



Isle of Man

Ellan Vannin

AT 18 of 1980

**MISREPRESENTATION AND UNFAIR
CONTRACT TERMS ACT 1980**



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**Isle of Man***Ellan Vannin*

MISREPRESENTATION AND UNFAIR CONTRACT TERMS ACT 1980

Received Royal Assent: 17 December 1980
Passed: 17 February 1981
Commenced: 1 July 1981

AN ACT to make further provision in the law relating to civil misrepresentation; to impose further limits on the extent to which civil liability for breach of contract, or for negligence or other breach of duty, can be avoided by means of contract terms and otherwise; and for connected purposes.

GENERAL NOTE: Reference to a Board of Tynwald in s 16 is to be construed in accordance with the *Government Departments Act 1987 s 7*.

PART I – MISREPRESENTATION

1 Removal of certain bars to rescission for innocent misrepresentation

[P1967/7/1]

Where a person has entered into a contract after a misrepresentation has been made to him, and —

- (a) the misrepresentation has become a term of the contract; or
- (b) the contract has been performed;

or both, then, if otherwise he would be entitled to rescind the contract without alleging fraud, he shall be so entitled, subject to the provisions of this Act, notwithstanding the matters mentioned in paragraphs (a) and (b).

2 Damages for misrepresentation

[P1967/7/2]

- (1) Where a person has entered into a contract after a misrepresentation has been made to him by another party thereto and as a result thereof he has suffered loss, then, if the person making the misrepresentation would be liable to damages in respect thereof had the misrepresentation been made fraudulently, that person shall be so liable notwithstanding that

the misrepresentation was not made fraudulently, unless he proves that he had reasonable ground to believe and did believe up to the time the contract was made that the facts represented were true.

- (2) Where a person has entered into a contract after a misrepresentation has been made to him otherwise than fraudulently, and he would be entitled, by reason of the misrepresentation, to rescind the contract, then, if it is claimed, in any proceedings arising out of the contract, that the contract ought to be or has been rescinded, the court or arbitrator may declare the contract subsisting and award damages in lieu of rescission, if of opinion that it would be equitable to do so, having regard to the nature of the misrepresentation and the loss that would be caused by it if the contract were upheld, as well as to the loss that rescission would cause to the other party.
- (3) Damages may be awarded against a person under subsection (2) whether or not he is liable to damages under subsection (1), but where he is so liable any award under subsection (2) shall be taken into account in assessing his liability under subsection (1).

3 **Avoidance of provision excluding liability for misrepresentation**

[P1967/7/3; P1977/50/8]

If a contract contains a term which would exclude or restrict —

- (a) any liability to which a party to a contract may be subject by reason of any misrepresentation made by him before the contract was made; or
- (b) any remedy available to another party to the contract by reason of such misrepresentation,

that term shall be of no effect except in so far as it satisfies the requirement of reasonableness as stated in section 13; and it is for those claiming that the term satisfies that requirement to show that it does.

PART II – UNFAIR CONTRACT TERMS

Introductory

4 **Scope of Part II**

[P1977/50/1]

- (1) For the purposes of this Part, “**negligence**” means the breach —
 - (a) of any obligation, arising from the express or implied terms of a contract, to take reasonable care or exercise reasonable skill in the performance of the contract;
 - (b) of any common law duty to take reasonable care or exercise reasonable skill (but not any stricter duty);

- (c) of the common duty of care imposed by the *Occupiers' Liability Act 1964*.
- (2) This Part is subject to Part III; and, in relation to contracts, the operation of sections 5 to 7 and 10 is subject to the exceptions made by Schedule 1.
- (3) In the case of both contract and tort, sections 5 to 10 apply (except where the contrary is stated in section 9(4)) only to business liability, that is liability for breach of obligations or duties arising —
 - (a) from things done or to be done by a person in the course of a business (whether his own business or another's); or
 - (b) from the occupation of premises used for business purposes of the occupier;and references to liability are to be read accordingly.
- (4) In relation to any breach of duty or obligation, it is immaterial for any purpose of this Part whether the breach was inadvertent or intentional, or whether liability for it arises directly or vicariously.

