

“Standard Form of Contracts with a review of Snapdeal.com: Terms of Sale”

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Statement of Problem

In today's world of globalisation and technological advancement certain tasks such as shopping has become so convenient that it may be done while having the comfort of your home and without roaming in the shops. This has just become possible due to the so called concept of online shopping. There are several online shopping websites that provide access to a number of goods that are delivered at your doorstep. The customer has to choose among the available basket of goods and hence once stepped towards purchasing the same, the customer agrees to the terms and conditions of the website. There are a number of prominent websites in India that are famous for their online shopping facility. The customer has an ease of not going to the shops and roaming to find different varieties. Everything is available at a single place because of these online websites. One such website is *Snapdeal.com*. Every online shopping website has certain terms and conditions of sale and agreement. They have their own payment policy, return policy, warranty policy, etc. Similarly Snapdeal.com too has certain terms and conditions for the customers. All such contracts are Standard Forms of Contracts which is based on the 'take it or leave it' policy, where a customer has no options for negotiations. Hence there are devices for protection of customers to check the justice by the contract.

Hence, the broad aim of the researcher is to study the protective devices for a Standard Form of Contract and further check and analyse whether the policy of snapdeal.com is fair for the customers or not and also to analyse it using the protective devices.

LITERATURE REVIEW

The concept of Standard Form of Contract and Consumer protection is discussed in M.P. Furmston's book "Law of Contracts, Indian Edition". The article by Advocate Vishnu S. titled "Devices Developed by the Courts for the Protection of Individuals in Standard form of Contract" also explains effectively the use of Standard Form of Contract and also the Protective devices used by courts for the protection of consumers from unjust contracts. Also the book 'The Indian Contract Act' by F. Pollock and D. F. Mulla provides a better understanding of the concepts and about the Indian Contract Act. The book 'Contract 1' by R. K. Bangya gives a brief understanding of the protective devices and Standard Form.

OBJECTIVES OF THE PAPER

Keeping in mind the broad aim of the researcher the objectives of this paper are as mentioned below:

- i) Describe briefly the Standard Form of Contract.

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- ii) Find out and briefly describe the devices that ensure the protection of customers from an unjust contract.
- iii) Analyse the Terms of Sale of online shopping website: Snapdeal.com using the devices.
- iv) Suggest ways for changes, if required, in the terms that can be just for the customers.

HYPOTHESIS

Based on the available literature in the preliminary research the researcher hypothesize that the standard form of contract may be unjust for the customers many times and hence the devices serve as protective shield in analysing the contract. The researcher also hypothesizes that the terms of sale in the online shopping website snapdeal.com is a standard form of contract without any option of negotiation available with the customer.

RESEARCH QUESTIONS

The researcher aims to answer the following questions in the research paper:

- 1. What exactly is Standard Form of Contracts and how does it affect the consumers?
- 2. How can the protective devices use to protect customers from the unjust contracts?
- 3. What are the Terms of Sale of Snapdeal.com and how are they standard form of contract?
- 4. Are there any unjust clauses in the Terms of Sale of Snapdeal.com and how can they be changed to make them just for the consumers?

RESEARCH METHODOLOGY

The researcher has used non doctrinal armchair method of research for conducting the research for this paper. Literature from various sources such as books, articles and websites have been used as references.

TENTATIVE CHAPTERISATION

- i. Standard form of contracts: Definition and features
- ii. Protective devices developed by courts
- iii. Snapdeal: Terms of Sale analysis
- iv. Possible changes in the terms for justice to the customers

STANDARD FORM OF CONTRACTS

Contracts had been taking place from time immemorial from the medieval world to the contemporary world. From the barter system in the historical era to the agreements today, every transaction need a type of expressed or implied contract. The realm of globalization today involves numerous contracts taking place for various services. But there are several

buyer seller relationships where it is unfeasible for the seller to every time get a separate contract negotiated upon and subsequently signed by every other customer. The solution for this problem was a single contract for every customer and subsequent transaction which would not be negotiated upon. This is a Standard Form of Contract, in which also comprehended are a set of terms and conditions that the other party i.e. the non-negotiating party has to accept without any ifs and buts if he wants to avail the service. The examples of such contracts may be online purchases, railway transactions, insurance policies, etc. All such transactions involve a pre drafted contract with the party preparing it at a greater bargaining position, which drafts the terms suiting it the best. This party may even sometimes exclude or limit its liability in the terms and conditions.

