach. While the existing literature extensively discusses the definition, interpretation, and judicial treatment of exemption clauses, several gaps remain. First, much of the literature is doctrinal and case-based, with little empirical analysis of how exemption clauses operate in modern Nigerian commercial practice. Secondly, there is limited comparative analysis between Nigerian law and other common law jurisdictions in the post-consumer protection era. Finally, few studies comprehensively assess the impact of the FCCPA on exemption clauses across different sectors such as transportation, banking, and digital commerce.

[40] . ibid 38.

CHAPTER TWO

CONCEPTUAL AND THEORETICAL FRAMEWORK

2.1. Conceptual Framework

The conceptual framework of this study explains the key concepts and their interrelationship in examining the nature and scope of exemption clauses under Nigerian contract law. It identifies the major variables that influence the validity, interpretation, and enforceability of exemption clauses, and how these variables interact to determine whether such clauses will be upheld by the courts. At the center of this framework is the exemption clause, which serves as the primary contractual mechanism for limiting or excluding liability. Treitel describes exemption clauses as devices used by contracting parties to allocate risks and limit legal responsibility.[41] In Nigeria, exemption clauses commonly appear in standard-form contracts drafted by banks, transport companies, insurers, and service providers.

For an exemption clause to be legally effective, it must be properly incorporated into the contract. Incorporation occurs through signature, reasonable notice, or a consistent course of dealing between the parties. Anson notes that failure to properly incorporate an exemption clause renders it ineffective, regardless of its wording.[42] In the conceptual framework, incorporation serves as the first gate-keeping mechanism that determines whether an exemption clause forms part of the contractual agreement. Closely related to incorporation is the concept of notice. The law requires that reasonable steps be taken to draw the exemption clause to the attention of the other party before or at the time of contracting. This concept is crucial in consumer and standard-form

[41]. ibid 18.
[42]. Ibid, 23.

contracts, where parties often sign without reading the terms. Adequate notice strengthens the argument that genuine consent was given.[43] Even where properly incorporated, exemption clauses are subject to strict judicial interpretation. Courts apply the contra proferentem rule, whereby ambiguous clauses are construed against the party seeking to rely on them. This principle limits the scope of exemption clauses and prevents parties from benefiting from vague or misleading language.[44] Interpretation therefore determines whether the exemption clause actually covers the breach or liability in dispute. Another critical concept in this framework is inequality of bargaining power. Sagay observes that exemption clauses often reflect an imbalance in negotiating strength, particularly in consumer and employment contracts.[45] Where one party has significantly superior bargaining power, courts are more inclined to scrutinize exemption clauses for fairness and reasonableness. Public policy and statutory regulation act as external constraints on exemption clauses. Statutes such as the Federal Competition and Consumer Protection Act (FCCPA) 2018 prohibit unfair, unjust, or unreasonable contractual terms. Exemption clauses that attempt to exclude liability for fraud, fundamental obligations, or statutory duties are likely to be declared void.[46]

2.2. Historical Development of Contract

The development of contract law can be divided into four major stages;[47] Early common law (12th-15th century); English contract law was rigid and formal, based on certain “forms of action,” mainly:

[43]. ibid, 22.
[44]. Ibid, 10.
[45]. Ibid, *24.*
[46]. *Ibid* 40.
[47]. Okay Achike, *Nigerian contract law (Nwamife pulisher ltd) (1973).3*

a. Writ of debt, this applied when one person owed another money or goods. It did not look at the agreements or promises, only at the existence of a debt. It can be debt on record or debt on an obligation.

b. Writ of covenant, this requires formalities, especially that the agreement must be sealed (signed and sealed). Without seal, an agreement was unenforceable. Defects, most agreements were not enforceable unless formal. No recognition of everyday bargains or promises. Development of assumption (15th -17th century): foundation of modern contracts. Court created the writ of assumpsit to solve the rigidity of formal actions. It recognized informal promise enforceable without seals. It introduced consideration as a requirement, and the principle that "no consideration.no contract". Classical contract law (18th -19th century): freedom of contract; this was the peak, parties were free to make any agreement, courts would enforce it strictly, and the state did not interfere. Modern contract law (20th century-present): there was increased use of standard-form contracts. Powerful companies-imposed terms on weaker parties, courts and legislatures responded with: consumer protection statutes, judicial scrutiny of unfair terms and doctrine of unconscionability, reasonableness, fundamental breach, and contra proferentem. This period shapes how exemption clauses are treated today.

Under English law, these clauses serve to alcoate risk between contracting parties. However, the law imposes controls to prevent abuse, especially where bargaining power is unequal. This essay analyses the nature and purpose of exemption clauses and examines the common law rules governing their incorporation and interpretation, including the demise of the doctrine of fundamental breach. It then discusses the statutory frameworks of the Unfair Contract Terms Act of 1977.[48] and the Consumer Rights Act of 2015,[49] to highlight the differences in treatment between business-to-business (B2B) and consumer contracts. Historically, unscrupulous use of exemption clauses (for instance, businesses trying to evade all responsibility for defective products or negligent services) led to judicial and legislative intervention. Courts developed rules to determine whether an exemption clause forms part of the contract (incorporation) and how it should be interpreted (construction). These common law doctrines apply to all contracts (B2B and consumer), though their practical impact is now often overtaken by statutory rules in many scenarios. Common law principles alone were deemed insufficient to protect parties (especially consumers and small businesses) from unfair exemption clauses. The most significant statutes are the Unfair Contract Terms Act 1977 (UCTA 1977) and the Consumer Rights Act 2015 (CRA 2015).

2.3. Sources of Contract Law:

Contract law derives its authority from various legal sources that collectively regulate the formation, interpretation, and enforcement of agreements. The major sources of contract law include:

a. Common Law: The common law is one of the primary sources of contract law in Nigeria. It consists of legal principles developed through judicial decisions over time. Nigerian contract law largely draws from English common law, which was received into Nigeria during the colonial era and continues to apply subject to local circumstances and statutory modification. Key principles

[48]. Ibid,11.
[49]. Ibid, 12.

such as offer, acceptance, consideration, intention to create legal relations, and privity of contract originate from the common law.[50]

b. Statutes (Legislation); Statutes constitute a major source of contract law. In Nigeria, several statutes regulate contractual relationships either directly or indirectly. Examples include: The Sale of Goods Act, 1893 (as applicable in Nigeria), the Federal Competition and Consumer Protection Act, 2018, the Companies and Allied Matters Act, 2020, and the Labour Act. Statutory provisions are particularly significant in regulating unfair contract terms and controlling exemption clauses.[51]

c. Judicial Decisions (Case Law); Judicial decisions form an important source of contract law under the doctrine of stare decisis. Decisions of superior courts bind lower courts and ensure consistency and certainty in the law. Through case law, courts interpret statutes, develop common law principles, and adapt contract law to changing social and economic realities. Landmark cases such as *Carlill v. Carbolic Smoke Ball Co. and L'Estrange v. Graucob,*[52] illustrate how judicial decisions shape contract law.

d. Equity: Equity developed to mitigate the rigidity of common law by introducing principles of fairness and justice. Equitable doctrines such as undue influence, misrepresentation, estoppel, and unconscionable bargains significantly influence contract law. Equity plays a crucial role in controlling unfair contracts and protecting parties affected by inequality of bargaining power.[53] Nigerian courts apply equitable principles where strict application of common law would result in injustice.

[50]. *Ibid, 42.*
[51]. *Ibid, 46.*
[52]. *Carlill v. Carbolic Smoke Ball Co. (1893) 1 QB 256; L'Estrange v. Graucob (1934) 2 KB 394*.
[53] . *ibid, 41.*

d. Customary Law: Customary law is a recognized source of contract law in Nigeria, particularly in transactions governed by indigenous customs and traditions. Contracts made under customary law are enforceable provided they are not repugnant to natural justice, equity, and good conscience or inconsistent with statutory law.[54] Customary law governs agreements relating to land, marriage, and traditional commercial practices in many Nigerian communities.

e. Received English Law: Received English law includes English common law, doctrines of equity, and statutes of general application in force in England on 1 January 1900. These laws form the foundation of Nigerian contract law and apply subject to local statutes and judicial interpretation.[55]

2.4. Exemption Clause

An exemption clause is "a term in a contract which purports to exclude or limit the liability of a party which would otherwise arise under the contract or in tort".[56] These clauses are commonly found in standard-form contracts, particularly in commercial transactions, consumer agreements, insurance contracts, and contracts for services. Exemption clauses are typically drafted by the party in a stronger bargaining position and are often embedded in printed or pre-prepared contractual documents. Clauses are designed to shift or minimize contractual risk, especially where one party wishes to avoid extensive liability for potential breaches.[57] Exemption clauses may take different forms, including: clauses excluding liability for negligence, clauses excluding liability for certain types of loss, and clauses excluding liability altogether. However, while exemption clauses promote contractual certainty, they may also result in unfairness where the weaker party has no

[54]. Ibid, *45.*
[55]*. Ibid, 43.*
[56] *. ibid,53.*
[57] *. ibid,50.*

real opportunity to negotiate the terms.[58] Because of their potential to operate unjustly, judicial control is exercised through strict rules on incorporation, interpretation, and statutory regulation. Courts are particularly reluctant to uphold exemption clauses that seek to exclude liability for negligence or fundamental obligations without clear and express wording. [59]

2.5. Terms of Contract

Terms of contract are the basic agreements regulating the contract between the parties. It contains the definite terms, conditions, stipulations and exemptions. From the terms of contract, the obligations of the parties could be ascertained. This means that the full extent of the party's obligations in contract cannot be adequately determined until the terms are pigeonholed into terms such as fundamental terms, conditions, warranties and innominate or intermediate terms. It is after evaluating the nature of the terms of contract that the court can determine the extent of a party's obligations and the consequences of a breach of contract. If the aggrieved seeks damages for breach of a term of contract he may go home with an award of specific or general damages or both.

2.5.1. Express

A contract can be made orally or written or partly orally and written (unless where a specific provision of the law requires that the contract shall be in writing). The express terms of a contract maybe orally made or reduce to writing.[60]

a. Oral contract; where a contract is orally made, the parties have the obligation to thrust upon themselves oral evidence which is to be adduced in the proceedings. There must be a proof of fact

[58] . *ibid,54.*
[59] . *ibid,44.*
[60]. *Ibid, 47.*

as to what the people actually said. This is a matter which belong to the law of evidence, but it must be clearly mentioned here that the onus lies on the party who feels aggrieved by the breach of contract to produce evidence sufficient to warrant the court to find in his favor, otherwise the claim fails.

b. Written contract; where the parties have made their intention known through writing, the proof of their contractual liabilities is usually simpler, being a matter of documentary evidence. It is also a well-established proposition in law that the court does not make a redraft a contract for the parties *Davies v. Davies.*[61] so that where the written contractual document is clear and unequivocal, the court must declare the legal position of the parties as manifested in the document. But in circumstances where the written document is ambiguous, the court may resolve this ambiguity by the aid of the rules of construction.

2.5.2. Implied terms

It is impossible in every written and oral contract for the parties to incorporate all the terms that they wish could govern their agreement.[62] Generally, the courts are not ready to imply terms unless the justice of the case demands it. The terms implied maybe categorized in three; terms implied by custom or court or by law;

(1.) Terms implied by custom and usage: it is usually recognized that a well known local custom or mercantile usage maybe implied in the contract unless it is repugnant to or inconsistent with the express terms of the contract. Terms which the court are always ready to imply feature prominently in the contracts of employment. In *T. A. Ahuronye v. University College Ibadan*,[63]

[61]. *(1887) Ch. D. 359.*
[62] . *ibid,47.*
[63]. *(1959) W.R.N.L.R 232.*

the plaintiff claimed damages for the wrongful dismissal having been given only one month's notice of the termination of service, his salary being that $144 per annum. It was contended by the plaintiff that the employment at an annual salary represented a general or indefinite hiring for a year certain, and then on a year to year basis determinable only by a notice expiring at the end of the year. The court refused this contention and held that by the prevailing custom, the plaintiff's employment was determinable by one month's notice.

