Vilnius University Faculty of Law

Department of Private Law

Achere Bessem Bate Batey-Tambe,

II study year, International and European Law Programme Student

Master`s Thesis

The Approach of Modern European Private Law to Standard Form Contracts

Šiuolaikinės Europos privatinės teisės požiūris į standartinės formos sutartis

Supervisor: Assit.prof.dr. Victor Terekhov

Reviewer: lect. dr. Stasys Drazdauskas

2024-2025 Vilnius

Abstract

The Approach of modern European Private law to standard Form contracts," explores the regulations and the impact of standard Form contract within the context of the European Union and contemporary European private law. It analyzes legal frameworks in German, Italy and Czech Republic not living out some countries like USA and Isreal which goes to show the universal nature of standard form contracts and its principles. Key findings highlight the effectiveness of the EU Directives and call for a unified legislative framework. Recommendation includes integrating modern technologies and Blockchain technologies to address the evolving digital age. This thesis underscores the importance of a transparent contractual environment within the European Union and a more equitable and efficient legal framework that will benefit all parties.

Keywords: Standard Form Contract, Contract, Consumer Protection, Unconscionability Doctrine, Good Faith, Harmonization and Digitalization.

Table of Contents

Introduction

Standard form contract is a common type of contract in commercial interaction. They are often presented on a “take it or leave it form”. This is advantageous because just as fixed costs and scale economies in production lead producers to develop standardize goods, it helps businesses in the reduction of transaction costs, because the parties do not need to negotiate a new contract for each other. This form of contract, however, raises criticism regarding fairness, transparency and the protection of weaker consumers. The focus of this work shall be on the consumer and little to do with to do with civil contracts and business transactions but should be included to provide a comprehensive understanding of standard form contracts. Consumers typically lack bargaining power, they are susceptible to standard form contracts due to their frequent deficiency in negotiating power, or expertise to negotiate conditions. In contrast to businesses and corporations, which typically possess legal acumen and financial resources to safeguard their interest, consumers are faced with a take it or leave it situation. The Unfair Terms in Consumer Contracts Directive (93/13/EEC) safeguard consumers from inequitable practices by restricting contractual flexibility in instances of substantial imbalance. Commercial transactions and basic civil agreements: Although these elements are integral to the overarching framework of contract law, they will not be examined in depth unless they pertain to consumer-related matters.

Historically, standard form contracts surfaced in the 19th century but gain its popularity in the 20th century. As early stated, it posed major problems in the legal doctrine. This type of contract is often drafted by one party long before the contractual relational take place which is contrary to the classical method where contractual relationship is based on ab agreement between the parties who intend to embark in a contract thereby promoting freedom of contract. Although this contract violates the principle of autonomy of the will of the parties is very essential for legal agreement, it

is still embraced by many and approved on a daily by consumers and businesses. These types of business have become very essential for the flow or circulation of goods and services both in national and international markets.

Modern day European private law has created a different framework to deal with the challenges of standard form contracts. The European Union (EU) has created some directives to safeguard consumers, such as the Unfair Contract Terms Directive and the Consumer Rights Directive. The target of these regulations is aimed at ensuring that standard form contracts do not carry unfair provisions that may abuse customers. Apart from European countries, they will be a mention of two other countries in the work namely, the Isreal and United States of America (USA).

Relevance of the study

The research investigates the concept of a unified European private law, paying attention to contract and sales law. Several documents designed to establish a common ground, including:

- Principles of European Contract Law: Guidelines for contracting parties across Europe.
- Principles derived from existing EU laws and court decisions - Acquis Principles:
- Draft Common Frame of Reference: A comprehensive framework for European contract law.
- Consumer Sales Directive: Protecting consumers in sales transactions.
- Proposal for a Directive on Consumer Rights: Enhancing consumer rights in the EU.
- United Nations Convention for the International Sale of Goods: Global standards for international sales.
- Principles of European Sales Law: Guidelines for sales transactions within the EU.

These documents are analyzed to determine their cohesiveness and representation of European law.

Some areas, like special contracts and extra-contractual duties, are still in the early stages of development.

The ultimate goal is to shift focus from national laws to a truly European approach, but more research and development are necessary to achieve this vision.

