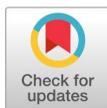


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# Concept and Judicial Treatment of Standard Printed Contracts

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## Abstract

To meet modern business requirements such as the digitalization of commercial activities, the extensive use of standard printed contracts has become unavoidable despite their tricky formulation, including obscure, illegible, and complex clauses that ordinary buyers rarely understand or read, often leading to commercial exploitation. The objective of this paper is to outline the concept of standard printed contracts, as executing such contracts results in provision of exemption clauses causing commercial exploitations. However, effective treatment through judiciary can help counter these abuses. This study adopts an analytical, qualitative, exploratory, and descriptive research methodology while considering the judicial interpretation and the legal safeguards available under both English and Pakistani laws. In conclusion, the paper finds that judicial treatment of standard printed contracts balances the need to uphold freely made contracts while protecting weaker parties from unfair terms. An effective judiciary can foster economic stability and development by providing an organized, timely and orderly mechanism for dispute resolution. While English law provides a rich body of case law on these issues, Pakistani law is gradually developing frameworks to address similar concerns.

**Keywords:** contractual liability, digitalization of commercial activities, inequality in bargaining power, judicial treatment, standard printed contracts

## Introduction

The standard printed contracts, sometime referred to as the adhesion contracts, (Hillman & Rachlinski, [2002](#)) represent a category of agreements where a party with whom such contracts are executed are simply asked either to accept them or reject with no option of bargaining, negotiation or even rejection if any of the term in these contracts is not acceptable or potentially exposes him to some losses or damages, if signed. These contracts are mostly drafted by the powerful entities themselves (Ecocards

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v. Tekstir, Inc., [2024](#)) or by third parties who are usually the trade associations and ensure inclusion of many of their standard preferred business terms which result into disparity to the rights of weaker customers.

Furthermore, formulation of these contracts is done in a tricky manner (Trivedi, [2008](#)) like they contain less visible, illegible and incomprehensible clauses, hardly understandable or readable by the ordinary purchasers and giving a capricious and arbitrary right to the supplier to amend or change the contractual terms and conditions.

In this article, we will explore the standard printed contracts, their definition, concept and background and the principles of “*a prendre ad laisser*” (Atiyah, [1995](#)) i.e. “*to take it or leave it*”. Furthermore, we will also cover the concepts of judicial treatment, adhesive nature and use and abuse of standard printed contracts, and judicial mode of protection mainly under the English and Pakistani law against the exploitation of a weaker party.

### **The Concept and Background of Standard Printed Contracts**

In modern technology enriched and oriented world of today, in the area of contract, the key progress has been the use of standard printed category agreements encompassing a number of the terms and conditions and the exemption provisions in “fine print” (Beatson, [2020](#)) which has not only limited the liability of the sellers (Niazi, [1991](#)) but has also exempted them broadly and widely from their contractual liabilities (Atiyah, [1995](#)). There has been benefits of these agreements including saving the process and review time during the commercial transactions but are also linked with the fact that these are open to abuse with the reason that a party who has to procure goods or services is not allowed to alter the printed terms and take or leave them (Faryal v. Nayatel (Pvt.) Ltd., [2024](#)). By pointing on this issue, Lord Denning (Thornton v. Shoe Lane Parking Limited, [1971](#)) once said that out of a thousand, hardly any customer would read the terms and if they stop to do, will miss the ship.

This illustration below (CartoonStock, [n.d.](#)) depicts the situation happening in a day-to-day commercial dealing of people in fine printed agreements (Burke, [2000](#)). But reality is that hardly, any person wants to see the fine terms available in these contracts resulting into unfairness (Slawson, [1971](#)). Procedurally, these transactions vary as in some cases the transaction is done quickly especially in the cases of buying a ticket, mobile SIMs, laundry receipts which can be done simply in few minutes (Kessler,

[1943](#)) where the customer is to fill some of the blanks in the form and rest of the terms are already available in a standard printed mode on their back side which are the crucial point of this whole discussion (Rakoff, [1983](#)).