(2.). Terms Implied by court: The Lagos State Sale of Goods Law.[64] These terms are not expressly stated by the parties but are read into the contract by law or by the court to ensure fairness and commercial efficacy. Beyond statutory provisions, courts imply terms into contracts to reflect fairness and the presumed intention of the parties. This is sometimes called the **"business efficacy" test** and **previous dealings**.

(3.) Terms implied by statute or law: Implied terms are obligations that the law automatically reads into contracts of sale, even if the parties did not expressly include them. They protect buyers and ensure fairness in commercial transactions. Under the Lagos State Sale of Goods Law, [65] these terms are codified in Sections 12 to 16.

(a) Section 12 – Title: If the seller does not have ownership or authority, the buyer can reject the goods and recover the price. 500 buyer recovered full price because seller had no title to the car.[66]

[64] . *2014.*
[65] . *ibid, 63.*
[66] . *Rowland v. Divall [1923] 2 KB*

(b) Section 13 – Sale by Description: Where goods are sold by description, they must correspond with that description. It applies even if the buyer has inspected the goods. A car described as "Herald convertible" but was a hybrid; it was held to be a breach of implied condition.[67]

(c) Section 14 – Merchantable Quality: Any defects that make goods unusable or unsafe breach this condition. A goods must be saleable under the description.[68]

(d) Section 15 – Fitness for Purpose: If the buyer makes known the purpose for which goods are required and relies on the seller's skill/judgment, the goods must be fit for that purpose. The underwear caused dermatitis; breach of fitness for purpose.[69] If a Lagos retailer sells a refrigerator with a clause: *"Seller not liable for defects after purchase"*, this would be invalid because **Section 14** (merchantable quality) and **Section 15** (fitness for purpose) are implied by law and cannot be excluded in consumer sales.

(e) Section 16 – Sale by Sample: Where goods are sold by sample, the bulk must correspond with the sample. **A** bulk of cloth differed from sample; breach of implied condition.[70]

2.5.3. Innominate term

In more recent times, a new term has been evolved by the courts, which is really a hybrid between a condition and warranty. A breach of terms within this category could lead either to damages or repudiations, depending on the effects of the breach. If the breach is so devastating as to deprive the injured party of substantially the whole benefit which it was the intention of the parties that it

---

[67] . *Beale v. Taylor [1967] 1 WLR 1193*
[68] . *Bristol Tramways v. Fiat Motors [1910] 2 KB 831*
[69] . *Grant v. Australian Knitting Mills [1936] AC 85*
[70] . *Drummond v. Van Ingen (1887) 12 App Cas 284*

should obtain from the contract, then the remedy would be repudiation; otherwise, it could be damages. The existence of an innominate term was first vigorously canvassed by the court of appeal (particularly by Diplock, L. J.) in *Hong Kong Fir Shipping Co. V. Kawasaki Kisen Kaisha* [71],The defendants chartered a ship from the plaintiffs for twenty-four months on time charter, for cargo service. The vessel was delivered, and it sailed from Liverpool in the United Kingdom to Newport News in the United States and loaded a cargo of coal for Osaka in Japan. The engine room staff was incompetent and the engine was old. The ship broke down and was held up for five weeks on the journey to Osaka. On the arrival there, it was discovered that further repairs would take another week. The charterers repudiated the contract for this reason even though the contract still had twenty more months to run. In an action brought by the owners for wrongful repudiation. Salomon. J. found that the vessel was unseaworthy, having regards to her engine-room staff, but that the owners breach of contract was not frustrated. On appeal, this judgement was affirmed.

2.5.4. Fundamental terms:

Fundamental term as something which underlies the whole contract so that if not complied with, the performance becomes totally different from that which the contract contemplates.[72] Delvin J. Illustration of breaches of fundamental term;

There was a sale of goods by description and sample in *Adel Boshali v. Allied Commercial Exporters Ltd,.*[73] First the cloths were sold by description, but at a later stage the description was supported by a sample which answered to the description already given. A further shipping sample did not comply with the earlier sample and the appellant rejected them but the contract contained

[71] . *(1962) 2 Q.B. 26;(1962) 1 All E.R. 474.*
[72] . *Smeaton Hanscomb &Co. ltd. V. Sasson I. Co*. (NO.). (1953) 1 W.L. R. 1468at p. 1470.
[73] . (1961) all N. L. R. 917.

an exemption clause that the defendants "cannot undertaken any guarantees or admit any claims beyond such as are admitted by and recovered from the manufacturer. Lord Guest, reading the judgement of the judicial committee said: "An exemption clause can only avail a party if he is carrying out the contract in its essential respect. A breach which goes to the root of a contract disentitles a party from relying on the exemption clause. As they were substantially different goods the exemption clause cannot avail the respondent". A breach of fundamental terms entitles the injured party to sue for damages and rescission and it is immaterial that the exemption clauses from any liability whatsoever have been inserted.

2.6. Limiting clause;

A limitation clause is a contractual device that "limits the quantum of damages or the scope of liability which would otherwise arise at common law" [74]Such clauses are commonly found in commercial, insurance, banking, transportation, and consumer contracts. The rationale behind limitation clauses lies in risk allocation and commercial certainty. By agreeing in advance on the maximum liability exposure, parties are able to manage risks, fix prices appropriately, and obtain insurance cover where necessary. Limitation clauses serve a legitimate commercial purpose and are often viewed more favorably by courts than total exemption clauses.[75] However, despite their commercial utility, limitation clauses are susceptible to abuse, particularly where they are imposed unilaterally in standard-form contracts.[76] For a limitation clause to be enforceable, it must be properly incorporated into the contract. Incorporation may occur through: Signature, Reasonable notice, or consistent course of dealing. Where a document containing a limitation clause is signed, the signatory is generally bound by its terms, whether or not they read or understood them, as

---

[74] . *ibid,56.*
[75] . *ibid,57.*
[76] . *ibid,73.*

established in *L'Estrange v. Graucob.*[77] Where incorporation is by notice, the party relying on the clause must show that reasonable steps were taken to bring it to the attention of the other party before or at the time of contracting. This principle ensures that limitation clauses are not extended beyond their clear and ordinary meaning.[78] *In Ailsa Craig Fishing Co Ltd v. Malvern Fishing Co Ltd,*[79] the House of Lords held that limitation clauses should be construed strictly but not with the same degree of hostility applied to exclusion clauses. Where a limitation clause seeks to restrict liability for negligence, the courts require clear and unambiguous wording. The principles laid down in *Canada Steamship Lines Ltd v. The King,* provide guidance on whether a clause covers negligence.[80] Although originally developed in relation to exclusion clauses, these principles also influence the construction of limitation clauses. Under modern contract law, a limitation clause is not automatically invalidated by a fundamental breach. The decision in *Photo Production Ltd v. Securicor Transport Ltd,*[81] confirmed that limitation clauses may apply even in cases of serious breach, provided that the clause is properly incorporated, clearly worded, and not contrary to public policy or statute.

In Nigeria, limitation clauses are increasingly regulated by statute, particularly in consumer transactions. The *Federal Competition and Consumer Protection Act,*[82] prohibits unfair, unjust, or unreasonable contractual terms and empowers courts and regulatory authorities to invalidate oppressive limitation clauses *(FCCPA).*

---

[77] . *ibid, 52.*
[78] . *ibid,59.*
[79] . (1983) 1 WLR 964.
[80] . (1952) AC 192
[81] . *ibid,35,* AC 827.
[82] . ibid,51.

2.7. Condition:

A breach of condition may entitle the innocent party to an action for damages and rescission or repudiate it.[83] Condition can be seen as the major terms of the contract. In *Poussard v. Spiers & Pond.*[84] An actress was engaged to play a leading part in a French operetta as from the beginning of its run. As a result of illness, she was unable to wake up her role until a week after the pe rformances had started. In the main time, the producers, who had engaged a substitute to replace her, refused to have her back. She instituted an action for breach of contract. It was held that her failure to appear for the final rehearsals and the early performances of the operetta constituted a breach of condition and that the defendant were entitled to treat the contract as discharged. In the words of James, L.J., in Section 11(1)(b) of the Sale of Goods Act 1893[85]: A condition is an act or event that affects a party's contractual duty. It is a qualification that is placed on an obligation. For instance, A tells B that he would wash his clothes if B gives him (A) his lunch. This agreement has a condition. A is not obligated to wash B's clothes unless B gives him his lunch. A condition is an important term, one which goes 'to the root of a contract'. If a condition is breached, then the injured party can not only claim damages but is also entitled to treat the contract as repudiated. This right to treat the contract as repudiated is available even if the consequences of the breach of the condition were trivial. There are three different forms of conditions. They are categorized based on the time that the condition occurred. These refer to conditions that occurred before, during or after a contractual duty. They are: condition precedent, condition concurrent, conditions subsequent.

83. *Sale of Goods Act* 1893, section 11(1)(b)
84 . (1876) 1 Q. B. D. 410.
85 . "That provides that a breach of condition may entitle the innocent party to damages and rescission, or they may elect to treat it as a breach of warranty".

2.8. Warranty

A breach of warranty offers the injured party a remedy for damages only but not a right to reject the goods and treat the contract as repudiated. Warranty can be seen as the minor terms of a contract. In Bettini v. Gye,[86] the defendant entered into a contract to engage the plaintiff as a singer in operas and concerts for a period of three months. The plaintiff undertook to be in London at least six days before the commencement of his engagement for the rehearsals. He however, only arrived two days before the engagement commenced and the defendant thereupon repudiated the contract. It was held that the term as to rehearsals was a warranty, and whilst the defendant could have sued for damages or the plaintiff's lateness in showing up, he could not repudiate the contract.

Section 62(1) of the *Sale of Goods Act,*[87] defines warranty as ''…an agreement with reference to goods which are the subject of a contract of sale, but collateral to the main purpose of such contract, the breach of which gives rise to a claim for damages, but not a right to reject the goods and treat the contract as repudiated''. A warranty is a term that did not seem vitally important when the contract was made. It is viewed as a term which does not go to the root of the contract. If a warranty is breached, the injured party can only claim damages. He is not entitled to treat the contract as repudiated or refuses to perform his side of the contract else he himself will be in breach of the contract. Examples of warranties under the Act are:

1. Warranty of quiet possession- section 12(1) of the SGA 'An implied warranty that the buyer shall have and enjoy quiet possession of the goods.

[86] . (1876) I.Q.B.D.183.
[87] . ibid, 83.

2. Warranty of freedom from charge or encumbrance- section 12(3) of the SGA 'An implied warranty that the goods shall be free from any charge or encumbrance in favor of any third party, not declared or known to the buyer before or at the time when the contract is made'.

2.9. Doctrine of Contractual Freedom:

The doctrine of fundamental breach is a principle developed under common law to control the abuse of exemption clauses in contracts. The doctrine was designed to protect the innocent party from serious contractual injustice, especially in situations involving unequal bargaining power.[88] According to Anson, a fundamental breach is one that "goes to the root of the contract and renders further performance pointless". [89] In such circumstances, the courts historically held that an exemption clause could not protect the party in breach, regardless of how clearly the clause was worded. Courts initially treated fundamental breach as a rule of law, meaning that once a breach was classified as fundamental, the exemption clause automatically became inoperative. This approach is reflected in cases such as *Karsales (Harrow) Ltd v. Wallis,*[90] where a car sold under a hire-purchase agreement was delivered in a severely defective condition. The court held that the seller could not rely on an exemption clause because the breach was fundamental. Nigerian judges are inclined to construe exemption clauses strictly, especially where enforcing such clauses would result in injustice or undermine public policy. [91]

[88] . *ibid*,74.
[89] . *ibid,75.*
[90] . (1956) 1 WLR 936.
[91]. *ibid*,58.