These types of contracts are also called dotted line² contracts because the consumer is restricted to either accept or reject the contract without bargaining which is analogous to merely signing on the dotted line in order to accept it. These contracts are not illegal per se but render the consumer vulnerable to exploitation seldom. The contract framers sometimes embrace such terms and conditions that are severely exploitative on part of the consumer or may be unreasonable. For instance, in an insurance policy one of the conditions may be embedded between the terms and conditions which may be exploitative in nature but not be visible in normal course of reading by a layman. If the court contemplates such condition to be exploitative, it may order it to be stricken off or may render that contract void.

PROTECTIVE DEVICES

As discussed earlier the standard form of contracts keep one party at a greater bargaining level and the other party at a vulnerable position. Due to this fact of these contracts being of exploitative nature, some protective devices have been crafted so as to protect the consumers from this exploitation by the other party. These devices help in ascertaining that the terms and conditions and also the situations for contract are not posing an exploitative threat over the consumer i.e. there is no undue loss or abuse on part of the consumer. The court scrutinizes the contract on the basis of these protective devices. These devices are not exhaustive in nature i.e. these are not only the bases to judge the contract but are the primary analysing devices. If the court feels the contract unjust even on the basis of something not in these devices it can anyways prohibit that. The main idea is to provide justice and not merely following the black letters of law.

1. There Should be a Contractual Document

The contract should be having a valid contractual document not a mere receipt for the transaction. As in the case, *Chapleton v. Barry Urban District Council*³ the court held that the terms and conditions in the document are not binding and it does not create a contract if it's a mere receipt. The plaintiff in this case hired a chair to sit on the beach for which he paid the consideration and received a ticket and kept it in the pocket without reading anything. When he sat on the chair he went through the canvass due to which he suffered personal injuries for which he brought an action for the compensation from the defendants. The defendants took a plea that the non-liability clause was already printed on

²Dr. R. K. Bangya, *Contract I*, 6th ed., 2010, Allahabad Law Agency, Pg.55

³*Chapleton v. Barry Urban District Council*, 1940 1, K.B. 532

the ticket. But the court held that it was no more than a mere receipt and hence could not be exempted from liability.

2. There Should be no Misrepresentation

There should not be a difference in what a person is signing for and what he is told i.e. a person should not be misrepresented orally for something which is actually stated differently in the written document. In the case, *Curtis v. Chemical Cleaning and Dyeing Co.*,⁴ the plaintiff Mrs Curtis, who gave a satin wedding dress for cleaning, was made to sign on a 'Receipt' expressing her that it was needed for the terms were written on it. They told her that the terms state that the co. will not be liable for the damage to the beads and sequins, but actually there was an exemption of liability clause in it stating the exemption of co. from any kind of damage to the articles. The lady received the dress with many stains on it. The court held that there was misrepresentation and the co. was liable to pay the damages.

3. There Should be Reasonable Notice of the Contractual Terms

The party drafting the terms of the contract is in the obligation to bring into the notice of the other contracting party about those terms and conditions. The binding contract arises as regards to the terms when the terms are brought into sufficient notice to the party to the contract. For example, printing on a ticket, "See Overleaf for Conditions". Even if the signatures of the party is being taken, the party should be intimidated and explained of the terms and conditions he's signing for. In *M/S Prakash Road Lines (P) Ltd. v. H.M.T. Bearing Ltd.*⁵ it was held that merely printing on the transport receipt that the goods are transported at owner's risk will not waive off the liability unless proved that it was brought into the notice of the plaintiff.

4. Notice Should be Contemporaneous with the Contract

The party wanting the exemption from any liability, then this notice must be given to the party entering the contract at the time of contract and not thereafter. The subsequent notice after the contract has been already entered upon will be ineffective and the liability cannot be exempted. In *Olley v. Marlborough Court Ltd.*,⁶ the plaintiff and her husband by paying in advance for one week boarding and lodging, hired a room in the defendants' hotel. After they went into the room they found there a notice stating, "The Proprietors will not hold themselves responsible for articles lost or stolen, unless handed to the managers for the safe custody."⁷ The property of the plaintiffs was stolen from the room due to the negligence of the hotel staff. The court held that the notice at the room was not a part of the contract and hence the company would be liable to pay the losses to the plaintiff.

⁴*Curtis v. Chemical Cleaning and Dyeing Co.*, (1951) 1, K.B. 805

⁵*M/S Prakash Road Lines (P) Ltd. v. H.M.T. Bearing Ltd.*, A.I.R. 1999, A.P. 106.