5 Negligence liability

[P1977/50/2]

- (1) A person cannot by reference to any contract term or to a notice given to persons generally or to particular persons exclude or restrict his liability for death or personal injury resulting from negligence.
- (2) In the case of other loss or damage, a person cannot so exclude or restrict his liability for negligence except in so far as the term or notice satisfies the requirement of reasonableness.
- (3) Where a contract term or notice purports to exclude or restrict liability for negligence, a person's agreement to or awareness of it is not of itself to be taken as indicating his voluntary acceptance of any risk.

6 Liability arising in contract

[P1977/50/3]

- (1) This section applies as between contracting parties where one of them deals as consumer or on the other's written standard terms of business.
- (2) As against that party, the other cannot by reference to any contract term —
 - (a) when himself in breach of contract, exclude or restrict any liability of his in respect of the breach; or
 - (b) claim to be entitled —
 - (i) to render a contractual performance substantially different from that which was reasonably expected of him; or
 - (ii) in respect of the whole or any part of his contractual obligation, to render no performance at all,

except in so far as (in any of the cases mentioned above in this subsection) the contract term satisfies the requirement of reasonableness.

7 Unreasonable indemnity clauses

[P1977/50/4]

- (1) A person dealing as consumer cannot by reference to any contract term be made to indemnify another person (whether a party to the contract or not) in respect of liability that may be incurred by the other for negligence or breach of contract, except in so far as the contract term satisfies the requirement of reasonableness.
- (2) This section applies whether the liability in question —
 - (a) is directly that of the person to be indemnified or is incurred by him vicariously;
 - (b) is to the person dealing as consumer or to someone else.

Liability arising from sale or supply of goods

8 “Guarantee” of consumer goods

[P1977/50/5]

- (1) In the case of goods of a type ordinarily supplied for private use or consumption, where loss or damage —
 - (a) arises from the goods proving defective while in consumer use; and
 - (b) results from the negligence of a person 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.
- (2) For these purposes —
 - (a) goods are to be regarded as “in consumer use” when a person is using them, or has them in his possession for use, otherwise than exclusively for the purposes of a business; and
 - (b) anything in writing is a guarantee if it contains or purports to contain some promise or assurance (however worded or presented) that defects will be made good by complete or partial replacement, or by repair, monetary compensation or otherwise.
- (3) This section does not apply as between the parties to a contract under or in pursuance of which possession or ownership of the goods passed.

9 and 10 [repealed]¹*Other provisions about contracts***11 Effect of breach**

[P1977/50/9]

- (1) Where for reliance upon it a contract term has to satisfy the requirement of reasonableness, it may be found to do so and be given effect accordingly notwithstanding that the contract has been terminated either by breach or by a party electing to treat it as repudiated.
- (2) Where on a breach the contract is nevertheless affirmed by a party entitled to treat it as repudiated, this does not of itself exclude the requirement of reasonableness in relation to any contract term.

12 Evasion by means of secondary contract

[P1977/50/10]

A person is not bound by any contract term prejudicing or taking away rights of his which arise under, or in connection with the performance of, another contract, so far as those rights extend to the enforcement of another's liability which this Part prevents that other from excluding or restricting.

*Explanatory provisions***13 The “reasonableness” test**

[P1977/50/11]

- (1) In relation to a contract term, the requirement of reasonableness for the purposes of section 3 and of this Part, is that the term shall have been a fair and reasonable one to be included having regard to the circumstances which were, or ought reasonably to have been, known to or in the contemplation of the parties when the contract was made.
- (2) [Repealed]²
- (3) In relation to a notice (not being a notice having contractual effect), the requirement of reasonableness under this Act is that it should be fair and reasonable to allow reliance on it, having regard to all the circumstances obtaining when the liability arose or (but for the notice) would have arisen.
- (4) Where, by reference to a contract term or notice, a person seeks to restrict liability to a specified sum of money, and the question arises (under this or any other Act) whether the term or notice satisfies the requirement of reasonableness, regard shall be had in particular (but without prejudice to section 18(5) of the *Supply of Goods and Services Act 1996* in the case of contract terms) to —

- (a) the resources which he could expect to be available to him for the purpose of meeting the liability should it arise; and
 - (b) how far it was open to him to cover himself by insurance.³
- (5) It is for those claiming that a contract term or notice satisfies the requirement of reasonableness to show that it does.