Furthermore, statutory interventions such as the Federal Competition and Consumer Protection *Act (FCCPA) 2018* reinforces judicial control by prohibiting unfair and unreasonable contract terms, including those that seek to exclude liability for fundamental obligations.[92]

Criticisms of the Doctrine: Treitel argues that treating fundamental breach as a rule of law undermines freedom of contract and introduces uncertainty into commercial transactions.[93]

2.10. Doctrine of inequality of bargaining power;

The doctrine of inequality of bargaining power is a principle developed to address situations where contracting parties do not negotiate on equal footing. The doctrine serves as a legal tool through which courts scrutinize unfair contractual terms, particularly exemption clauses, in order to prevent exploitation and injustice.[94] According to Treitel, this inequality often arises where contracts are imposed on a "take-it-or-leave-it" basis, leaving the weaker party with no realistic opportunity to negotiate or reject unfair terms.[95] The English case of *Lloyds Bank Ltd v. Bundy*[96], marked a significant development. Lord Denning recognized inequality of bargaining power as a basis for setting aside unfair contracts where one party exploits their dominant position over the others, identified factors such as poverty, ignorance, and lack of independent advice as indicators of inequality.

Anson observes that such clauses, though technically agreed upon, may lack genuine consent due to economic pressure.[97] In *George Mitchell (Chesterhall) Ltd v. Finney Lock Seeds ltd,*[98] *the court*

92. ibid,82, s 11,50.
93 . *ibid,88.*
94 . *ibid*,55.
95 . *ibid,93.*
96. (1975) QB 326.
97. *ibid,89.*
98 . (1983) QB 284

refused to uphold a limitation clause because the seller was in a stronger bargaining position and the clause was unreasonable in the circumstances. Modern courts do not automatically invalidate contracts due to inequality of bargaining power. Instead, they examine: the relative strength of the parties, whether the weaker party had any real choice, whether the terms were oppressive or unconscionable, and whether statutory protections apply.

Thus, inequality of bargaining power functions as a contextual factor guiding judicial interpretation and fairness rather than as a rigid rule of law.[99] The (FCCPA) reinforces this doctrine by prohibiting unfair, unjust, or unreasonable contract terms and empowering regulators to protect consumers from exploitative practices.[100]

2.11. Theoretical Framework

The theoretical framework of this study is anchored on legal and jurisprudential theories that explain the rationale behind the use, regulation, and limitation of exemption clauses in contract law. These theories provide the intellectual foundation for understanding why exemption clauses are recognized in law, as well as why courts and legislatures impose restrictions on their operation. The study adopts the following theories;

1. Freedom of Contract Theory: The freedom of contract theory is the traditional theoretical basis of contract law. It is founded on the idea that parties are autonomous and should be free to determine the terms of their contractual relationship without undue interference. According to classical contract theorists, once parties voluntarily enter into an agreement, the law should enforce the terms as written, including exemption clauses.[101] *Treitel* notes that exemption clauses allow

[99]. *ibid,78.*
[100] . *ibid*,92.
[101]. P.S., Atiyah, *An Introduction to the Law of Contract,* 6th ed., Oxford University Press, 2005.

parties to predict liability and manage commercial risks efficiently.[102] However, the freedom of contract theory assumes equality of bargaining power an assumption that often does not reflect modern commercial realities.

2. Laissez-Faire Economic Theory: Closely related to freedom of contract is the laissez-faire economic theory, which advocates minimal state interference in private economic relations. Under this view, exemption clauses are seen as economically efficient mechanisms that reduce transaction costs and promote certainty in commercial dealings. Proponents argue that parties who dislike exemption clauses can choose not to contract or can seek alternative service providers.[103]

3. Protective and Consumer Welfare Theory: In contrast to the classical theories, the protective or consumer welfare theory emphasizes the need for legal intervention to protect weaker parties in contractual relationships. This theory recognizes that many contracts are concluded under conditions of unequal bargaining power, where one party imposes terms on a "take-it-or-leave-it" basis.[104] Sagay observes that unrestricted enforcement of exemption clauses may lead to injustice and undermine public confidence in the legal system.[105] This theory underpins judicial doctrines such as contra proferentem, fundamental breach, and inequality of bargaining power, as well as statutory interventions like Federal Competition Consumer Protection Act, which prohibits unfair and unreasonable contract terms.[106]

4. Balancing Theory- Modern Contract Law Approach: Modern contract law adopts a balancing approach that synthesizes the above theories. Rather than completely rejecting exemption clauses or enforcing them blindly, courts seek to balance contractual freedom with fairness, justice, and

[102]. *ibid*,95.
[103] . R.A., Posner, *Economic Analysis of Law, 9th ed., Wolters Kluwer,* 2014.
[104]. *ibid, 97.*
[105]. *ibid,91.*
[106]. *ibid,100.*

public policy considerations. As stated in *Photo Production Ltd v. Securicor Transport Ltd*,[107] the primary issue is one of construction and intention, subject to statutory and public policy limits.

5. Reasonableness and Public Policy: courts may strike down clauses that are unconscionable or contrary to public interest. Courts determine enforceability of exemption clauses based on incorporation, notice, and clarity. Key principles include: Incorporation by signature, notice, or course of dealings.[108] Interpretation rules and ambiguous clauses are construed against the party seeking to rely on them (contra proferentem).[109] Limits of exemption cannot exclude liability for fraud or fundamental terms.[110] Nigerian courts have applied these principles in some cases demonstrating awareness of equity and fairness.[111] Exemption clauses are also shaped by statutes: Sale of Goods Act, implies certain obligations that cannot be excluded, Federal Competition and Consumer Act protection prohibits unfair or unreasonable terms in consumer contract.

---

[107] .ibid,81,AC 827.

116.*Olley v. Marlborough Court* (1949) 1 KB 532.

[109] *. Houghton v. Trafalgar Insurance Co*. (1954) 1 KB 247.

[110] *. Curtis v. Chemical Cleaning & Dyeing Co., 1951; Photo Production v. Securicor,* 1980.

[111] *. Oyekoya v. G.B. Ollivant (Nigeria) Ltd (1969)1 All NLR 80.*

CHAPTER THREE

LEGAL REGIMES GOVERNING EXEMPTION CLAUSE IN NIGERIA

3.0. Overview of relevant Nigeria statute

Several statutes have been enacted and they are relevant in controlling unfair contract terms, including exemption and limitation clauses. They include:

3. 1. Federal Competition and Consumer Protection Act.

The Federal Competition and Consumer Protection Act, is the most significant contemporary statute regulating contracts in Nigeria, particularly consumer contracts, FCCPA.[112] Section 127 prohibits undertaking from contracting with consumers on terms that are unfair, unreasonable or unjust. In addition, section 141 prohibits evasion of liability by means of a secondary contract.

Subsection (1) provides that a person is not bound by any contract term prejudicing or taking away the persons rights arising under or in connection with the performance of another contract, so far as those right extend to the enforcement of another's liability which this Act prevents that other from excluding or restricting.

Section 137 (1) provides that in case of goods of a type ordinarily supplied for private use or consumption, where loss or damage arises from the goods proving defective while in consumer use or results from the negligence of an undertaking concerned in the manufacture or distribution of the goods, liability for the loss or damage cannot be excluded or restricted by reference to any contract term or notice contained in or operating by reference to a guarantee of the goods.

[112] . ibid,106.

Furthermore, section 38 prohibits the exclusion of certain obligations implied by law. As against a person dealing as a consumer, liability for breach of the sellers implied obligation as to conformity of goods with description or sample, quality or fitness for particular purpose, shall not be excluded or restricted by reference to any contract term-(2), by subscription. (3). As against a person dealing otherwise than as a consumer, the liability specified in subsection (2) may be excluded or restricted by reference to a contract term only if the term satisfies the requirement of reasonableness. [113] The Act is particularly relevant to exemption clauses, as it provides statutory backing for striking down clauses that undermine fairness or accountability.[114]

3.1.2. Sale of Goods Act 1983

The Sale of Goods Act remains an important statute governing contract for the sale of goods in Nigeria. It implies certain conditions and warranties into contracts, such as fitness for purpose and merchantable quality.[115] These implied terms limit the effectiveness of exemption clauses that seek to exclude fundamental obligations. According to Okonkwo, [116] the Act demonstrates early legislative control over contractual terms by protecting buyers against unfair exclusions. Any exemption clause inconsistent with the implied terms of the Act is subject to strict judicial scrutiny.

3.1.3. Companies and Allied Matters Act (CAMA) 2020

The Companies and Allied Matters Act regulate contracts entered into by companies, including pre-incorporation contracts and contracts executed under corporate authority. CAMA ensures transparency, accountability, and legality in corporate contracting. Although CAMA does not directly regulate exemption clauses, it provides the legal framework within which corporate

---

[113] . *section 39 Act (FCCPA) 2018;*
[114] . *ibid, 105.*
[115]. *Sale of Goods Act,* 1893.
[116] . *ibid*, 94.

contracts operate.[117] Anson notes that statutory regulation of corporate capacity indirectly affects the validity and enforceability of contractual terms.[118]

3.1.4. Labour Act 2011

The Labour Act governs contracts of employment and provides statutory protection for employees, who are generally regarded as the weaker party in employment relationships. The Act restricts the ability of employers to rely on contractual terms that undermine statutory rights. Exemption clauses that seek to exclude employer liability for workplace safety, wages, or statutory benefits are likely to be void. This reflects the application of public policy and inequality of bargaining power in employment contracts.[119] Exemption clauses that attempt to exclude employer liability for workplace injuries or statutory entitlements are generally void on grounds of public policy Section 12 of the Act.

3.1.5. Insurance Act 2003

The Insurance Act regulates insurance contracts and requires clarity and disclosure in policy terms. Exemption and limitation clauses in insurance contracts must comply with statutory requirements, especially regarding disclosure and good faith. Statutory regulation of insurance contracts demonstrates the law's concern with preventing abuse of exclusionary clauses in highly technical agreements.[120] Courts are generally reluctant to uphold clauses that defeat the statutory purpose of insurance or mislead policyholders. *Chalmers Sale of Goods Act* 1893. Statutory control of insurance

---

[117]. *Companies and Allied Matters* Act, 2020.
[118]. ibid,*104*, (2016).
[119] *A., Emiola, Nigerian Labour Law, 4th ed., Ogbomosho* Press, 2011.
[120]. *ibid, 102*.

contracts reflects the technical nature of such agreements and the inequality of bargaining power between insurers and insured persons.[121]

3.1.6. Constitution of the Federal Republic of Nigeria, 1999 (as amended)

The Constitution serves as the supreme law of Nigeria and indirectly influences contract law. Section 1(3) provides that any law or contractual term inconsistent with the Constitution is void.[122] Fundamental rights provisions, such as the right to fair hearing and protection of property, may be invoked where contractual terms operate oppressively or contrary to public policy.[123]

3.1.7. Contract law:

An exemption is commonly found in standard form contracts drafted by parties in a superior bargaining position.[124] Under contract law, an exemption clause will only bind the parties if it has been properly incorporated into the contract. Where a party signs a contractual document, they are generally bound by its terms, including exemption clauses, whether or not they have read them, unless there is fraud or misrepresentation.[125] Courts apply the contra proferentem rule, meaning that any ambiguity in the clause is construed against the party seeking to rely on it.[126] The widespread use of standard form contracts has intensified concerns about exemption clauses.

In Nigeria, statutory intervention has supplemented common law control. Similarly, sector-specific legislation in areas such as insurance, banking, and telecommunications restricts the operation of exemption clauses to ensure fairness and consumer protection.[127]

---

[121] . *Insurance act laws of the federation of Nigeria (2003) s. 55 and 56.*

[122] . *Constitution of the Federal Republic of Nigeria, 1999 (as amended).*

[123] . *ibid*. 122

[124] . *ibid,120.*

[125] . *L'Estrange v Graucob* Ltd [1934] 2 KB 394.

[126] . ibid, 118.

[127] . *ibid,112*.

