

ABSTRACT

Law of Contract is one of the most important and valuable areas in the modern business world. All kinds of business contracts which are initiated among business persons are based on this law. However, a pertinent issue in this field of law is that its scope fails to cover contracts related to lands which are certainly among major commercial transactions in the modern business world. In Sri Lanka, land transactions often occur through Agreement to Sell and it is considered as a standard form of contract. Generally, exemption clauses are included in such agreements in line with the choice of the relevant parties. This is identified as 'freedom of contract'. Exemption clauses are commonly included in contracts by parties in the construction industry in an attempt to limit their liability for loss or exclude such liability altogether.

The control of the enforcement and implementation of unfair exemption clauses should be done under the Unfair Contract Terms Act No.26 of 1997 (UCTA). The main objective of this act is to protect consumers who are affected by the use of unfair exemption clauses or terms which evade liability for breach of contracts.

The objectives of this study are to critically evaluate how far the expected objectives of the Unfair Contract Terms Act have been fulfilled and to find out reasons for non inclusion of land contracts in the UCTA. The study also attempts identify the drawbacks of UCTA and its impact to the freedom of contract related to land contracts. Finally the study provides corrective recommendations in view of the drawbacks.

This research is based on the qualitative approach and an extensive critical analysis was conducted to achieve the main objectives. Critical content analysis underpinned by qualitative methodology allowed a mixed method of conceptual, analytical and empirical assessment of contract and exemption clauses.

The study analytically illustrates that the enforcement of exemption clauses negatively impacts the freedom of contract related to land contracts with special reference to Agreement to Sell. Often, the weaker party of land contracts is at a disadvantage due to exemption clauses imposed by the stronger party and therefore, the study recommends in conclusion that

the existing Unfair Contract Terms Act No. 26 of 1997 should be amended to include in its scope land contracts so as to ensure the protection of the interests of both parties to land contracts.

Key words: Exemption Clauses, Freedom of Contract, Unfair Contract Terms, Agreement to Sell.