14 “Dealing as consumer”

[P1977/50/12]

- (1) A party to a contract “deals as consumer” in relation to another party if —
- (a) he neither makes the contract in the course of a business nor holds himself out as doing so;
 - (b) the other party does make the contract in the course of a business; and
 - (c) in the case of a contract governed by the law of sale of goods or hire-purchase, the goods passing under or in pursuance of the contract are of a type ordinarily supplied for private use or consumption.⁴
- (2) But, on a sale by auction or by competitive tender, the buyer is not in any circumstances to be regarded as dealing as consumer.
- (3) Subject to this, it is for those claiming that a party does not deal as consumer to show that he does not.

15 Varieties of exemption clause

[P1977/50/13]

- (1) To the extent that this Part prevents the exclusion or restriction of any liability, it also prevents —
- (a) making the liability or its enforcement subject to restrictive or onerous conditions;
 - (b) excluding or restricting any right or remedy in respect of the liability, or subjecting a person to any prejudice in consequence of his pursuing any such right or remedy;
 - (c) excluding or restricting rules of evidence or procedure;
- and (to that extent) sections 5 and 8 to 10 also prevent excluding or restricting liability by reference to terms and notices which exclude or restrict the relevant obligation or duty.
- (2) But an agreement in writing to submit present or future differences to arbitration is not to be treated under this Part as excluding or restricting any liability.

16 Interpretation of Part II

[P1977/50/14]

In this Part —

“**business**” includes a profession and the activities of any Board of Tynwald, Statutory Board or local authority;

“**goods**” [Repealed]⁵

“**negligence**” has the meaning given by section 4(1);

“**notice**” includes any announcement, whether or not in writing, and any other communication or pretended communication;

“**personal injury**” includes any disease and any impairment of physical or mental condition.

PART III – MISCELLANEOUS**17 International supply contracts**

[P1977/50/26]

- (1) The limits imposed by this Act on the extent to which a person may exclude or restrict liability by reference to a contract term do not apply to liability arising under such a contract as is described in subsection (3).
- (2) The terms of such a contract are not subject to any requirement of reasonableness under section 6 or 7.
- (3) Subject to subsection (4), that description of contract is one whose characteristics are the following —
 - (a) either it is a contract of sale of goods or it is one under or in pursuance of which the possession or ownership of goods passes; and
 - (b) it is made by parties whose places of business (or, if they have none, habitual residences) are in the territories of different States (the United Kingdom and the Channel Islands being treated for this purpose as different States from the Island).
- (4) A contract falls within subsection (3) only if either —
 - (a) the goods in question are, at the time of the conclusion of the contract, in the course of carriage, or will be carried, from the territory of one State to the territory of another; or
 - (b) the acts constituting the offer and acceptance have been done in the territories of different States; or
 - (c) the contract provides for the goods to be delivered to the territory of a State other than that within whose territory those acts were done.

18 Choice of law clauses

[P1977/50/27]

- (1) Where the proper law of a contract is the law of the Isle of Man only by choice of the parties (and apart from that choice would be the law of some country outside the Island), sections 5 to 8 do not operate as part of the proper law.⁶
- (2) This Act has effect notwithstanding any contract term which applies or purports to apply the law of some country outside the Island where (either or both) —
 - (a) the term appears to the court or arbitrator to have been imposed wholly or mainly for the purpose of enabling the party imposing it to evade the operation of this Act;
 - (b) in the making of the contract, one of the parties dealt as consumer and he was then habitually resident in the Island, and the essential steps necessary for the making of the contract were taken there, whether by him or by others on his behalf.

PART IV – SUPPLEMENTARY**19 Amendments**

The enactments mentioned in Schedule 3 shall be amended in accordance with that Schedule.

20 Transitional and saving provisions

The transitional and saving provisions in Schedule 4 shall have effect.