### Figure 1

*Excerpt of Fine Printed Contract Terms*



Professionals with expertise in their respective fields usually create standard printed forms while investing their money and time. The customers who are always in hurry to complete transactions find the developed forms filled with legal jargons, making it difficult for them to understand (Eisenberg, [1995](#)). The standard forms have several realities that customers perceive when dealing with them, such as the customer is left with no better option from the competitors who also come up with similar terms (Leff, [1985](#)) and the organizations, who are more conscious about their reputation with the buying customer, so, will not leave the customer alone in case of any eventually and would back their offered products and services (Rakoff, [1983](#)).

Let us take the example of banking industry transactions pertaining to opening of accounts where the customer is given fine terms printed forms with blanks to fill and customer considering it a laborious job fills up only few and the officer fills in the rest. If the customer is illiterate, he would just leave the thumb impression, and the officer then fills in every blank.

These contracts are provided to clients in a fancy manner in eye-

catching booklets, have replaced the antiquated practice of negotiating contracts with each person. For contracts presented electronically, the mode to agree on the terms is electronic by pushing the "ACCEPT" button, without the opportunity to discuss terms. Such contracts are commonly referred to as adhesion contracts (Hillman & Rachlinski, [2002](#)).

### Standard Printed Contracts and Principles of “*a prendre ad laisser*”

When it comes to standard printed contracts, imbalance in the negotiating power of the contracting parties is the first thing that comes to everyone’s mind viz-a-viz the ordinary customer and monopoly entity and he is left with no other option except to put his signatures “*on the dotted line*” of the document.

#### Figure 2

*Excerpt of Printed Contracts Falling under a prendre ad laisser Category*



Such contracts fall under the category of *a prendre ad laisser*, (Trivedi, [2008](#)) especially when it comes to bigger organizations, he is left with no other choice except to agree on the printed forms as presented, or leave with no purchases done (Atiyah, [1995](#)).

### Standard Printed Contracts and Judicial Treatment

It is a well-established principle that unless the contractual transaction

involves the elements of undue influence, misrepresentation or fraud, the written contract, which has the elements of reasonableness and mutuality and is signed by the parties would be enforceable under the eyes of law with no interference from the judiciary to declare the contract voidable or void.

Furthermore, with a strong possibility of the enforcement of such contracts, the judiciary's role can be limited to certain aspects of the contracts resulting into refusal of the enforcement of some of the terms and not the whole contract as observed while going through the cases decided by English courts and same principles apply in Pakistan. Like in *UBL v. M/s Khalid Shafi & Co.*, the court criticized bank's unilateral imposition of terms being unfair, especially when the buyer has no control in the drafting (*UBL v. M/s Khalid Shafi & Co.*, [2003](#)).

### **Formation of Contracts and Procedural Unconscionability**

The format as how the agreement was formed between the parties to such contract is referred to as the procedural unconscionability (*Faryal v. Nayatel (Pvt.) Ltd.*, [2024](#)). The following section discusses this concept in detail.

### **Standard Printed Contracts and Their Adhesive Nature**

The adhesive nature of the standard printed contracts as evidence has been pointed out by the courts in some matters (*Pace v. Hamilton Cove*, [2024](#)) by referring to the added terms in the said contracts as “involuntary” and unconscionable from procedural aspects (*Circuit City Stores, Inc v Adams*, [2002](#)).

As noted earlier that the offering party usually offers to other party these contracts on a take it or leave it basis without any possibility of bargaining and the customer also does not get any opportunity to reach out to the seller staff having authority to approve any changes in the printed terms. Therefore, it is correct for the courts to note that buyers are often left with only choice except to agree on printed terms or leave their purchase of seller products (*Cooper v MRM Investment Co Cooper v. MRM Investment Co.*, [2004](#)).

### **The Customers' Inequality of Bargaining Power**

When it comes to the use of standard printed contracts, a conflict of erosion is observed between poor customers and wealthy sellers because these contracts have witnessed no equality in the negotiating capacity

between them. Such disparity starts from the creation of these contracts and goes till their actual execution resulting into no ideal marketplace for the weak customers and no decisions are made free from any undue advantage, coercion, or fraud.