⁶*Olley v. Marlborough Court Ltd.*, (1949) 1 K.B. 532

⁷Supra Note 1, Pg.59

5. The Terms of the Contract Should be Reasonable

Merely bringing the terms and conditions into the knowledge of the contracting party by a notice before the contract is not enough, these terms should be reasonable themselves. An unreasonable term would be the one that defeats the very purpose the contract or is obnoxious to the public policy.⁸ In the case, *Central Inland Water Transportation Corporation Ltd. v. BrojoNath*,⁹ involved a service agreement that provided that the service of an employee could be terminated by giving him a notice of three months or salary for three months. The services of the respondent were terminated instantly by giving him a cheque for 3 months' salary. The Supreme Court held that such a clause in a service agreement was wholly unreasonable and against public policy.¹⁰ The clause was hence held void under Section 23 of the Contract Act which renders every contract which is against public policy void.

6. Strict Interpretation of Exemption Clause

The weaker party is given protection from exploitation by strictly interpreting the exemption clause. The case *Wallis v. Ptatt*¹¹ will illustrate this. In this case the appellants purchased seeds of a kind from the respondents by a sample of seeds. There was an exemption in the contract which stated that the seller would not give any warranty with regards to growth, description or any other matters. The appellant was actually supplied an inferior quality of seed which looked exactly similar to the original seed variety but it could not be distinguished until the harvest is ready. The appellant sold these further and when the crop was ready he was forced to pay the compensation to those buyers and hence they brought an action against the sellers. The sellers pleaded exemption on the basis of the clause. It was held that there was a breach of an implied condition. The condition was that the goods shall correspond not only to sample but description as well. The exemption was for warranty and not for the breach of conditions. Hence the appellants were liable to pay the compensation.

7. Fundamental Breach of Contract

This device was adopted to protect the weaker parties from an exploitation that may result in the breach of main contractual obligation. There may be an exemption clause in the contract that states the same. For example, a courier company puts an exemption clause that says the company would not be liable if the goods are lost in the transit. The fundamental obligation of a courier company is to deliver the goods safely to the address mentioned. If it would exempt itself from the same then it would be nebulous. In *Alexander v. Railway Executive*,¹² the appellant deposited his luggage in the cloak room and in the ticket which he received from the defendant was a clause that exempted the

⁸Adv. Vishnu S., *Devices Developed by the Courts for the Protection of Individuals in Standard form of Contract*, Legally Service India, <http://www.legalservicesindia.com/article/article/standard-form-of-contract-286-1.html>, last accessed on 21/07/2015, 15:10 IST

⁹*Central Inland Water Transportation Corporation Ltd. v. BrojoNath*, A.I.R. 1986 S.C. 1571

¹⁰Supra Note 1, Pg.59

¹¹ *Wallis v. Ptatt*, 1911, A.C. 394

¹²*Alexander v. Railway Executive*, (1951) 2, K.B., 882

defendants from any liability of loss or misdelivery of luggage.¹³ Subsequently plaintiff's luggage was delivered to someone else without the ticket being produced. The court held that it was a fundamental breach of contract and the defendants were liable to pay the compensation.

8. Non-Contractual Liability

Even if the exemption clauses are exhaustive enough to get away with all kinds of liability, still a liability against torts stays.¹⁴ The contractual liability exclusion may not negate any other kind of liability. In the case, *White v. John Warrick Co. Ltd.*,¹⁵ the defendants, from whom the plaintiff hired a cycle, included a clause that exempted the owners from any personal injuries to the customer. The customer, while riding the cycle got injuries when the saddle of the cycle tilted and he consequently was thrown. The defendant was held liable for negligence under torts.

9. Liability Towards Third Party

If a party exempts itself from the liability, that itself does not grant exemption to any other party i.e. a third party from liability. For example, the servants or the sub agents of any service providing company cannot be avoided their liability for negligence due to the exemption clause by the company. The case, *Morris v. C.W. Martin and Sons Ltd.*,¹⁶ illustrates it the best.

10. Statutory Protection

Several statutes in Indian Law provide protection to the vulnerable party from exploitation. Some of the statutes are:

- The Misrepresentation Act, 1967
- The Sale of Goods Act, 1979
- Unfair Contract Terms Act, 1977
- The Consumer Safety Act, 1978

SNAPDEAL: TERMS OF OFFER FOR SALE¹⁷

Snapdeal.com is an online shopping website that provides customers an access to goods of different categories at one place. The customers purchasing the goods from the website have to accept certain terms and conditions of sale. As soon as they purchase any goods or services from the website they automatically enter into a contract with the website accepting the terms and conditions.