Nigerian courts generally approach exemption clauses with caution. While they recognize the parties' right to allocate risks contractually, they insist on clarity, fairness, and consistency with public policy. Courts are particularly unwilling to enforce clauses that exclude liability for negligence or defeat the main purpose of the contract.[128]

3.1.8. Lagos States Sales of Goods Law 2014;

The 2014 Law reflects modern commercial realities and strengthens consumer protection, particularly by regulating implied terms and limiting the effect of exemption clauses.[129] The Lagos State Sale of Goods Law,[130] applies to all contracts for the sale of goods entered into within Lagos State. It governs both consumer and commercial transactions involving movable goods. The Law defines a contract of sale as one where the seller transfers or agrees to transfer property in goods to the buyer for a money consideration, known as the price.[131] One of the most significant features of the law is the retention and strengthening of implied conditions and warranties in contracts of sale. These include implied terms as to: title, correspondence with description, merchantable quality, and fitness for purpose.[132]

These implied terms form the backbone of buyer protection and directly affect the operation of exemption clauses. A seller who breaches these fundamental obligations cannot easily rely on contractual terms to escape liability. The law provides that contractual terms seeking to exclude or restrict liability for breach of implied conditions must be subjected to strict scrutiny, particularly in consumer transactions.[133]

---

[128] . *ibid*,114.
[129] . *Lagos State Sale of Goods Law, 2014*
[130] . *ibid. 129.*
[131] . *ibid,130, Section 1.*
[132] . *ibid,131, Sections 12,15.*
[133] . *ibid. 132.*

In this respect, the law complements the FCCP A, 2018, which also prohibits unfair contract terms. Together, both regimes form a robust framework for controlling oppressive exemption clauses.[134]

3.1.9. Hire Purchase Act,[135]

Sections 6 and 7 contract, section 6(1) provides that you cannot exclude or restrict liability for the implied obligation regarding title (ownership) at all. For other key implied terms such as the goods being of satisfactory quality or fit for purpose the rules differ for consumers and businesses.

3.1.10. Consumer Right Act 2015

Consumer contracts are no longer governed by UCTA on this point. In a contract where one party deals as a consumer, any exclusion of the implied terms about quality, fitness, or correspondence with description as provided by the Sale of Goods Act is void.[136]In a B2B contract, such exclusions or limitations are permissible only if reasonable (UCTA s.6(3)). For example, a B2B supply contract might include a clause "goods are sold as seen, with all warranties excluded"; this will be subject to the reasonableness test under UCTA. Similarly, section 7 applies comparable rules to contracts for the supply of goods other than by sale/hire-purchase (e.g., leases, work and materials, etc.).

Section 65(1) of the CRA 2015 provides that: a trader cannot exclude or restrict liability for death or personal injury resulting from negligence. This provision mirrors the position under UCTA and reflects the public policy principle that liability for serious harm should not be contractually avoided. Any clause attempting to exclude such liability is automatically void, regardless of whether the consumer agreed to it. The CRA 2015 gives consumers specific statutory rights

[134]. Lagos State Federal Competition and Consumer Protection Act, 2018.

[135] . 1962

[136] .[(UCTA s.6(2)].

relating to goods, digital content, and services. These include the right that goods must be of satisfactory quality, fit for purpose, and as described,[137] it further provides that services must be performed with reasonable care and skill.[138]

It was expressly provided that a trader cannot exclude or restrict liability for breach of these statutory rights.[139] Consequently, any exemption clause seeking to deny a consumer these rights is unenforceable. This ensures that consumers cannot contract out of minimum legal standards. Even where exemption clauses are not expressly prohibited, they are still subject to the fairness test under Section 62 of the CRA 2015.

Section 68 of the CRA 2015 introduces the requirement of transparency, which demands that exemption clauses must be expressed in plain and intelligible language and, where written, must be legible. If a clause is ambiguous, it will be interpreted in the way most favorable to the consumer under Section 69. This principle aligns with the common law rule in *Houghton v Trafalgar Insurance Co Ltd*,[140] where ambiguous exemption clauses were construed against the party relying on them (the contra proferentem rule).

3.1.11. Unfair Contract Terms Act, 1977

This law was designed to stop parties, especially stronger commercial actors from unfairly excluding or limiting liability. One of its most important roles is in controlling attempts to exclude terms implied by law, such as those on quality, fitness for purpose, or reasonable care. A seed supplier tried to rely on a clause limiting liability to the price of the seeds, even though the seeds

[137]. Sections 9–11,
[138]. Section 49.
[139]. Section 31 of the CRA.
[140]. ibid,109 [1954] 1 QB 247

were defective and caused massive crop loss.[141] The House of Lords held the clause was unreasonable under UCTA, because it excluded liability for breach of implied terms of quality and fitness for purpose. UCTA does not generally apply to consumer contracts today, as these are now governed by the Consumer Rights.[142] One of the most important provisions of UCTA is section 2, which regulates exclusion of liability for negligence. Section 2(1) provides that liability for death or personal injury resulting from negligence cannot be excluded or restricted by any contract term. Such clauses are automatically void. Section 2(2) allows liability for other loss or damage caused by negligence to be excluded or limited only if the clause satisfies the reasonableness test.

Under Section 6, UCTA restricts exclusion clauses relating to implied terms in contracts for the sale or supply of goods. Section 3 of UCTA applies where one party deals on the written standard terms of business of another. In such cases, that party cannot: exclude or restrict liability for breach of contract; or claim entitlement to render substantially different performance, unless the clause satisfies the reasonableness test. The Court of Appeal upheld a limitation clause because both parties were experienced businesses with equal bargaining power, showing judicial reluctance to interfere in commercial agreements.[143]

The reasonableness test is contained in section 11.[144] A term is reasonable if it is fair and reasonable having regard to the circumstances which were, or ought reasonably to have been, known to the parties at the time of contracting. Factors considered include: bargaining power of the parties, availability of alternative contracts; whether the customer knew or ought to have known of the term; whether compliance with the term was practicable. *George Mitchell (Chesterhall) Ltd*

[141] . *ibid,98*,2 AC 803.
[142] . ibid, 49,(Act 2015).
[143] . *Watford Electronics Ltd v Sanderson CFL* Ltd [2001] EWCA Civ 317,
[144] .ibid,142, UCTA (2015)

v Finney Lock Seeds Ltd,[145] the seller supplied cabbage seeds, and a clause limited liability to the replacement of seeds or refund of their price. The seeds were defective, causing the farmer large loss. The House of Lords held that while the clause was effective in scope (covering the loss), it failed the reasonableness test under UCTA.[146] Lord Bridge noted factors like the disparity between the price of seeds and the potential loss, the fact that the seller had often paid out compensation in excess of the clause in the past (implying they themselves did not always adhere to it), and that insurance for the seller was feasible, whereas the buyer could not reasonably insure against such a loss at the point of sale. Thus, the clause was not fair or reasonable.

3.1.12. Supply of Goods and Services Act 1982 (SGSA)

This is a cornerstone of UK contract law. It fills in the gaps where parties have not expressly agreed on certain terms, by implying obligations into contracts for services and for the supply of goods. These implied terms are crucial because they ensure fairness and minimum standards. A surgeon performed a vasectomy but failed to warn the patient that the operation might not be 100% effective.[147] The court held that under SGSA, the surgeon had breached the implied duty of reasonable care and skill**.**

3.1.13. Sales of Goods Act of 1893: Exclusion of implied terms and conditions**.** Where any right, duty or liability would arise under a contact of sale by implication of law, it may be negative or varied by express agreement or by the course of dealing between the parties, or by usage be such as to bind both parties to the contract. Example: A retail butcher buys the carcass of a pig from a meat salesman in Smithfield market. The meat is seized in the butcher's shop and condemned as

[145] . ibid,141, [1983] 2 AC 803 (HL).
[146] . ibid, 144
[147] . *Thake v Maurice* [1986] QB 644.

unfit for human food. If the butcher sues the meat salesman, evidence is admissible to show that by the usage of the market no warranty of fitness is implied.[148]

3.2. Other sector specific legislations;

Beyond general contract and sale of goods legislation, several sector specific statutes in Nigeria regulate contractual relationships within particular industries. It includes:

1. Banking and Financial Services Legislation; It is being regulated by statutes such as the Banks and Other Financial Institutions Act,[149] and guidelines issued by the Central Bank of Nigeria.[150] These regulations impose duties of disclosure, fairness, and accountability on financial institutions. Standard-form banking contracts often contain limitation clauses, but such clauses cannot override statutory duties imposed on banks. Courts and regulators are empowered to sanction unfair practices that harm customers.[151]

2. Telecommunications Legislation; The Nigerian Communications Act, 2003 regulates contracts between service providers and subscribers. However, the Act empowers the Nigerian Communications Commission (NCC) to protect consumers and ensure fair contractual terms. Exemption clauses that undermine service standards or consumer rights may be declared invalid.[152]

3. Transportation and Carriage Laws; Sector-specific laws governing air, sea, and land transportation also regulate exemption clauses. For instance, carriage contracts often limit carrier liability, but such limitations are subject to statutory ceilings and international conventions

[148] . ibid, 132 Act 1893
[149] . (BOFIA) 2020.
[150] . (CBN). Act of 2007,
[151] . ibid,149, (2020) section 36, and, 124, (2020).
[152] . *Nigerian Communications Act*, 2003. Section 104

incorporated into Nigerian law. These laws recognize the commercial need for liability limitation while ensuring that carriers remain accountable for negligence or misconduct.[153]

3.3. Revised Law of Enugu State 2004;

Revised law of Enugu State 2004 on contract law (common law position);[154] Section; 189, Provides that parties to contract shall have the right to limit or exclude their liability for the breach of the said contract: provided that the exemption clauses are expressed clearly and without ambiguity. Section 190, provides that nothing in section 189 shall be construed as to enable a party guilty of fundamental breach of the contract or a breach of a fundamental term to rely upon an exemption clause so as to escape liability.[155]

3.4. **Hospitality**;

Hospitals, whether public or private, regularly enter into contractual relationships with patients for the provision of medical services. In an attempt to reduce exposure to legal liability, hospitals sometimes include exemption or limitation clauses in admission forms, consent documents, or hospital regulations. However, the enforceability of such clauses raises serious legal concerns, particularly where they seek to exclude liability for negligence or professional misconduct. Contract law therefore treats hospital exemption clauses with exceptional caution due to public policy considerations and the vulnerable position of patients.[156] The relationship between a hospital and a patient is contractual in nature. A contract is formed once a patient is admitted for treatment and agrees, either expressly or impliedly, to pay for medical services. An implied term of this contract is that the hospital and its staff will exercise reasonable care, skill, and diligence in

[153] . *ibid*,128.
[154] . Volume 1 CAP 26, Pg. 595;
[155] . ibid,154.
[156] . *ibid*,124, (2015).

the treatment of the patient. The court held that a hospital owes a duty of care to patients and may be vicariously liable for the negligence of its medical staff.[157] Given the unequal bargaining power between hospitals and patients especially in emergency situations courts are reluctant to treat such clauses as reflecting genuine consent because the weaker party often has no real choice.[158]

3.5. Banking;

The court described the banker customer relationship as that of debtor and creditor, subject to implied contractual duties.[159] These duties cannot be lightly excluded by exemption clauses.

Banks frequently rely on exemption clauses to exclude or limit liability for losses caused by forged cheques, electronic fraud, system downtime, or third-party actions. Such clauses are usually contained in standard-form contracts drafted by banks and presented to customers on a "take-it-or-leave-it" basis. Given the complexity of banking contracts and the absence of real negotiation, customers often have little understanding of the exemption clauses they accept. As Atiyah observes, standard-form contracts in banking illustrate how freedom of contract may operate harshly against weaker parties,[160] Courts apply strict rules in determining the enforceability of exemption clauses in banking contracts. Nigerian courts adopt a similar approach, insisting on clarity, fairness, and consistency with public policy. The Supreme Court emphasized the duty of banks to exercise reasonable care in dealing with customers' accounts.[161] Statutorily, the Banks and Other Financial Institutions Act.[162] and regulatory guidelines issued by the Central Bank of Nigeria impose obligations that cannot be excluded by contractual clauses. Additionally, the Federal Competition

---

[157] . *Cassidy v Ministry of Health [1951] 2 KB 343,*
[158] . *ibid*, 101, (2005).
[159] . *Joachimson v Swiss Bank Corporation* [1921] 3 KB 110.
[160]. Ibid,127 (2018).
[161] . *Union Bank of Nigeria Plc v Ajabule* (2011) 18 NWLR (Pt. 1278) 152,
[162] . (BOFIA), 2020

and Consumer Protection Act,[163] empowers courts and regulators to invalidate unfair or unreasonable exemption clauses in consumer banking contracts. Banking is a service imbued with public interest, allowing banks to rely extensively on exemption clauses to escape liability would undermine consumer confidence and the integrity of the financial system.