However, the above understanding appears to be an imaginary situation as in the real economic world (World Bank, [2022](#)) such theory of perfect competitive market does not exist. As Mariner ([1988](#)) asserts that there are several imbalances between customers and sellers in terms of information and choices which results into disadvantageous situation for the customer to go with their preferred purchases (Aziz & Yusoff, [2010](#)).

Moreover, the courts quite often base their outcome of the procedural unconscionability on the standard form contracts' adhesive nature added with apparent bargaining power inequalities between the buyer and seller (Ecocards v. Tekstir, Inc., [2024](#)).

The terms as available in these contracts are usually enforced by the courts; however, such terms are also invalidated by the courts occasionally while relying on the doctrine of unconscionability. There have been some factors which the courts have identified detailing the procedural unconscionability, like the presence of monopoly situation, unconscionable bargains, economic duress and inequality of bargaining power, (Abdul Rahim v. Messrs United Bank Ltd of Pakistan, [1997](#)). Additionally, the inclusion of terms in the printed contracts which are difficult to read or comprehend, particularly in cases involving illiterate customers. This could be correlated positively with the provisions as being non-salient and ultimately lead towards making the term inefficient. But these are generally considered as weak factors.

### **The Formation of Standard Printed Contracts and *consensus ad idem***

Theory of meeting of minds arises between two parties when they enter into a voluntary business relationship. According to the principles of contract law, there must be same level of *consensus ad idem* (state of meeting of minds). The classical theory of contract links will of the parties to the contract when it comes to contract creation and its related legal obligations (Oughton, [1989](#)). When offer and acceptance go in the existence form, these reflect signs of meeting of minds in formation of contract. These are the signs which are classified coming as offer from one party and further same was agreed and accepted by the other contracting party (Aziz &

Yusoff, [2010](#)).

Similarly, the growing increase in business needs has led the evolution of “Will Theory” of contract that whenever a promise is made with free will, this will be legally binding and essentially is product of the consenting minds i.e. *consensus ad idem*. For example, when a party makes a promise to the other party to enter into a contract, it should be reasonably understood that the other party intended to enter into a full fledged contractual relationships, even if later it goes at the detriment of the promisor but that promise will be contractually binding upon him even though the promisor was not intending to go with the contract in those conditions (Trivedi, [2008](#)).

Similar principles are applicable under the Pakistani contract law i.e. for demonstration of judicial scrutiny of adhesion contracts, court found that the borrower was not in a position to negotiate terms and declared certain clauses unenforceable (Haji Abdul Karim v. Messrs United Bank Ltd., [2000](#)) and similarly, for interpreting a document, the parties would be deemed to be “*consensus ad idem*” about the essential terms of the contract (Al Huda Hotels & Tourism Co. v. Paktel Ltd., [2002](#)).

### **Judicial Modes of Protection Under the English and Pakistani Law**

The judiciary is one of the most important organs of any developed legal system for resolving disputes and delivering justice to citizens. In such developed systems, the main law source lies in the legislation according to which the judges decide on the issues and pass judgments on the basis of the facts in a reasonable manner. Under English law, courts also consider prior decisions of higher courts, particularly the Supreme Court or by the same court under the doctrine of precedent i.e. *stare decisis* (Munir, [2014](#)). This doctrine has a binding nature and the decision’s binding nature verily depends upon the *ratio-decidendi* and the courts’ hierarchy as from which court decision has come from (R. v. Kirkpatrick, [2022](#)).

As compared to Unfair Contract Terms Act 1977 passed by English Parliament to tackle the issues arising from standard printed category agreements, the current legislation in Pakistan does not adequately address misuse of these contracts that contain exemption provisions. So far, the judiciary has to some extent addressed the issues in the form of creating the balance of these contracts in favour of the affected parties (M/S Pak Telecom Mobile Ltd. v. Federation of Pakistan, [2012](#)) including the

exemption clauses as made available therein. In *PIA v. Tanveer Anjum*. Supreme Court held that exemption clauses in PIA's standard contract could not absolve it from liability when the passenger had no real opportunity to negotiate or reject the terms (*PIAC & others v. Tanveer ur Rehman & others*, [2010](#)). *Pakistan International Airlines Corporation & others v. Tanveer-ur-Rehman & others* also deals with the matter (*PIAC & others v. Tanveer ur Rehman & others*, [2010](#)).

