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The legality of Standard Form Contracts

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Introduction

The proliferation of standard form contracts in today's market calls for a law that would regulate and in some cases prohibit outright unfair contract terms, which deleteriously affect the buying public.

Standard form contracts, commonly referred to as "adhesion contracts" are agreements where the terms and conditions are prepared by one party, placing the other in a take-it or leave-it position with little or no opportunity to negotiate terms acceptable to both.

Because of complexities of modern day transactions, almost all contracts consumers enter into belong to said category. From cable subscription to gym enrolment, one is presented with a ready-made form of contract, usually spelled out in very small prints, forcing him to merely affix his signature thereto, with little or no chance to bargain in equal footing.

This of course is alarming, since most consumers hardly have time to review fully the terms and conditions of these agreements. Even before they can critically assess the pros and cons of those stipulations, they are normally coaxed and smooth-talked into signing the contract by the representative of the other party, whose sales pitch focuses on the favourable terms, but is silent on those which are outright weighted, if not misleading.

Sadly, companies that sell goods or offer services have long utilized this to take advantage of their clients. They normally present the attractive terms, *e.g.* free expensive phone for a reasonably-priced two-year subscription post-paid plan - on the visible or shopped terms, then slip grossly one-sided terms, *e.g.* hidden charges, forfeiture of payments - in small, less visible fine prints that are least likely read or understood by consumers.

At the end of the day, the consumer ends up paying much more than the monthly two thousand pesos indicated on the plan, while discovering he can no longer back-out from the two-year period stipulated without forfeiture and penalties.

The only consolation probably is he can brag about his new iPhone 5. However, that is another story.

In some cases, companies even deliver the goods even before securing the consent of the prospective consumers. For example, it has become a practice among banks to issue and send a credit card to a client even before he could see and sign the contract. Because of his excitement, he ends up using the card sans judicious scrutiny of the contract terms. Of course, he will only realize this when a collecting agency sends him a demand letter, threatening to file legal cases unless he settles his obligation, usually involving exorbitant charges caused by compounded interests and hefty penalties.

The Absence of Law

Unfortunately, there is no law right now that addresses unfair contract terms. The Consumer Act of 1991, for all its breadth, does not really touch on the issue but merely focus on consumer products quality and safety standards.

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Therefore, unless your concern as a consumer relates to defective, substandard or hazardous goods, the Department of Trade and Industry will most likely never answer your call.

There lies the problem.

According to article 1305 of the Civil Code of the Philippines, a contract is "a meeting of minds between two persons whereby one binds himself, with respect to the other, to give something or to render some service."

The operative phrase here is "meeting of minds," which indubitably is a condition *sine qua non* for a valid contract to exist.

In the case of *PNB vs. Medrano* (G.R. No. 167004, February 7, 2011), the Supreme Court in clear and unequivocal terms, explains how a

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contract is perfected. Citing the case of *Traders Royal Bank v. Cuison Lumber Co., Inc.*, (G.R. No. 174286, June 5, 2009, 588 SCRA 690, 701, 703), it emphatically ruled:

> Under the law, a contract is perfected by mere consent, that is, from the moment that there is a meeting of the offer and the acceptance upon the thing and the cause that constitute the contract. The law requires that the offer must be certain and ***the acceptance absolute and unqualified***... Case law holds that an offer, to be considered certain, must be definite, while ***an acceptance is considered absolute and unqualified when it is identical in all respects with that of the offer so as to produce consent or a meeting of the minds.*** We have also previously held that the ascertainment of whether there is a meeting of minds on the offer and acceptance depends on the circumstances surrounding the case (emphasis supplied).

For this reason, adhesion contracts would appear legally infirmed, because the conditions and circumstances surrounding them normally deny consumers the opportunity to determine fully the contracts' terms and conditions, evaluate their repercussions, and assess the respective obligations of the parties. Such being the case, it cannot be said there is meeting of minds as the weaker party does not fully understand what he is entering into and as a result of which could not completely give his consent, as it is either vitiated at the very least or as if not given at most.

Unfortunately, the Supreme Court, notwithstanding its strictly construed definition of consent, does not see it that way. In a long line of cases, it has steadily maintained that since a person has the free will to either reject or accept these boilerplate contracts, the fact that they sign them should mean they adhere to them and therefore accept them.