These terms start with defining the usage of certain expressions in the terms and conditions. Further it states in clear bold uppercase letters that the terms must be read

¹³Supra Note 1, Pg. 62

¹⁴Supra Note 7

¹⁵*White v. John Warrick Co. Ltd.*, (1953) 1 W.L.R. 1285; (1953) 2 All E.R. 1021

¹⁶*Morris v. C.W. Martin and Sons Ltd.*, 1966 1 Q.B. 716; 1965 All E.R. 725

¹⁷*Terms Of Offer For Sale*, <http://www.snapdeal.com/info/termsOfSale>, last accessed on 10/09/2015, 18:25 IST

carefully before entering into any purchase of goods or services. It mentions that the moment one purchases any goods or services from the website, he/she indicate his/her acceptance to the terms and conditions and hence is legally bound by the same. Also if there are any other terms and conditions embedded with any particular goods or services then the purchaser is bound by them too and in case of any disputes between terms of sale and these additional terms, the latter would be given priority. In case the customer is not agreeing to the terms of offer for sale he/she should not access the website for purchase.

Clauses in the Terms and Their Analysis

Clause 1 and 2: The clause 1 defines the website and the services provided by it. It also gives the rights to the website owners to discontinue any service at any time. It may or may not provide the customers the notice about that discontinuance i.e. it is not obliged to provide the notice for the same. It can also add or modify any mode, procedure, processes or conditions of purchase in the same way. Further Snapdeal would not be liable for the same. The clause 2 comprising of several sub clauses discusses about the purchase of vouchers for various stores and services that can be redeemed in place of actually paying for those services. Similar to clause 1, the purchase of the vouchers also make the buyer automatically accept the terms and conditions of the website as well as the voucher vendor brand. Every voucher has certain terms and conditions printed on it and also they have a certain expiry date beyond which the vouchers cannot be redeemed. Other sub clauses of clause 2 makes snapdeal not responsible for any type of loss or misplace of the vouchers and it also states that the voucher are non-refundable once sold, either the customer uses it or not.

These clauses are justified as scrutinised using the protective devices.

Clause 3 and 4: These two clauses include product and services available for purchase from the website. Sub clauses in clause 3 states conditions for purchase of products, their shipping, its charges etc. It then states about every product governed under the warranty policy separately provided by every respective company. The products available in the website would not be more than that of the M.R.P. quoted. Also snapdeal excludes its liability from any time of faults arising in the electronic products. The customer is supposed to visit the service centre of the respective brand for the same. In case of no service station snapdeal would arrange a pickup for the same and the entire cost has to be borne by the customer. Section 4 talks about the services purchased by the customer. It will not be responsible for the actions of the customer in using the services and also for the deficiency in payment of consideration for the same. It also does not provide any refunds for the services already purchased and for the errors occurring during payment or redemption of such services, it's attributable to snapdeal.

The terms mentioned in these two clauses are completely fair and are not exploitative under any of the protective devices. The website while stating above mentioned terms for products and services is justified.

Clause 5 and 6: The former talks about very important information i.e. the pricing information. It mentions that the prices mentioned would be the best one but may not be the lowest available and also the clause gives snapdeal the right to change the same without notice and hence it would also not be liable for the same. The other sub-clause discusses about the typographical errors that may occur in the website. It gives snapdeal complete right to cancel any order wherein such error occurred in pricing or any other information, by intimidating to the customer via email or any other feasible source. The amount already paid will be transferred to the account from which it was credited. Clause 6 states conditions for the credit card usage. It renders snapdeal free from any type of liability arising out of unauthorised use of credit card by any customer. It also states some type of credit cards that cannot be used for the EMI option of payment.

The clauses discussed above merely talked about mistakes for which the website cannot be held liable and these are justified. They are not exploitative and do not put the customers at a vulnerable position. Hence it does not abuse any customer according to any protective device.

Clause 7 and 8: The first one merely talks about the snapdeal cash whose terms and conditions are governed by the terms of use. Clause 8 deals with an important topic of delivery of the respective order. The database verifies the address mentioned by the customer and if the mentioned address is not serviceable by the delivery partners the customer has to provide with an alternate address that must be in the list of the merchant. Snapdeal excludes its liability from any dispute arising out of delivery to areas not serviceable by the company and for the non-delivery to such areas. It also mentions conditions for the customers wishing for multiple orders and delivery to different addresses.