While addressing the above problems, the judiciary's approach has been to adopt the interpretational methods (Joshi, [1996](#)). The following section examines the judicial modes of protection available to weaker parties under English law. Notice of the Printed Terms

The key components of a contract are the offer and acceptance. However, as discussed in the preceding paragraphs that in a standard printed contract, the customer has no choice of the bargaining or negotiation but to either accept or reject goods or services under the contract in totality and available in the printed form of a printed ticket, notice or receipt sent during the negotiations.

The question that arises regarding the notice is whether it refers to awareness of the contents or merely to the existence of the terms and conditions. In the well-known case of *Parker v. Smith*, the court held that providing notice of the terms and conditions constitutes sufficient notice of their existence (*Parker v. South Eastern Railway Co.*, [1877](#)).

However, if the document does not contain clear and explicit wording on its face to draw proper attention to the printed terms on its reverse side, it may reasonably lead a party to believe that the document is merely a receipt or ticket, which they might simply put away without reading. In such a case, the document cannot be regarded as a contractual document and would be treated merely as a receipt, carrying no binding effect of the exemption clauses.

In *Chapelton v. UDC*, the issue related to the notice with the exemption clause printed on the back of the ticket purchased, the court held that the said clause was included in the agreement because no reasonable person would treat the ticket as nothing more than a receipt and consider it a contractual document (*Chapelton v. Barry UDC*, [1940](#)).

Similarly, in (*Thornton v. Shoe Lane Parking Limited*, [1971](#)) a notice outside of the park displayed the parking charges and further it was written

that car parking shall be at their owner's risk. The claimant got the ticket which contained term in a very small print that the issued ticket was subject to the terms and conditions which were displayed on the inside of the car park premises.

The claimant was injured in an accident partly due to SLP's negligence while retrieving his car from a parking facility. He had not seen or been made aware of the exclusion clauses printed on the machine-issued ticket. On appeal, the court held that the ticket machine constituted the offer, and the contract was formed when the claimant inserted payment, making the ticket merely a receipt. Since the exclusion clause was presented after contract formation, it was not binding. The appeal failed due to the defendant's inability to establish notice of the terms. The case highlights the need to clearly inform users of contractual terms before acceptance.

### **Co-existence of the Notice**

It is pertinent to note that it is very important to see when notice of the printed conditions has been given. Before or at the time of entering the contact to make them binding and effective, the essential thing is that the other party to the contract is given the notice.

The case of *Olley v. Marlborough* deals with this issue wherein the proposition set was that if a representation was made after the contract was made, it can't become a term of the said contract. At the appellate forum, it was held that Olley's notice which came to her attention after the contract was made, hence not effective, and also the subsequent notice with the exemption clause had no bearing on her rights. As a result, Olley was successful in her damages claim and was fully reimbursed for the cost of the stolen belongings. Any dealing previously done between the parties may also be helpful for inferring the notice of the printed terms with exemption from the contractual liabilities (*Olley v. Marlborough Court Ltd.*, [1949](#)).

The case of *Olley v. Marlborough* established that a representation made after a contract is formed cannot become a binding term. The court held that the hotel's notice, which included an exemption clause and was only seen after Olley had checked in, was ineffective. Since the clause was not part of the contract at the time of agreement, it had no impact on her rights. Olley was therefore successful in her claim and received full compensation for her stolen belongings. The case also suggests that prior dealings between parties may be relevant in determining notice of contractual terms.

At the time of collection, all barrels were empty because Bradshaw refused to pay the agreed warehouse charges, leading Spurling to sue for recovery. Spurling relied on an exemption clause printed on the invoice, arguing he wasn't liable for Bradshaw's counterclaim of negligence. Although Bradshaw received the exemption clause after the contract was made, he admitted similar terms had been used in prior dealings, though he hadn't read them. The court held that the exemption clause was part of the contract due to their established "course of dealings", but noted that clear notice is required to incorporate such terms (*Spurling Ltd. v. Bradshaw*, [1956](#)).