3.6. Communication industries:

Contracts between service providers and subscribers are usually governed by standard form agreements containing exemption and limitation clauses. These clauses often seek to exclude or restrict liability for service interruptions, data loss, billing errors, or network failures. Contract law, however, imposes strict controls on the enforceability of such clauses due to the unequal bargaining power between service providers and consumers and the essential nature of communication services.[164] Contracts in the communication industry are typically consumer contracts entered into through subscription forms, SIM registration agreements, or online "click-wrap" terms. Once a subscriber accepts the terms, a binding contractual relationship arises. An implied term of such contracts is that the service provider will exercise reasonable care and skill in the provision of communication services. This duty cannot be easily displaced by exemption clauses, especially where such clauses undermine the core purpose of the contract.[165]

3.7. Reasonableness test under statute;

This test evaluates whether the exclusion of liability is fair, just, and reasonable in the circumstances.[166] In Nigeria, other sector-specific legislation implicitly recognizes that exemption

[163] . ibid,160.
[164]. Act (1977) 41.
[165]. *ibid,157, [1951]*.
[166]. *ibid, 161*.

clauses must be reasonable.[167] The Federal Competition and Consumer Protection Act, prohibits unfair, unconscionable, or unreasonable contractual terms, including clauses that limit liability for essential services,[168] These includes:

1. Bargaining Power of the Parties: Where one party has significantly greater power, strict enforcement of an exemption clause may be deemed unreasonable, emphasized unequal bargaining power and unconscionability.[169]

2. Knowledge and Notice: Whether the party seeking to rely on the clause took reasonable steps to bring it to the other party's attention, highlighted the need for clear notice of onerous clauses.[170]

3. Nature of the Contract: Contracts involving essential services or personal safety are subject to stricter scrutiny, reinforced strict interpretation of exemption clauses in the context of fundamental obligations.[171]

4. Scope and Clarity of the Clause: Ambiguous clauses are interpreted narrowly against the party seeking to rely on them. Broad, all-encompassing clauses are less likely to be upheld.

5. Industry Standards and Public Policy: Exemption clauses that violate statutory obligations or ethical standards are unreasonable and unenforceable. Nigerian courts also consider the Federal Competition and Consumer Protection Act, which empowers regulators to invalidate clauses that are unfair, unjust, or unreasonable. The reasonableness test serves several objectives. This includes to Protect weaker parties from oppressive clauses, ensures fairness and equity in contractual

[167]. *Sale of Goods Act,* Cap S1 LFN 2004.
[168]. ibid,166.
[169] . *ibid, 96,* QB 326
[170] . *Thornton v Shoe Lane Parking* Ltd [1971] 2 QB 163
[171] . *ibid, 107,* AC 827

relationships, maintains public confidence in critical sectors such as banking, healthcare, and telecommunications, it also encourages clarity and transparency in contract drafting.

3.8. Unequal bargaining power and standard form of contract;

Inequality is most visible in standard form contracts, where one party dictates the contractual terms while the other merely assents without meaningful negotiation. Modern contract law increasingly recognizes that such imbalance may undermine genuine consent and justify legal control of contractual terms, particularly exemption and limitation clauses.[172] Unequal bargaining power refers to a situation where one party to a contract possesses significantly greater economic strength, expertise, or negotiating advantage over the other. The weaker party often lacks real alternatives and is compelled to accept the terms presented on a "take-it-or-leave-it" basis.

Lord Denning famously described unequal bargaining power as a condition where one party has "no real freedom of choice" and is forced to submit to unfair terms,[173] In such circumstances, contractual consent may be more formal than real. A standard form of contract is a pre-drafted agreement prepared by one party, usually a large organization, for repeated use in similar transactions. These contracts are common in banking, insurance, telecommunications, transportation, employment, and consumer services. According to Anson, standard form contracts promote efficiency and certainty but often contain extensive exemption and limitation clauses designed to protect the drafting party.[174] The weaker party rarely has the opportunity to read, understand, or negotiate these terms. Standard form contracts are the primary vehicle through which unequal bargaining power operates. Because the dominant party controls the content of the

172 . *ibid*, 158.
173. *ibid, 170,* [1971] 186.
174 . *ibid*,126.

contract, it is able to insert clauses that exclude or limit liability, shift risks, and restrict remedies. Sagay observes that the widespread use of standard form contracts has transformed contract law from a system based on mutual agreement to one often characterized by imposed terms.[175] This reality challenges the assumption that parties freely and equally negotiate contractual obligations. At common law, courts traditionally upheld contracts regardless of inequality, provided the formal requirements of contract formation were satisfied. However, judicial attitudes have evolved. Courts now adopt strict rules of interpretation, such as the contra proferentem rule, to protect the weaker party from unfair exemption clauses.

The doctrine of inequality of bargaining power, though not fully developed as an independent ground for invalidating contracts in Nigeria, influences judicial reasoning, especially in cases involving standard form contracts. [176]

3.9. Alternative choices;

Alternative choices refer to the options available to a party when an exemption clause seeks to limit or exclude liability. These options may include:

1. Negotiating Specific Terms: Before entering into a contract, a party may attempt to negotiate the scope of exemption clauses to narrow or modify them.

2. Seeking Statutory Remedies: Where an exemption clause attempts to limit liability for acts prohibited by law, the affected party may rely on statutory rights. For example, under the Federal Competition and Consumer Protection Act[177], unfair exemption clauses in consumer contracts are unenforceable.

[175] . *ibid*,153.
[176] . *ibid, 171,* AC 827.
[177] . ibid,163, Act.

3. Limiting the clause's effect through judicial interpretation: Courts may interpret exemption clauses narrowly or strike down overly broad clauses that attempt to exclude liability for negligence or fundamental.[178]

3.10. Distinction Between Consumer and Business-to-Business (B2B) Contract

Statutes such as the Consumer Rights Act [179]and the Unfair Contract Terms Act [180], draw clear lines between these two categories. A consumer contract is defined under Section 2(3) of the Consumer Rights Act 2015 as a contract between a trader and a consumer. A consumer is a natural person acting for purposes wholly or mainly outside their trade, business, craft, or profession, while a trader is a person acting for purposes relating to their business.[181]

A business-to-business contract is a contract made between two parties both acting in the course of business. Unlike consumer contracts, B2B contracts are generally governed by the principle of freedom of contract, as both parties are presumed to have comparable bargaining power and commercial experience. B2B contracts are primarily regulated by the Unfair Contract Terms Act 1977, rather than the CRA 2015, particularly in relation to exemption clauses.[182]

3.11. Prohibited Exclusions

While parties to a contract are generally free to allocate risks through exemption or limitation clauses, the law recognizes that certain exclusions are prohibited because they are contrary to public policy, statutory law, or fundamental principles of justice. [183] These clauses are unenforceable even if included by mutual consent. The concept of prohibited exclusions ensures

[178]. Ibid,177.
[179] . ibid,49, (CRA 2015)
[180] . ibid,146, (1977 UCTA)
[181] . ibid,156, (2015), ss. 2, 31, 62, 65
[182]. Ibid,18, ss. 2, 11
[183]. *Ibid,155, Act.*

that contractual freedom does not allow one party to escape liability for essential obligations or statutory duties. [184] Prohibited exclusions are contractual terms that attempt to:

a. Exclusion of Liability for Death or Personal Injury: Courts consistently hold that clauses attempting to exclude liability for gross negligence or physical harm are unenforceable. The House of Lords held that a disclaimer attempting to exclude liability for negligent property valuation was unreasonable and void.[185] Under Nigerian law, similar principles apply; clauses excluding liability for personal injury in healthcare, transport, or building contracts are void as contrary to public policy.

b. Exclusion of Statutory or Regulatory Rights; Statutory provisions often prohibit parties from contracting out of their obligations: For example, Federal Competition and Consumer Protection Act, prohibits unfair or unconscionable terms in consumer contracts, including clauses excluding liability for defective goods or services.[186] Banks and Other Financial Institutions Act (BOFIA), 2020, imposes duties on banks that cannot be negated by contractual exemption clauses. In *Union Bank of Nigeria Plc v Ajabule*[187], the court invalidated a contractual term that sought to absolve the bank of statutory duties owed to its customer.

c. Exclusions That Defeat Fundamental Obligations: Courts will not enforce clauses that defeat the purpose of the contract or remove obligations essential to the agreement: The House of Lords emphasized that exemption clauses must be construed to ensure they do not undermine the

[184]. *Re London Wine Co* [1986].
[185] . Smith v Eric S. Bush [1990] 1 AC 831.
[186]. ibid,178, (2018).

[187]. (2011) 18 NWLR (Pt. 1278) 152

fundamental terms of the contract.[188] Nigerian courts follow a similar approach, insisting that exclusion clauses must not nullify the main contractual purpose.[189]

3.12. Liability for Death

Exemption clauses attempting to absolve a party from liability for death are generally void and unenforceable,[190] this is because, such clauses conflict with public policy by undermining safety obligations, they are inconsistent with the duty of reasonable care owed to others. Established principles for construing exclusion clauses, emphasizing that clauses attempting to exclude liability for death or personal injury must be clearly expressed. Exemption clauses cannot be used to avoid responsibility for acts leading to death, particularly in sectors with a high duty of care such as: hospitals and healthcare, transportation and workplace and industrial safety.

3.13. Fraud

Fraudulent acts cannot be excluded by contractual terms.[191] The law is clear that no party can rely on an exemption clause to shield itself from liability arising from fraud, misrepresentation, or intentional wrongdoing.[192] This principle is grounded on public policy, fairness, and the protection of weaker parties. Fraud involves deliberate deception intended to secure an unfair or unlawful advantage. The court held that a party cannot rely on an exemption clause to avoid liability for fraud.[193]

---

[188]. *ibid, 110.*
[189]. *Ibid*,175.
[190]. ibid,183, Act, (2004).
[191]. *ibid*,172.
[192]. ibid,185.
[193]. *Doyle v Olby (Ironmongers)* Ltd [1969] 2 QB 158.

CHAPTER FOUR

CHALLENGES AND REFORM OF EXEMPTION CLAUSE

4.1. Commercial Transactions (B2B)

In commercial (Business to Business, B2B) transactions, exemption clauses play a central role in allocating risk between contracting parties. Unlike consumer contracts, where courts adopt a protective approach, commercial contracts are generally governed by principles of freedom of contract. The law assumes that businesses possess relatively equal bargaining power and the capacity to negotiate terms effectively.

An exemption clause may seek to exclude liability entirely, limit liability to a specified amount, or restrict certain remedies. Although courts are more willing to enforce such clauses in B2B transactions, their validity remains subject to incorporation, interpretation, and statutory control particularly under the Unfair Contract Terms Act.[194]

(a) Risk Allocation Mechanism: In commercial transactions, exemption clauses function primarily as tools of risk management. Businesses often determine pricing, insurance arrangements, and contractual obligations based on anticipated liability exposure. Therefore, limitation clauses, especially financial caps, are considered legitimate commercial devices. The modern judicial approach reflects respect for negotiated allocation of risk. Lord Diplock emphasized that exemption clauses are not automatically invalidated by "fundamental breach." Instead, their effectiveness depends on construction of the contract.[195] This marked a shift away from earlier

[194] . 1977 (UK).
[195] . *ibid,188*, [1980].

hostility toward such clauses. Thus, in B2B contracts, exemption clauses are generally treated as part of the commercial bargain.

(b) Freedom of Contract and Commercial Certainty: Courts assume that parties in commercial contracts are capable of protecting their own interests. This approach was strongly articulated where the House of Lords upheld a broadly drafted exclusion clause between two commercial entities.[196] Similarly, the Court of Appeal held that in contracts between sophisticated commercial parties, the contra proferentem rule has limited application, particularly where liability caps are clearly drafted.[197] The courts therefore prioritize certainty and predictability in commercial dealings.