The above mentioned clause discusses the terms of delivery, which is very important for any online shopping transaction. It does not mention any such condition that is undue or exploitative in nature. It is fair as judged upon using the protective devices.

Clause 9 and 10: These clauses discuss really essential heads and also the most disputed heads in any online shopping platform. These are the return policy and the products and the cancellation. Clause 9 has various sub-clauses discussing about the return of defective product and the procedure followed for the same. Further it provides certain conditions that a customer ought to follow while returning the product. The terms also give snapdeal the right to take actions against frivolous complaints. The subsequent sub-clauses mentions the details of the procedure for refund for the products returned. Clause 10 discusses about the cancellation either by Snapdeal or by the customer. The first sub-clause gives discretionary power to cancel or refuse any order for any reason, no matter what it is. It also mentions several conditions due to which snapdeal may cancel order. The second sub-clause discusses about the cancellation by the customer. It provides snapdeal the right to accept or reject the request for return of product by the customer by any reason whatsoever. It shall cancel the orders that are not processed and the full right

to decide if a product is processed or not is upon snapdeal. Furthermore it mentions certain other conditions that may cause an order to be cancelled.

The clauses discussed above are questionable before a court of law and can even turn out to be exploitative for the customers. The clause 10.1 that gives the website the right to cancel any order for any reason and further makes this unquestionable exploitative in nature. It falls under the protective device of unreasonable terms and it is because that if the order of any customer could be cancelled by the website for any reason then a condition may arise wherein a customer would desperately need any product and due to the cancellation of the same he may suffer losses. The other clause is 10.2 that gives the right to snapdeal either to accept the request for the cancellation by the customer or not is also exploitative in nature since snapdeal has the sole right to decide whether an order is processed or not, putting the customer in a vulnerable condition. Also making the customer not to dispute against any decision is exploitative. Hence, it's too an unreasonable term.

Clause 11 and 12: Clause 11 contain the terms in case of failure of delivery of the product or service by the vendor making the vendor liable for the same and not snapdeal. Clause 12 is the Disclaimer clause. It renders snapdeal not liable for any product or services offered by any third party websites or links accessible through the website. All the terms and conditions would be of the third party and the customer uses the third party website solely at his own risk.

These clauses are not putting the customers in any vulnerable position as far as the liability of the website is concerned and hence are not exploitative in nature under any protective devices.

Clause 13 and 14: Clause 13 is the indemnification of the liability clause that renders snapdeal not liable for any losses due to legal action arising against snapdeal. It also makes snapdeal and either of their employees not liable for any indirect, consequential or punitive damages resulting from any foreseeable or unforeseeable reasons. It also makes itself liable up to the amount actually paid by the customer. Clause 14 is the governing law clause that makes the all the disputes to be subject to the jurisdiction of New Delhi courts.

Clause 13 above can turn to be exploitative and can fall under the protective device of 'Non-Contractual Liability' or liability under tort. It is also unfair under the 'Unfair Contract Terms Act, 1977'.

Suitable Changes Required in the Terms

The overall terms and conditions do not seem to be exploitative in nature but a couple of terms and conditions need review and alteration because of the possibility of them becoming exploitative for the customers. Firstly the Clause 10.1 and 10.2 that gives the website the right to cancel order without giving any reason and also to decide whether to accept or reject the cancellation request by the customer. There is also a mention in these

terms about the right to decide by the website if the order is processed or not, which is not defined as what does processing mean and hence is again exploitative. The framers of these terms should clearly define what processing is i.e. when and under what circumstances can the order be termed to be processed.

Conclusion

The parties who are at greater bargaining position and framing a standard form of contract should frame the terms and conditions in such a way that it does not put any question mark on them and also while framing the contract it should not only consider maximum profit making and but rather put itself into the shoes of the customers having no bargaining power per se. It should not merely exclude itself from everything and make the customers liable and hence putting them at a vulnerable position.

The hypothesis done by the researcher has proved right and can be substantiated from the research. The Standard Form of Contracts can prove to be exploitative to the party having less bargaining power and Snapdeal contract is a standard form of contract, some clauses of the same may prove to be questionable and put the customers at a vulnerable position.

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The tentative list of the literature for the research involved in this paper is as given below:

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