In the matter of *Mendelssohn*, the question asked to the court was whether a notice incorporating an exemption clause which is seen but not read being not obvious and prominently placed to be considered incorporated into the contract.

The matter was decided by the court in claimant's favour with the observation that no sufficient measures were taken by the defendant for bringing the notice to the plaintiff's attention and the other customers in order to successfully incorporate the notice and exemption provision in the contract (*Mendelssohn v. Normand Ltd.*, [1969](#)).

In a matter of *Hollier v. Rambler Motors* ([1972](#)), a known English contract law case related to the *contra proferentum* a rule of incorporation of terms into a contract and further interpretation of the same and also shows a very strict example of the interpretation of exemption clauses. The Court held that repairing plaintiff's car for three or four occasions were not enough to consider that all this would cover the aspect doing this in a course of dealing. Hence, the claim of the plaintiff sustained, and defendant was held liable to pay the damages.

Form the above, it becomes clear that any exemption provision in a standard printed contract would bind the other party when added into a contract during a course of dealing and reasonable steps were taken by one party to advise the other contracting party on the exemption clause if he still wishes to proceed with the contract on that exemption provision.

### **No Misrepresentation in Notice Regarding the Contract Terms**

When a document is signed, denying its contractual character generally becomes difficult and it also becomes irrelevant in this case to give the evidence of notice. Unless a party has been misled or subjected to

misrepresentation, a document duly signed by that party binds them to its terms, regardless of whether they have read its contents or not.

The *L'Estrange* case establishes that the terms of a written contract are binding even if a party has not read the contents before signing it. However, the contract would not be binding in situations involving misrepresentation, fraud, or the plea of *non est factum* (meaning “it is not my deed”) (*L'Estrange v. F.Graucob Ltd.*, [1934](#)). Resultantly, it can be validly concluded that the above case significantly emphasizes contracts sanctity by the Courts.

Another case (*Curtis v. Chemical Cleaning & Dyeing Co.*, [1951](#)) affirms that if the significance of a contractual provision has been misinterpreted, a party is not bound to follow such provision. So, in the current circumstances, where the defendant’s assistant misled the plaintiff, such exemption clause ought not be deemed legally enforceable.

The general principle of contract law is that the party drafting the contract bears the burden of proving that its terms were clearly expressed and free from ambiguity. If any uncertainty arises regarding the scope or meaning of the terms particularly where such ambiguity could exclude a party’s liability, the interpretation will be construed against the drafting party (*Ailsa Craig Fishing Co. v. Malvern Fishing Co. Ltd.*, [1983](#)).

In *Akerib v. Booth* ([1961](#)) the contract in addition to employing the defendants exclusively for packing the goods and bringing them to the premises, also provided that the defendants’ liability shall be excluded from any damage due to insects, water, vermin, or fungi to the goods. Given the uncertainty in the language, it was held that the plaintiff cannot claim damages.

On the question of what constitutes a “reasonable notice” when the document is not signed, the relevant case is the *Richardson Spence & Co. v. Rowntree* ([1894](#)) where the plaintiff booked passage from Philadelphia to Liverpool and received a folded ticket containing printed terms, including a clause limiting the defendants’ liability to \$100. As she was unaware of this clause and the defendants failed to provide reasonable notice, the court ruled in her favor.

Where a person is unable to read (*Thompson v. London, Midland & Scotland Railway Company*, [1930](#)) is an important judgment to consider on the effect of the exemption clause.

In this case, the plaintiff, who was illiterate, purchased a railway ticket through her niece. The ticket referenced conditions on the back, including a clause excluding the company's liability for injuries. After being injured due to the company's negligence, she sued for damages. The court held that the company took reasonable steps to notify passengers of the clause, and illiteracy did not affect its enforceability. Therefore, the defendant was not liable for damages as claimed by the plaintiff.

So, from the above discussion, it becomes clear that whoever relies on the exemption provision, the requirement is to take all reasonable steps with no further requirement of bringing such exemption provision and notifying the same to the other party as the primary objective of the notice is to reasonably warn a person and then letting him to go with the transaction or not.