21 [Repealed]⁷**22 Short title and commencement**

- (1) This Act may be cited as the Misrepresentation and Unfair Contract Terms Act 1980.
- (2) This Act shall come into operation on such date as the Governor in Council may by order appoint, and different days may be so appointed for different provisions of this Act.⁸

Schedule 1

SCOPE OF SECTIONS 5 TO 7 AND 10

Section 4(2)

[P1977/50/Sch. 1]

1. Sections 5 to 7 do not extend to —
 - (a) any contract of insurance (including a contract to pay an annuity on human life);
 - (b) any contract so far as it relates to the creation or transfer of an interest in land, or to the termination of such an interest, whether by extinction, merger, surrender, forfeiture or otherwise;
 - (c) any contract so far as it relates to the creation or transfer of a right or interest in any patent, trade mark, copyright, design right, registered design, technical or commercial information or other intellectual property, or relates to the termination of any such right or interest;⁹
 - (d) any contract so far as it relates —
 - (i) to the formation or dissolution of a company (which means any body corporate or unincorporated association and includes a partnership), or
 - (ii) to its constitution or the rights or obligations of its corporators or members;
 - (e) any contract so far as it relates to the creation or transfer of securities or of any right or interest in securities.¹⁰
2. Section 5(1) extends to —
 - (a) any contract of marine salvage or towage;
 - (b) any charterparty of a ship or hovercraft; and
 - (c) any contract for the carriage of goods by ship or hovercraft; but, subject to this, sections 5 to 7 and 10 do not extend to any such contract except in favour of a person dealing as consumer.
3. Where goods are carried by ship or hovercraft in pursuance of a contract which either —
 - (a) specifies that as the means of carriage over part of the journey to be covered, or
 - (b) makes no provision as to the means of carriage and does not exclude that means,

then, sections 5(2), 6 and 7 do not, except in favour of a person dealing as consumer, extend to the contract as it operates for, and in relation to, the carriage of the goods by that means.

4. Section 5(1) and (2) do not extend to a contract of employment, except in favour of the employee.

Schedule 2¹¹

Schedule 3

AMENDMENT OF CERTAIN ENACTMENTS

Section 19

[Sch 3 amended by Sale of Goods Act 1983 Sch 3 and by Consumer Safety Act 1983 Sch 4, and amends the following Act —

Supply of Goods (Implied Terms) Act 1976 q.v.]

Schedule 4

TRANSITIONAL AND SAVING PROVISIONS

Section 20

[P1967/7/5; P1977/50/29(1)-(3), 31(2)]

1. Nothing in Part I applies in relation to any misrepresentation or contract of sale which is made before the commencement of that Part.
2. Nothing in Parts II to IV or in any Schedule applies to contracts made before the date on which they come into operation; but, subject thereto, they apply to liability for any loss or damage which is suffered on or after that date.
3. Nothing in Parts II to IV removes or restricts the effect of, or prevents reliance upon, any contractual provision which —
 - (a) is authorised or required by the express terms or necessary implication of an enactment; or
 - (b) being made with a view to compliance with an international agreement under which the Island is bound, does not operate more restrictively than is contemplated by the agreement.
4. (1) A contract term is to be taken for the purposes of Part II as satisfying the requirements of reasonableness if it is incorporated or approved by, or incorporated pursuant to a decision or ruling of, a competent authority acting in pursuance of any statutory provision and is not a term in a contract to which the competent authority is itself a party.

- (2) In this paragraph —
- “**competent authority**” means any court, arbitrator or government department;
- “**government department**” includes a Board of Tynwald and a Statutory Board.

Schedule 5¹²

ENDNOTES

Table of Legislation History

Legislation	Year and No	Commencement

Table of Renumbered Provisions

Original	Current

Table of Endnote References

¹ Ss 9 and 10 repealed by Supply of Goods and Services Act 1996 Sch 4.

² Subs (2) repealed by Supply of Goods and Services Act 1996 Sch 4.

³ Subs (4) amended by Supply of Goods and Services Act 1996 Sch 3

⁴ Para (c) amended by Supply of Goods and Services Act 1996 Sch 4.

⁵ Definition of 'goods' repealed by Supply of Goods and Services Act 1996 Sch 4.

⁶ Subs (1) amended by Supply of Goods and Services Act 1996 Sch 3.

⁷ S 21 repealed by Sale of Goods Act 1983 Sch 3.

⁸ ADO (whole Act) 1/7/1981 (GC66/81).

⁹ Subpara (c) amended by Design Right Act 1991 Sch.

¹⁰ Para 1 amended by Trade Marks Act 1994 (P) (as applied by SI1996/729).

¹¹ Sch 2 repealed by Supply of Goods and Services Act 1996 Sch 4.

¹² Sch 5 repealed by Sale of Goods Act 1983 Sch 3.