In fact, in the case of *Pilipino Telephone Corporation vs. Tecson* (G.R. No. 156966, May 7, 2004), the Court, discussing the issue on validity of a subscription agreement, being a contract of adhesion, expressly opines:

> Indeed, the contract herein involved is a contract of adhesion. But such an agreement is not *per se* inefficacious. The rule instead is that, should there be ambiguities in a contract of adhesion, such ambiguities are to be construed against the party that prepared it. If, however, the stipulations are not obscure, but are clear and leave no doubt on the intention of the parties, the literal meaning of its stipulations must be held controlling.
>
> A contract of adhesion is just as binding as ordinary contracts. It is true that this Court has, on occasion, struck down such contracts as being assailable when the weaker party is left with no choice by the dominant bargaining party and is thus completely deprived of an opportunity to bargain effectively. Nevertheless, contracts of adhesion are not prohibited even as the courts remain careful in scrutinizing the factual circumstances underlying each case to determine the respective claims of contending parties on their efficacy.
>
> A contract duly executed is the law between the parties, and they are obliged to comply fully and not selectively with its terms. A contract of adhesion is no exception.

Such pronouncements have serious ramifications.

First, the presumption is that a boilerplate contract is valid. As such, any person who thinks otherwise has the burden of proving the same. This is rather unfair because it only exacerbates the pitiful situation of the weaker party, who has more to lose in this case.

Second, even if the terms are ambiguous, the only repercussion is the contract will be strictly construed against the dominant party. Therefore, the court will simply provide the proper interpretation and implement them. It will not consider the same voidable or void, as the case may be. On the other hand, if the stipulations are clear, they bind the weaker party even if they appear one-sided, unfair and unconscionable against him.

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In other words, there is no way out. If said party does not comply with his obligations, as incorporated in the contract, he is liable for breach and would suffer the consequences, as expressly stipulated in the agreement or as provided for by pertinent provisions of law.

Third, the court will only invalidate said contract if the weaker party is **completely** deprived of an opportunity to bargain effectively. The term "completely" is too rigid a requirement and under the circumstances is too difficult to establish. This is like saying the aggrieved party should prove that either he is under duress or is

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outright deceived into signing the contract.

The problem with existing jurisprudence is that it presupposes that no person in his right mind will sign anything if he does not want to give his consent or does not want to be bound by it. To a certain extent, this is true. In most cases, consumers voluntarily and even wilfully sign anything that is presented to them. Nevertheless, it does not necessarily mean they do so, fully aware of what they are entering into.

While it is true that these contracts come with a caveat, the conditions upon which they are presented to consumers simply make it extremely tough to exercise the care and caution needed. People simply do not have the patience to go over drawn-out terms and conditions, particularly if the provisions are too difficult to understand. They may read the first few stipulations but that is about it. Ordinarily, they would rely on the assurances of the other party and the other things he intimates to them.

The Need for Law

Given the magnitude and complexity of the problem, it is probably high time that a law be enacted that would define unfair contract terms, regulate transactions that involve adhesion contracts and to a certain extent declare void or invalid those that deceptively and fraudulently take advantage of the vulnerability of consumers.

Other countries have done this. In fact, in the United Kingdom, for instance, the parliament, in addition to common law, has enacted both the "Unfair Contract Terms Act of 1977" and the "Unfair Terms in Consumer Contract Regulations of 1999." These two statutes complement each other by identifying specific instances of unfair terms, establishing sufficient standards for determining whether a contract is one of adhesion or not, providing for appropriate penalties and laying down the procedures for availing of remedies in favour of the aggrieved party.

Since almost contracts arising from business and other transactions are adhesive, Congress should finally come up with a law, similar to those in other countries, in order to amply protect the public.

This is the only way.

The law, for example, can automatically declare as invalid or at the very least regulate certain

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unconscionable stipulations, such as compelling a consumer to pay an unreasonable indemnity arising from breach or negligence. Another can be providing for a no-way out clause such that he cannot get out of the contract unless he pays for the rest of his obligations or unless he pays for exorbitant interest and penalties. Another can be automatically renewing the contract if the consumer fails to inform the other party of his decision within a certain period.

Likewise, the law could lay down the factors courts can consider in determining whether the contracts are reasonable. These factors may include the strength of the bargaining powers of the party; whether or not the weaker party gets an inducement to accept the terms; whether or not he is expected to understand the stipulations as presented to him; or whether or not it is reasonably practicable to comply with his obligations as expressly stated.

More importantly, the law can provide for specific remedies in cases of breach and provide for efficient ways that afford the aggrieved party the opportunity to fully protect himself and avail of damages.

In the meantime, the public should exercise caution. Anything that is too good to be true, more often than not, is not true. At the end of the day, no person can think twice, let alone thrice, if he does not even have the habit of even thinking once.

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