### **Notice Related to the Contents of Non-Contractual Documents**

In most of the above cases, one party included a printed term to exclude liability for negligence. However, to rely on a term that limits or excludes a party's liability, it must be demonstrated that the document containing such a term was clearly communicated and constituted an integral part of the agreement.

In the matter of *Watkins v. Rymill*, the plaintiff left his wagonette at the defendant's repository and received a printed receipt referring to terms displayed on the premises. These terms included the defendant's right to sell the goods if storage fees weren't paid within a month. When the plaintiff failed to pay, the defendant exercised this right. The court held that sufficient notice of the terms had been given, and the defendant was not liable (*Watkins v. Rymill*, [1883](#)).

Based on the above, it can be further concluded that in order to manage and control unreasonable provisions such as the exemption clauses, the doctrine of notice is being used.

### **Construction**

It is very common that drafting of the exemption clauses in standard contracts is done in broadest terms which leave no choice with the contracting party except to agree on the same. In that manner, the party drafting of the terms at his pleasure easily set asides the general contract law (*Maersk Guiné Bissau SARL & Anor v Almar Hum Bubacar Baldé*

SARL, [2024](#)).

For the interpretation and construction of the written documents, certain rules have been developed by the courts and one of the rules laid down was the “golden rule” of construction of documents. This “golden rule” was stated in *Grey v. Pearson* matter that unless there is any absurdity or inconsistency in the words with the rest of the document, ordinary meanings of the words to be adhered and words only be modified to avoid such absurdity or inconsistency and courts must adhere to the natural meanings of the words (*Grey v. Pearson*, [1857](#)).

The key advantage of the golden rule is that it allows courts to close loopholes and correct drafting errors in statutes, aligning interpretations with the legislature’s intent. However, a major disadvantage is that judges may, under the guise of interpretation, alter the meaning of words on technical grounds, potentially overstepping their powers and undermining the separation of powers. Additionally, the rule offers little value when the statute is clear and free of absurdity.

In the order passed by Cardozo J. in *Utica City N.B. matter*, the modern rule as developed was that strict and primary meanings would lead to making the transaction futile and secondary or loose meaning would give it a purpose and efficacy and aim of the transaction would guide us on our choice in such situation (*Utica City National Bank v. Gunn*, [1918](#)).

Similarly, in matter of *Reardon Smith Line Ltd.*, Lord Wilberforce provided a further clarity to this modern rule of interpretation with his given observation that while speaking on intention of the parties to a contract, the parties cannot give direct evidence of what their intention was and what the court must do must be to place itself in the same factual matrix as in which the parties were *Reardon Smith Line Ltd. v. Yngvar Hansen-Tangen* ([1976](#)).

The shift in judges' attitudes has resulted in the development of a number of outstanding interpretive devices go against the person trying to take benefit of the exemption clauses and in favor of the people who are the subject of the claim. These interpretative devices include (a) the rule of *Contra Proferentem* and (b) the rule of Strict Construction which are explained as follows:

### **The Rule of *Contra Proferentem***

The Latin maxim *verba chartarum fortius accipiuntur contra*

*proferentem* is the source of the phrase "*Contra Proferentem*," which states that in case of any uncertainty as to the meaning of a written contract, the party who proposed it will have the words interpreted against them. The basis of this rule falls under the principle that a person who is responsible for any vagueness in his own expressions and thoughts does not have the right to persuade the other to agree with him on the contract on the idea that the words used by him would mean one thing, however, he expects from the court adoption of an interpretation with a different meaning and advantageous for him (Beatson, [2020](#)).

The main objective of the principle (Boardman, [2006](#)) is to motivate the contract drafting party to be precise, explicit, and clear to the extent possible while considering all possible and foreseeable situations. If we go into the depth of this rule, it goes against the standard form of printed contracts where the other party usually does not leave any room for negotiation, however, this rule stresses on the negotiation in order to create a balanced document.