3. Incorporation of Exemption Clauses: Before an exemption clause can operate, it must be incorporated into the contract. Incorporation may occur through: Signature, reasonable notice, course of dealing. It was established that a party who signs a contractual document is bound by its terms, even if they have not read them, absent misrepresentation.[198] In unsigned documents, reasonable notice must be given before or at the time of contracting. Lord Denning MR held that particularly onerous clauses require clear and explicit notice.[199] However, in B2B transactions, courts are less sympathetic to claims of inadequate notice, especially where parties are experienced and regularly contract on similar terms.

---

[196] . ibid,186, (2018).
[197] . *Persimmon Homes Ltd v Ove Arup & Partners Ltd* [2017] EWCA Civ373,
[198] . *ibid,77*, [1934] 2 KB 394 (CA),
[199] . *ibid,173*, [1971] 2 QB 163 (CA),

Here are the core challenges facing B2B exemption clauses today.

1. The Inequality Illusion (The "Big vs. Small" Business Problem): The fundamental flaw in current Nigerian B2B contract law is the assumption that all businesses have equal bargaining power. They don't. When a small or medium-sized enterprise (SME) in Lagos contracts with a massive multinational telecom company, a major bank, or a state-backed energy provider, they are handed standard-form, non-negotiable contracts. If a major logistics firm slips a clause into a contract stating they aren't liable for cargo theft, an SME supplier has two choices: accept the risk or walk away from life-saving revenue. Nigerian common law rarely steps in to protect a business from a harsh exemption clause unless there is outright fraud or misrepresentation. Unlike consumers, businesses cannot easily run to regulators to cry foul over an "unfair contract."

2. The FCCPA's B2B Identity Crisis: Federal Competition and Consumer Protection Act: While it works wonders for regular consumers, its application to B2B disputes is a massive grey area.[200] The FCCPA defines a "consumer" broadly enough that, in certain contexts, a business purchasing goods or services from another business for its own internal use (e.g., a law firm buying a software package) could claim to be a consumer. Because the law is relatively new and lacks extensive judicial testing on this front, there is immense legal uncertainty. Corporate legal teams are constantly guessing whether an aggressive B2B exemption clause will be struck down by the FCCPC tribunal or upheld by a traditional commercial court under standard contract law.

3. The Academic Nightmare of "Fundamental Breach": When a B2B contract completely falls apart, businesses end up in court fighting over whether the exemption clause survives a catastrophic failure (a fundamental breach). Because Nigerian courts follow the "rule of

[200] . ibid,196, (FCCPA 2018).

construction" (looking at the contract's intent rather than automatically throwing the clause out), B2B litigation is notoriously slow, expensive, and unpredictable. In the case of Amechi v. United Bank for Africa, [201] the battle lines are always drawn around what the parties "intended" at the time of drafting. For businesses, spending five to seven years in a Nigerian court trying to interpret the intent of a sentence is a commercial death sentence. Therefore, to fix the chaotic B2B landscape, Nigerian contract law needs to evolve beyond the simplistic assumption that "all businesses are equal."

4.2. Consumer Transactions (B2C)

In consumer transactions (Business to Consumer, B2C), such clauses often appear in standard form contracts drafted by businesses, leaving consumers with little or no bargaining power. Under Nigerian law, exemption clauses are not automatically void. However, in consumer transactions, the courts and statutory provisions, particularly the Federal Competition and Consumer Protection Act, imposed important limitations to prevent abuse and protect consumers. [202] Thus, while freedom of contract remains a foundational principle, it is significantly restricted in B2C relationships in Nigeria. In consumer transactions, exemption clauses may attempt to: Exclude liability for negligence, limit liability to a small monetary amount, exclude implied warranties, restrict remedies e.g., “no refund” policies, impose strict time limits for complaints. Such clauses are common in sectors like telecommunications, transportation, insurance, banking, and product sales. However, their enforceability depends on incorporation, interpretation, and statutory control. Before an exemption clause can operate, it must be properly incorporated into the contract, which can either be; incorporation by signature, incorporation by notice. Ambiguity in a contract term is

[201]. Ibid,200.
[202] . ibid, 201.

interpreted against the party relying on it (usually the business). This principle is well recognized in Nigerian jurisprudence. The Supreme Court emphasized that exclusion clauses must be strictly construed against the party seeking to rely on them.[203] Thus, if wording is unclear, the court will interpret it in favor of the consumer. To successfully exclude liability for negligence, the clause must clearly and expressly refer to negligence or use sufficiently wide wording. The persuasive authority of *Canada Steamship Lines Ltd v The King* provides guidelines:[204]

1. If negligence is expressly mentioned, effect must be given.
2. If not, the words must be wide enough to cover negligence.
3. If another plausible head of liability exists, the clause may not apply to negligence.

Nigerian courts frequently apply these interpretative principles. The most significant development in consumer protection in Nigeria is the enactment of the Federal Competition and Consumer Protection Act.[205] This Act significantly limits the enforceability of unfair exemption clauses in consumer transactions. Nigerian courts generally uphold freedom of contract but are cautious where exemption clauses are used oppressively. In *Niger Insurance Co Ltd v Abed Brothers Ltd,*[206] the Supreme Court upheld an exclusion clause in a commercial insurance contract, emphasizing that clear words must be given effect. However, this case involved commercial parties. In consumer transactions, courts are more protective, especially where public policy or statutory rights are involved.

---

[203] . *Akinsanya v UBA Ltd* (1986) 4 NWLR (Pt 35) 273 (SC),
[204]. Ibid,80, AC 192 (PC).
[205] . ibid,202.
[206] . (1976), 7 s 35.

Key Distinctions Between Consumer and B2B Contracts;

1. Status of the Parties; In a consumer contract, one party must be a consumer acting outside a business context. In contrast, in a B2B contract, both parties act in the course of business.

In *R & B Customs Brokers Co Ltd v United Dominions Trust Ltd,*[207] the court held that a company could still be regarded as a consumer if the transaction was not an integral part of its business. This highlights the importance of the purpose of the transaction rather than the identity of the party.

2. Level of Legal Protection; Consumer contracts enjoy a higher level of statutory protection. Under the CRA 2015, consumers cannot be deprived of key statutory rights, and unfair terms are not binding. Exemption clauses excluding liability for death or personal injury are absolutely prohibited. In B2B contracts, exemption clauses are generally allowed, provided they satisfy the reasonableness test under Section 2 and Section 11.[208] This reflects the assumption that businesses are better placed to negotiate and understand contractual risks.

3. Control of Exemption Clauses; In consumer contracts, the CRA 2015 strictly controls exemption clauses. Sections 31 and 65 prohibit exclusion of statutory rights and liability for death or personal injury. In B2B contracts, exemption clauses are assessed under UCTA, and their enforceability depends on whether they are reasonable in the circumstances. In *George Mitchell (Chesterhall) Ltd v Finney Lock Seeds Ltd,* [209] the House of Lords held that a limitation clause in a B2B contract was unreasonable due to unequal bargaining power.

4. Fairness and Reasonableness Tests: The CRA 2015 applies a fairness test, focusing on good faith and significant imbalance to the detriment of the consumer. This test is consumer-focused

[207] . [1988] 1 WLR 321
[208] . ibid,182, (1977).
[209] . ibid,145, [1983] 2 AC 803

and protective. By contrast, B2B contracts under UCTA apply a reasonableness test, which considers factors such as bargaining power, availability of alternatives, and whether the term was a standard form.

5. Ability to Negotiate Terms: Consumers typically accept contracts on a "take-it-or-leave-it" basis, often without real opportunity to

4.3. Service Industries

In Nigerian contract law, service industries often rely on exemption (or exclusion) clauses to limit liability, but courts scrutinize these clauses carefully especially in consumer facing contracts using principles of reasonableness, incorporation, and fairness.[210] The Nigerian decisions like *African Petroleum Ltd v. Owodunni* illustrate how courts balance freedom of contract with protection against unfair terms. Exemption clauses are contractual terms that exclude or limit liability for breach of contract or negligence. It is commonly found in transport, hospitality, telecoms, and financial services, where providers attempt to shield themselves from claims arising from service failures, it is rooted in the doctrine of *freedom of contract*, but tempered by judicial control to prevent abuse.

4.3.1. Banking

Clauses that exclude or limit liability for breach of contract, negligence, or service failure, are usually found in account opening forms, loan agreements, and online banking terms. Banks often attempt to disclaim liability for unauthorized withdrawals, system failures, or negligence of staff. Bank relied on exemption clause in its documents.[211] Court recognized freedom of contract but

[210] . *ibid, 116, (1949).*
[211] . *Cooperative Development Bank Plc v. Arc. A.O. Oba.*

stressed that clauses must be fair and not against public policy. Courts apply three main tests: Incorporation, Construction, Reasonableness/Public Policy. Such as *S.C.O.A. v. Sterling Bank Plc*. Banks often disclaim liability for unauthorized withdrawals, but courts may hold them responsible if negligence is proven. Clauses excluding liability for system downtime or fraud are common, but courts scrutinize whether customers had genuine notice. Banks may attempt to exclude liability for errors in documentation, but courts demand clarity and fairness.

4.3.2. Hotels

Hotels in Nigeria often display notices such as *"The management is not responsible for loss of guest property"*. These are classic exemption clauses terms that attempt to exclude liability for negligence or breach of contract. Hotel contracts are usually non-negotiable, presented as "take-it-or-leave-it." Courts view these skeptically because they exploit unequal bargaining power. Clauses must be brought to the guest's attention before contract formation. In *Olley v. Marlborough Court Ltd,*[212] notice inside a hotel room was ineffective since the contract was already formed at reception. Nigerian Courts interpret clauses strictly against hotels (*contra proferentem*). Ambiguous disclaimers like "not responsible for loss" are read narrowly, often against the hotel. *Niger Insurance Co. Ltd v. Abed Brothers Ltd,*[213]the court insisted that exemption clauses must be clear and unambiguous, it also apply fairness principles. Clauses excluding liability for negligence or theft are often struck down as unconscionable. *Union Bank of Nigeria Ltd v. Ajabule***,**[214] the Supreme Court held that exemption clauses cannot override statutory or fiduciary obligations. Hotels must balance risk management with consumer trust-blanket

---

[212] . ibid,210, (1949).
[213]. *(1976)***,**
[214] . ibid,168, (2011).

disclaimers are risky. Clauses displayed inside rooms or on receipts are often unenforceable and vague disclaimers ("not responsible for loss") are interpreted against hotels.

4.3.3. Transportation

Transportation contracts in Nigeria often contain exemption clauses where carriers attempt to exclude liability for loss, damage, or delay of goods. Nigerian courts, however, apply incorporation, construction, and reasonableness tests to ensure fairness, and in *DHL v. Eze-Uzoamaka,*[215] show that transport companies cannot rely on hidden or unfair clauses to escape liability**.** Clause must be brought to the customer's attention at contract formation. Example: *Olley v. Marlborough Court Ltd,*[216] notice after contract formation ineffective. *Nigerian Airways Ltd v. Abe*,[217] airline tried to rely on a clause in the ticket to avoid liability. Court held that the clause must be clear and brought to the passenger's notice before the contract was made.

4.4. Approaches in Incorporation and constructing of Exclusion Clauses

The effectiveness of an exclusion clause depends on two key aspects: incorporation (whether the clause forms part of the contract) and construction (how the clause is interpreted).[218]

1. Incorporation of Exclusion Clauses: Incorporation determines whether an exclusion clause is legally binding on the parties.[219] There are three primary approaches to incorporation:

By Signature, by reasonable notice and by Course of Dealing.

[215] . *(2020).*
[216] . ibid,212, (1949).
[217] . (1988).
[218] . *I.E., Sagay, Nigerian London, 2015.*
[219] . *ibid*,189, (2010).