In Pakistan, Section 77 of the Insurance Ordinance, 2000 deals with the *Contra Proferentem* Rule applicable to all insurance contracts, including for the commercial and personal agreement. Under this rule, any ambiguity in the insurance contract is interpreted in favor of the policyholder. The section also emphasizes the need for clear disclosure of relevant information and the use of simple, plain language in policy documents and claim forms.

Adeel Ahmed Qureshi, in a 2004 letter to Dawn (Qureshi, [2004](#)), while commenting on the Section 77 noted that personal insurance policyholders often lack commercial knowledge and understanding of insurance contract drafting. In contrast, commercial policyholders—typically corporations or firms—have in-house experts or consultants who protect their interests and are less vulnerable to unexpected contract interpretations. While considering the above, he suggested the following exclusions to the Rule of *Contra Proferentem* available in Section 77, to protect the insurance industry interests in Pakistan, which in the opinion of the writer of this article as well were given with a balanced approach.: “1. Commercial contracts should be excluded from its application as commercial policyholders can deal with ambiguities and other technicalities much better than personal policyholders. 2. The rule should only apply to "standard written insurance contracts" as they are pre-designed without the involvement of policyholders (where policyholders have been involved in

drafting the contract the ambiguities should not become a bar on insurers).  
3. The rule should only apply to those clauses which have not been individually negotiated with the policyholder....”

Now we briefly see as how the superior judiciary in Pakistan has discussed the rule:

In *Muhammad Shahnawaz vs. Karachi Electric Supply* (2011), while explaining the *contra proferentem* principle it was stated that in case where the drafter of the contract is the employer then such ambiguity would go in favour of the employee.

In above case, the court held it further that the *Contra Proferentem* principle may also be applicable in cases where it is required to remove an ambiguity as available in section 1.2 of the contract pursuant to which Karachi Electric Supply was given the power to amend the clause related to the termination of the agreement.

Similarly, below, we list some case laws, primarily from the United Kingdom, that reiterate this principle: in the event that there is any ambiguity regarding the scope and meaning of the exemption condition, it will not be against the other party to the contract, but rather against the party imposing the exemption provision and relying on it.

In *Hedley Byrne & Co Ltd v Heller & Partners Ltd* (1963), this principle was upheld where it was further observed that it is for the party who seeks to protect himself against liability to which he would otherwise be subject, to prove that the words clearly and aptly describe the contingency that has in fact arisen. In *Hedley Byrne & Co Ltd v Heller & Partners Ltd* (1963), the House of Lords referred to Rutter case.

As also discussed above, the words creating ambiguity in a contract are to be construed in favour of a person as compared to a person relying on them.

In the matter of *Houghton v. Trafalgar Insurance* (1954), the issue dealt was interpretation of the word “load” available in the exemption provision as available in the insurance policy and would this be applicable while carrying too many passengers.

The brief facts of the matter are that the insurance agreement between the plaintiff and the defendant included an exemption provision pursuant which the defendant was not liable in case the car had an excess load. The

five-seater car of the plaintiff while carrying six people met with an accident and the defendant placed its reliance on the exemption provision. The court held that the exclusion provision doesn't go in favour of the defendant the meaning of the word "load" was vague and to be interpreted in favour of the plaintiff.

### **The Rule of "Strict Construction"**

Another method by which the courts construe a clause "strictly" to make it a reasonable one is the rule of "*strict construction*" (Ch. Maqbool Raza v. Ashfaq Ahmed, [2013](#)) pursuant to which a statute or a written document is narrowly read or interpreted to bring it to apply reasonably.

In the matter Alison Ltd. case, while applying the rule of "strict construction" the court observed by stating that if a person is under a legal liability and wishes to get rid of it, he can only do so by using clear words (Alison Ltd. v. Wallsend Shipway & Eng. Co. Ltd., [1927](#)).

Another example on the rule of "strict construction" is Wallis, Son & Wells v. Pratt & Haynes ([1911](#)), an English case on the contract law related to the breach of warranty and condition.

The brief facts of the matter are that the appellants purchased seeds from the defendants known as "*common English sainfoin*" with the purpose to resale the bought seeds. The sale contract executed between the contracting parties contained an exemption provision stating that the seller gives no warranty express or implied, as to growth, description, or any other matters.

Later, it was turned out that the seeds which were sold by the defendants had a little commercial value and inferior in quality and were actually not "*common English sainfoin*". As the seeds were bought for the resale purposes, the appellants had to pay the damages to a third party to whom the seeds were subsequently sold. Resultantly, the appellants to recover the damages they suffered took a legal action against the defendants. The defendants relied on the exemption clause based on which the seeds were sold. The issue in this matter was whether delivery of the different kind of seeds amount to the breach of condition or the breach of warranty?

The House of Lords decided in favour of the appellants and held that the appellants had earlier accepted the seeds as they were and same were resold to a party, so, they cannot rescind the contract but can claim damages due to a breach of the condition as a breach of warranty originally implied

by Section 13 which was not excluded successfully.

As has been observed above that the clauses in the contracts which exclude or limit a party's liability to the contract are strictly construed, however, in cases where the clauses are reasonable and applied reasonably, same are given effect in accordance with its terms used in *Gillespie Bros. & Co. Ltd. v. Roy Bowles Ltd.* (1973) and was then distinguished in *Aprile SPA & ORS v. Elin Maritime Ltd*, EWHC-1001 (Comm) 2019.

### Conclusion

This study thoroughly examined the nature of the standard printed contracts, focusing on their nature, common abuses, and the legal protections available under English law and Pakistani law.

Furthermore, from the above discussion, the principles gathered are: (i) the standard printed contracts are formulated in a tricky manner which result into creating marginal inequality and imbalances in the rights of the parties to a contract at the cost and disadvantage to the weaker customers, (ii) there is inequality in the negotiation and bargaining capacity and power of the contracting parties., (iii) generally, in the absence of fraud, duress, undue influence, the exemption conditions available in the standard printed contract and signed and accepted by the purchaser would be enforceable under the common law, (iv) in cases where the buyer is unaware of the terms part of a contract and such ignorance is reasonable, some courts' rulings go in favor of unenforceability of such terms and conditions, (v) while relying on the unconscionability doctrine, the courts can invalidate the terms available in pre-printed contracts but usually these are valid and enforceable, and (vi) to have a valid contract in place, there must exist *consensus ad idem* and meeting of minds between the contracting parties and the same has also been stressed under the principles on the contract law formation.

The study further concludes that:(i) the burden of proof rests with him to demonstrate that the terms in the contract were unambiguously defined, (ii) in case of any ambiguity which leads to a difficulty in determining contracting parties' intention under a contract the principle of *contra proferentem* can be resorted to ascertain the intention of the contracting parties, and (iii) the words creating ambiguity in a contract are to be interpreted in favour of a person as compared to a person relying on them.

On the principle of *consensus ad idem*, the research conclusion is that, with the stated exceptions, standard printed category contracts keep the contractual ideas of mutuality in their construction, balance, and meeting of the minds.

Furthermore, there is a plethora of case laws in England on this point, but in Pakistan, legal system is still evolving and a very limited discussion has been made in one of the actions taken by the competition commission of Pakistan (Competition Commission of Pakistan, [2012](#)) and pursuant to the same, in the above situation, the organizations are bound to comply with the applicable legislation. In another matter, it was decided by the court in this matter that where an illiterate person executes a contract, the onus is on the person upholding the document to prove that the illiterate executant signed the documents when he was fully explained about the nature of the contract which he was going to sign.

Overall, the judicial treatment of standard printed contracts balances the need to uphold freely made agreements with protecting weaker parties from unfair terms. The key factors influencing enforceability include the clarity of notice, the bargaining power of parties, and the presence of mutual consent. Pakistani customer face challenges due to the absence of clear legal guidelines, weak enforcement mechanisms, and limited public awareness. This environment allows companies to engage in unethical practices with little regard for the potential harm to their reputation, customer trust, or financial performance.

#### **Author Contribution**

**Shafqat Mahmood Khan:** sole author

#### **Conflict of Interest**

The authors of the manuscript have no financial or non-financial conflict of interest in the subject matter or materials discussed in this manuscript.

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