2. Construction of Exclusion Clauses: Once incorporated, the next step is construction determining the meaning and scope of the clause. Courts apply several principles:

a. Contra Proferentem Rule: Ambiguous clauses are interpreted against the party seeking to rely on them *Hollier v Rambler Motors* (AMC) Ltd,[220] the court construed the exclusion clause narrowly against the business relying on it.

b. Fundamental Breach Doctrine; Historically, courts sometimes held that exclusion clauses could not cover fundamental breaches of contract. Modern law, however, focuses on construction rather than automatic invalidation. [221]

c. Specificity and Clarity; Courts require that clauses attempting to exclude liability for negligence or significant loss must be clear and unambiguous. General phrases may not suffice.

Canada Steamship Lines Ltd v R,[222] established guidelines for construing clauses excluding liability for negligence: Clear reference to negligence is needed to exclude it, if general wording can cover non-negligent liability, it will not extend to negligence unless explicitly stated, ambiguity favors the party claiming damages, reasonableness under Statute.

4.4.1. Methods of Incorporation: An exemption clause, before it can be relied upon by a party, must first be validly incorporated into the contract. Incorporation refers to the process by which the terms of a contract, including exemption clauses, become binding on the parties.

1. Incorporation by Signature: The first and most straightforward method of incorporation is by signature. Where a document containing contractual terms is signed by a party, that party is generally bound by those terms, whether or not they have read or understood them. This principle

---

[220] . [1972] 2 QB 71,
[221] . *ibid*, 219, (2010).
[222] . ibid,204, [1952] AC 192,

was firmly established in *L'Estrange v. F Graucob Ltd,*[223] where the claimant signed a sales agreement containing an exemption clause. The court held that her signature bound her to the terms, even though she had not read them. However, an important exception exists where the signature was obtained by fraud or misrepresentation. In *Curtis v Chemical Cleaning and Dyeing Co Ltd* ,[224] the defendant misrepresented the scope of an exemption clause, and the court held that the clause was not incorporated. Thus, incorporation by signature is effective unless vitiated by fraud or misrepresentation.

2. Incorporation by Notice: Exemption clauses may also be incorporated by reasonable notice, particularly where the contract is not signed. In such cases, the party relying on the clause must show that reasonable steps were taken to bring the clause to the attention of the other party before or at the time the contract was made. This principle was laid down in *Parker v South Eastern Railway Co*,[225] where the court held that a party would be bound by terms on a ticket if reasonable notice had been given.

a. Timing of Notice; The notice must be given before the contract is concluded. In *Olley v Marlborough Court Ltd*,[226] an exemption clause displayed in a hotel bedroom was held ineffective because the contract had already been formed at the reception desk. Similarly, in *Thornton v Shoe Lane Parking Ltd*,[227] the Court of Appeal held that the contract was concluded when the customer drove into the car park, and any exemption clause displayed afterward was not incorporated.

---

[223] . ibid,198, [1934] 2 KB 394.
[224] . [1951] 1 KB 805.
[225] . (1877) 2 CPD 416.
[226] . ibid,216, [1949].
[227] . ibid,199, [1971].

b. Degree of Notice: The more onerous or unusual the exemption clause, the greater the degree of notice required. This principle was famously stated by Lord Denning in *J Spurling Ltd v Bradshaw*, [228] often referred to as the "red hand rule".

3. Incorporation by a Course of Dealing; An exemption clause may also be incorporated through a previous course of dealing between the parties. For this method to succeed, the dealings must be regular, consistent, and over a sufficient period of time. In *McCutcheon v David MacBrayne Ltd*,[229] the House of Lords refused to uphold an exemption clause because the prior dealings were irregular and inconsistent.

Therefore, a course of dealing must be frequent and uniform for an exemption clause to be incorporated. Even where an exemption clause is properly incorporated, its enforceability may still be limited by statute, particularly in consumer contracts. Under the Consumer Rights Act 2015, exemption clauses must also satisfy the tests of fairness and transparency, and certain exclusions are expressly prohibited.

4.4.2. Lack of awareness and access to legal remedy: Big companies draft contracts and individuals just accept them. In Nigeria, exemption clauses in contracts often limit liability, but lack of awareness and access to legal remedies means many parties especially consumers are unable to challenge unfair terms. Courts have intervened in key cases like *Narumal & Sons Ltd v. N.B.T.C. Ltd,*[230] to balance freedom of contract with fairness, yet the problem persists because most people do not understand the implications of these clauses or how to seek redress. These clauses are found in standard form contracts e.g., transport tickets, service agreements, insurance

[228] . [1956] 1 WLR 461.
[229]. [1964] 1 WLR 125
[230] . SC. (1989) 2 NWLR (pt.106)730.

policies. The problem is that many consumers sign without reading or understanding them, effectively waiving rights unknowingly. The challenges include;

- Low legal literacy: Many Nigerians are unaware of their rights under contract law.
- Power Imbalance: Corporations draft contracts with exemption clauses, leaving consumers with little choice.

- Judicial limitations: Courts sometimes uphold clauses under the doctrine of freedom of contract, even when unfair.
- People do not know their rights**:** Many Nigerians sign contracts without reading or understanding the fine print.
- Hidden clauses: Companies often bury exemption clauses in small writing.
- Cost of justice: Going to court is expensive and slow, so ordinary people rarely challenge unfair clauses.

Ways forward/Reforms

Nigeria needs to stop relying entirely on old judge-made common law rules and adopt concrete, modern legislative frameworks. Here is the roadmap for reform:

1. Comprehensive Federal Legislation (A "Unfair Contract Terms Act"): Nigeria needs a unified federal law modeled after the UK's Unfair Contract Terms Act (UCTA). We shouldn't rely on piecemeal state laws. This federal law should outright ban certain exemption clauses. For example: Clauses excluding liability for death or personal injury caused by negligence should be completely illegal and void, no exceptions. Clauses excluding liability for financial losses should only be allowed if they pass a strict "reasonableness test" evaluated by the judge.

2. Aggressive Enforcement of the FCCPA: We actually have a sleeping giant: the Federal CCP Act (FCCPA). The FCCPA explicitly states that consumer contracts cannot contain unfair, unreasonable, or unjust terms. The Federal Consumer Protection Commission needs to actively penalize companies utilizing illegal "No Refund, No Exchange" or "At Owner's Risk" clauses. There needs to be a simplified, fast-track small claims tribunal where consumers can challenge these corporate shields without spending millions on lawyers.

3. Codification of the "Reasonableness" Test: The courts should abandon the overly academic debate about "fundamental breach vs. rules of construction." Instead, statutory law should empower judges to use a clear-cut balance test. The era of businesses using microscopic text to run away from their basic obligations needs to end. While the Nigerian judiciary has built clever guardrails to protect consumers, the ultimate way forward requires legislative teeth. By enacting a unified federal law on unfair terms and vigorously enforcing consumer rights, Nigeria can ensure that "freedom of contract" stops being a license for corporate negligence.

4.4.3. Practical Challenges in the Enforcement of Exclusion Clauses

Enforcing exclusion (exemption) clauses in Nigeria faces serious practical challenges: courts often scrutinize them for fairness, clarity, and public policy, and Nigerian case law shows that many clauses fail when they are hidden in standard form contracts or conflict with doctrines like fundamental breach. In Nigeria, these clauses are widely used, especially in standard form contracts like service agreements, banking transactions, hotels, airlines, and logistics. While parties have the freedom to include such clauses (freedom of contract), enforcing them in practice often encounters significant challenges, which includes;

a. Incorporation into the Contract; For an exclusion clause to be enforceable, it must be properly incorporated into the agreement. For instance, if a party signs a document containing the clause, it is generally binding, even if the party did not read it.[231]

b. When the clause is in an unsigned ticket, notice, or waybill, the enforcing party must prove that reasonable notice was given. where failure to notify resulted in non-enforcement.[232] Problems can arise when clauses are hidden in small print or not expressly agreed. The Supreme Court emphasized that parties must have actual or constructive notice of exclusion clauses for them to be bound.[233]

Practical Challenge: Many Nigerian consumers unknowingly enter agreements where exclusion clauses exist, especially in mobile telecommunications or service industries, leading to disputes over whether the clause was effectively incorporated.

b. Ambiguity and the Contra Proferentem Rule; Courts prefer strict interpretation of exclusion clauses: Ambiguous clauses are construed against the party seeking to rely on them. **Example**: In *Baldry v. Marshall,*[234] a clause excluding "other warranties" did not cover a breach of an implied condition under the Sale of Goods Act.

Practical Challenge: Nigerian contracts often contain vague or convoluted wording. When a dispute arises, courts must interpret the clause, creating unpredictability for businesses seeking certainty in liability.

[231] . *ibid,223, (1934).*
[232] . *Parker v. South Eastern Railway Company* (1877) and *Odeniyi v. Zard & Co*.
[233] . *U.T.C. (Nig.) Ltd. v. Pamotei*.SC. (1989) NWLR (pt. 103) 244
[234] . (1925) 1 KB 260

c. Fundamental Breach and the Rule of Law: A fundamental breach occurs when a breach goes to the root of the contract, depriving the innocent party essentially of all the benefit: Nigerian Supreme Court has upheld the principle that exemption clauses cannot shield parties in a fundamental breach, as in *IMNL v. Pegofor Industries Ltd,*[235] *and Eagles Super Pack v. ACB Plc*.[236] Similarly, in banking: *Guaranty Trust Bank v. Motu nrayoTolulope Aleogena,*[237] demonstrated that the bank could not rely on limited liability clauses to avoid responsibility for fundamental contractual obligations. However, the Supreme Court in *Narumal & Sons Ltd. v. N.B.T.C. Ltd,*[238] held that exemption clauses can, in principle, cover even fundamental breaches if clearly worded. This creates uncertainty: while courts recognize freedom of contract, they also balance against unfairness.[239]

- Practical Challenge:Indetermining whether a breach is fundamental is factsensitive. Businesses may exploit unclear boundaries, while courts struggle to consistently enforce limitations.

d. Standard Form Contracts & Inequality of Bargaining Power: Many exemption clauses appear in standard form contracts (e.g., transport tickets, bank agreements, service contracts). The weaker party often has no real choice but to accept the terms, raising fairness concerns. Courts in Nigeria sometimes refuse enforcement where the clause was not adequately brought to the attention of the weaker party. *Olley v Marlborough Court Ltd,*[240] exclusion clause on a hotel wall was ineffective because it was not incorporated at the time of contract. Nigerian courts adopt similar reasoning.

---

[235] . *(2005).*
[236] . (2006).
[237] . (2019).
[238] . ibid, 252, (1989).
[239] . yusufali.net.
[240] . ibid,229, [1949].

e. Public Policy & Consumer Protection: Courts may refuse to enforce clauses that are unconscionable or against public policy. For instance, clauses excluding liability for negligence in essential services (transport, banking) are often scrutinized. The rise of consumer protection laws in Nigeria further limits the scope of exemption clauses.[241]

4.4.4. Lesson learns from another jurisdiction: Lessons from jurisdictions such as the United Kingdom, the United States, Canada, and Australia offer insights that are highly relevant for Nigerian contract law, particularly in drafting, enforcing, and interpreting such clauses.

An exemption (or exclusion) clause is a contractual term that seeks to limit or exclude liability for breach of contract or negligence. It protects one party (often the stronger party in standard form contracts) from certain liabilities. Courts balance freedom of contract with fairness, ensuring weaker parties are not unfairly disadvantaged. The House of Lords rejected the doctrine of "fundamental breach" as an automatic invalidator of exemption clauses. Instead, courts must interpret the clause within the contract's context.[242] In Unfair Contract Terms[243], the court introduced statutory controls, requiring exemption clauses to pass a reasonableness test. Exemption clauses in Nigerian contract law illustrate the tension between contractual freedom and fairness. Nigerian courts, guided by English precedents, apply strict interpretation and public policy to control abusive clauses. However, lessons from England's statutory framework and South Africa's public policy approach suggest that Nigeria could benefit from legislative reform.

[241] . cjokoyelawview.com.

[242] . ibid, 176, (1980).

[243] . Act 1977 (UK).

A statutory reasonableness test would provide clarity, protect consumers, and align Nigerian law with global best practices.[244]

4.5. Statutory Reform: Exemption clauses are terms I n contracts that try to limit or exclude liability. Nigerian courts have long dealt with them through common law principles like incorporation, contra proferentem, and fundamental breach. But statutory reform refers to how legislation has stepped in to regulate or restrict their use, especially to protect consumers and weaker parties.

a. Consumer Protection Framework; Nigeria does not have a single statute like the UK's Unfair Contract Terms Act 1977, but several laws indirectly regulate exemption clauses such as; Federal Competition and Consumer Protection Act (FCCPA) 2018: This Act prohibits unfair contract terms and misleading exclusions. It empowers regulators to strike down clauses that are unjust or oppressive. Nigerian law is moving towards statutory control, ensuring consumers are not left without remedies.

b. Insurance Contracts; Nigerian Insurance,[245] is the key legislation that places limits on insurers' ability to exclude liability unfairly. It regulates insurance contracts, ensuring that exemption clauses cannot be used to defeat the fundamental purpose of insurance, which is to provide protection to policyholders. More recently, reforms such as the Nigerian Insurance Industry Reform,[246] have been introduced to strengthen consumer protection and modernize the sector**.** The

[244] . *Barkhuizen v Napier*, (2007) 5. SA. 323 (CC).
[245] . Act of 2003.
[246] . ibid,245.

court emphasized that exclusion clauses in insurance must be interpreted strictly and cannot defeat statutory protections.[247]

c. Carriage of Goods and Transport; The Carriage of Goods by Sea Act (COGSA) of 1926 (which incorporates the Hague Rules) restricts carriers from excluding liability for negligence in certain circumstances, the court held that statutory duties of carriers cannot be excluded by contract.[248]

d. Banking and Financial Services; Central Bank of Nigeria (CBN),[249] together with the Banks and Other Financial Institutions Act (BOFIA)**,** underpin prohibit banks from contracting out of liability for fraud or negligence, the court refused to allow the bank to rely on an exemption clause to avoid liability for wrongful dishonor of cheques.[250]

4.6. Juridical Reform: Juridical reform refers to how Nigerian courts have changed their approach over time in dealing with exemption clauses. It's about the shift in judicial thinking moving from rigid doctrines to more flexible, fairness-oriented interpretations. Initially, Nigerian courts followed the English rule that an exemption clause could not protect a party who committed a fundamental breach. In ***Karsales (Harrow) Ltd v Wallis,***[251] exemption clause failed when a car delivered was useless. Nigerian courts leaned on this idea, limiting the scope of exemption clauses.

Later, Nigerian courts adopted the modern English position that parties can exclude liability even for fundamental breaches, if the wording is clear. Supreme Court held that exemption clauses can cover fundamental breaches,[252] echoing *Photo Production v Securicor* (UK).[253] This reform

[247] . *Leadway Assurance Co. Ltd. v. Zephirum Nig. Ltd.*
[248] . *Nigerian Ports Authority v. Panalpina World Transport (Nig.) Ltd. (1973). All NLR 408.*
[249] . ibid,150, (2007)**.**
[250] . *Diamond Bank Ltd. v. Partnership Investment Co. Ltd. (2010) 13 W.R.N. 35.*
[251] . ibid,90, (1956).
[252] . *Narumal & Sons Ltd. v. N.B.T.C. Ltd* (1989).
[253] . ibid,242, (1980).

emphasized party autonomy and contractual freedom. Courts began insisting that exemption clauses must be properly incorporated into the contract. In U.T.C. *(Nig.) Ltd. v. Pamotei*,[254] the Supreme Court stressed that parties must have notice of the clause before being bound. This reform protects weaker parties from hidden or unfair terms. More recently, Nigerian courts have invoked public policy to strike down clauses that are oppressive or unjust. Inspired by South African cases like *Barkhuizen v Napier*,[255] Nigerian judges increasingly balance freedom of contract with fairness. Though Nigeria lacks a statute like the UK's **Unfair Contract Terms Act 1977**, courts use constitutional values and consumer protection principles to limit harsh clauses.

CHAPTER FIVE

SUMMARY OF FINDINGS, RECOMMENDATIONS AND CONCLUSION

5.1 Summary of Findings

Exemption clauses are widely used in Nigerian contracts, especially in transport, insurance, and service agreements, to limit or exclude liability. Their nature lies in protecting one party from responsibility for breach or negligence, while their scope is defined by how far courts are willing to enforce them. Nigerian law, drawing heavily from English common law, recognizes these clauses under the principle of *freedom of contract*. However, courts impose strict conditions: the clause must be clear, unambiguous, and brought to the attention of the other party.

[254] . SC. (1989) NWLR (pt. 103) 244
[255] . (2007) 5. SA. 323 (CC).

Judicial decisions show that exemption clauses cannot override fundamental principles of fairness. For example, clauses attempting to exclude liability for fundamental breach or gross negligence are often struck down. Consumer protection laws and public policy also limit their enforceability, especially in standard form contracts where one party has little bargaining power.

In practice, Nigerian courts adopt a balanced approach: they uphold exemption clauses when they are transparent and reasonable, but restrict them when they undermine justice or public interest. Exemption clauses under Nigerian contract law allow parties to limit or exclude liability, but courts carefully scrutinize them especially when they are hidden in standard form contracts or conflict with fairness. Nigerian case law shows that while freedom of contract is respected, exemption clauses cannot override fundamental breaches or operate unfairly against weaker parties

5.2. Recommendations:

1. **Clarity and Simplicity**
   - Draft exemption clauses in plain, straightforward language. Avoid technical jargon that could confuse the contracting parties.
   - Ensure the clause is unambiguous and leaves no room for multiple interpretations.
2. **Transparency and Notice**
   - Exemption clauses should be clearly highlighted in the contract (bold text, separate section, or signature acknowledgment).
   - Parties must be made aware of the clause before signing; hidden clauses are often invalidated by courts.
3. **Fairness and Reasonableness**

- Avoid clauses that attempt to exclude liability for gross negligence, fraud, or fundamental breach. Nigerian courts are reluctant to enforce such provisions.
- Ensure the clause does not create an unfair imbalance between the parties, especially in consumer contracts.

4. **Compliance with Consumer Protection Laws**
   - Align exemption clauses with the Federal Competition and Consumer Protection Act (FCCPA) rules and regulations and other statutory safeguards.
   - Clauses that undermine consumer rights or public policy are likely to be struck down.
5. **Context-Specific Drafting**
   - Tailor clauses to the nature of the contract (e.g., service agreements, transport contracts, insurance policies).
   - Avoid "blanket exclusions" that attempt to cover every possible liability without distinction.
6. **Judicial Precedent Awareness**
   - Consider Nigerian case law (e.g., *Narumal & Sons Ltd. v. NBTC Ltd.*) when drafting clauses, as courts often rely on precedent to determine enforceability.
   - Stay updated on evolving judicial attitudes toward exemption clauses.
7. **Alternative Risk Management**
   - Instead of overreliance on exemption clauses, businesses should adopt insurance policies, indemnity agreements, or limitation clauses that cap liability rather than exclude it entirely.

5.3. Conclusion

Exemption clauses remain an important feature of Nigerian contract law, serving as a mechanism for parties to manage risk and define the limits of liability. However, their enforceability is not absolute. Nigerian courts consistently emphasize that such clauses must be clear, fair, and transparent, and they will not uphold provisions that attempt to exclude liability for fundamental breaches, gross negligence, or matters contrary to public policy.

The overall trend in Nigerian jurisprudence is toward a balanced approach: respecting the principle of freedom of contract while safeguarding fairness and consumer protection. This ensures that exemption clauses function as legitimate tools of risk allocation rather than instruments of injustice.

In essence, exemption clauses in Nigeria can be effective when drafted responsibly, but they must always operate within the boundaries of reasonableness, judicial scrutiny, and statutory safeguards. This balance protects both business interests and the rights of contracting parties, reinforcing trust in contractual relationships.

BIBIOGRAPHY

BOOKS

1. Achike, O: Nigerian Law of Contract (Nwamife Publishers 1972).
2. Anson, W. R: J. Beatson, A. Burrows, and J. Cartwright, Anson's Law of Contract (31st edn, Oxford University Press 2020).
3. Cheshire, G. C: M. P. Furmston, Cheshire, Fifoot & Furmston's Law of Contract (18th edn, Oxford University Press 2023).
4. Chitty, J: H. Beale (ed), Chitty on Contracts (34th edn, Sweet & Maxwell 2021).
5. **Fredrick pollock, *Principle of contract* (13th edn, Stevens 11950) 1**
6. G.H. Treitel, The Law of Contract, 14th ed. (London: Sweet & Maxwell, 2015).Monye, F. I: Law of Consumer Protection (Spectrum Books Limited 2003).
7. B. O. Nwabueze, The Presidential Constitution of Nigeria (C. Hurst & Co. 1982).
8. C. O. Okonkwo, Okonkwo and Naish on Criminal Law in Nigeria (2nd edn, Spectrum Books 1980).
9. I. E. Sagay, Nigerian Law of Contract (2nd edn, Spectrum Books Limited 2000) / (3rd edn, Malthouse Press Limited 2021).
10. O. Okany, Nigerian Law of Contract (Onitsha, Nigeria: Africana First Publishers Plc, 2010).

11. Treitel, G. H: E. Peel, Treitel on the Law of Contract (15th edn, Sweet & Maxwell 2020).
12. W.R. Anson, Principles of the English Law of Contract and of Agency in Its Relation to Contract, 29th ed., edited by Jack Beatson (Oxford: Oxford University Press, 2016).

JOUNALS:

1. Agbom, C. O: 'Standard Form Contracts and Unequal Bargaining Power under the Nigerian Law of Contract' (2021) 4(2) Godfrey Okoye University Law Journal (GOULJ) 78–95.
2. Adams, J. N. and Brownsword, R: 'The Unfair Contract Terms Act: A Decade of Discretion' (1988) 104 Law Quarterly Review (LQR) 94–119.
3. Coote, B: 'The Essence of Contract; The Function of Exclusion Clauses' [1988] The Journal of Business Law (JBL) 197–210.
4. Idigbe, A: 'The Enforcement of Exemption Clauses in the Banking and Financial Services Sector in Nigeria' (2018) 12(3) *The Nigerian Bar Journa*l 14–31.
5. Monye, F. I: 'The Federal Competition and Consumer Protection Act 2018: A New Dawn for Consumer Protection in Nigeria' (2019) 10(2) Journal of Commercial Law and Industrial Policy 45–62.
6. Onuobia, C: 'Exclusion Clauses and the Sanctity of Contract in Nigerian Law' (2015) 6(1) Nigerian Journal of Commercial Law 112–135.

Online Materials

1. Federal Competition and Consumer Protection Commission, 'Guidelines on Unfair Contract Terms' (2020) <https://fccpc.gov.ng> accessed [12-06-26].

2. LawNigeria, 'Federal Competition and Consumer Protection Act 2018' (Commercial Law Library) <https://lawnigeria.com> accessed [12-6-2026].

3. Legal Article (SSRN);'The Impact of the FCCPA 2018 on Standard Form Contracts in Nigeria' (Social Science Research Network, [Year]) <https://ssrn.com> accessed [12-6-2026].

4. cjokoyelawview.com: https://cjokoyelawview.com. accessed [12-6-2026].

5. Yusuf Ali & Co., Ghalib Chambers: https://www.yusufali.net › offices. accessed [12-6-2026].

Other Relevant Sources of Information

1. Black's Law Dictionary: Bryan A. Garner (ed), Black's Law Dictionary (11th edn, Thomson Reuters 2019) (defining 'exemption clause', 'limitation clause', and 'bargaining power').

2. Halsbury's Laws of England: Halsbury's Laws of England (5th edn, 2020) Vol 22, 'Contract' (principles of construction and incorporation of terms).

3. Law Reform Commission Reports: Nigerian Law Reform Commission, Report on the Reform of the Law of Contract (NLRC, Abuja) [or your specific report year].