The approach of modern European private law has relevance for academia, stakeholders, and consumers. the legal framework interacts and affect each group in a distinct manner;

To academia, modern European private law offers a fertile ground for scholarly inquiry. Scholars can do comparative evaluations of how different member states implement EU directives, the growth of consumer protection laws, and the impact of digitalization on standard form contracts.

To stakeholders, it provides clarity, predictability for parties in contractual agreements in the business sector and it also facilitate cross border commerce since a harmonize regulation lessen legal ambiguities.

To consumers, it enables them to make inform business decisions since they are privy to information regarding the conditions of the contract.

Aim of the study

The aim of the study is to analyze how and evaluate how contemporary legal frameworks in Europe regulate and address the use of standard form contracts. This includes assessing legal frameworks, consumer protection, judicial practices, harmonization efforts and the impact of digitalization.

Objectives

1. To examine the existing legal frameworks governing standard form contracts.

2. Access the effectiveness of consumer protection laws and judicial practices in Europe, particularly in safeguarding individuals from fair terms and practices in standard form contract.
3. To explore the role of European Union directives in the harmonization of standard form contract and access the influence of advancement in technology.
4. To propose reforms aimed at balancing contractual freedom with consumer right, addressing challenges posed by digitalization, and enhancing in the overall fairness and functioning of standard form contract.

Scope of the study

The scope of this study on "the approach of modern European private law to standard form contract" it encompasses standard form contract in Europe in general and countries like Germany, Italy, Czech Republic, Bulgaria, France, Lithuania (the Schengen countries) and, Israel (the Israeli legal system neither take after common law or civil law and it is an associate member state of the European union) in particular. Geographically, the research focuses on modern private law regulations as well as foreign laws to standard form contracts.

In term of time, the study starts from 19th century when standard form contract first surface to 2024 which is the year this research is conducted. The time frame is chosen to provide an inadept assessment of the approach of modern European private law towards standard form contracts.

Brief Review of Literature.

In Europe, the regulations of standard form contracts are influenced by both national laws and EU directives. The mandates transparency and fairness in consumer contracts, emphasizing the need for clear and comprehensive terms. In addition, the unfair contract term directives provide for a

framework for assessing the fairness of contractual terms, particularly those disadvantaged consumers.

And talking about literature review, we shall look at some books which have talk on standard form contract and its principles. They are several books which were looked at. They include;

The groundbreaking book "Contract Law: Themes for the Twenty-First Century" by Roger Brownsword examines how contract law has changed in the contemporary day. Globalization, fairness and justice, autonomy and regulation, and technological improvements are some of Brownsword's main themes. He contends that although contract freedom is an essential idea, protections against exploitation of weaker parties must exist. Brownsword highlights the significance of consumer protection laws that forbid unfair terms and practices in the context of standard form contracts. Both opportunities and challenges for contract law are brought about by technological improvements, especially the growth of digital contracts and e-commerce. Brownsword supports a more unified approach to contract law to promote international trade.

Hans-W. Micklitz's "Legislative Technique in Consumer Law," a leading European legal researcher, analyzes consumer law legislative procedures and strategies to safeguard consumers in Europe. His work emphasizes the need for a consistent and effective regulatory framework to protect consumer rights, particularly in standard form contracts with unjust provisions. Micklitz addresses the pros and cons of harmonizing EU consumer law. He investigates how EU directives like the Unfair Contract Terms and Consumer Rights Directive enable harmonization.

Clear and understandable language in consumer contracts protect customers and ensure transparency and fairness. Micklitz's research of judicial interpretation and enforcement theory explains courts' consumer protection role. The study might use Micklitz's topics to evaluate current

legal frameworks and recommend modifications to increase consumer protection and contractual fairness.

Method.

Various research methods were used in this work. A mixed-methods research design will be employed to effectively study the approach of modern European private law to standard form contracts. This design allows for a comprehensive analysis of both qualitative and quantitative data. Analyze statutory laws, regulations, and relevant case law in countries like Germany, France, Italy will be used as the primary sources. A technical method of research will be performed, through reading of articles, journal and legal commentaries regarding the practice of standard form contracts in the various selected jurisdictions. A comparative legal analysis will be employed to compare the legal frameworks governing standard form contracts in the selected jurisdiction. Finally, data collection and data analysis methods stated above will be use to search and study modern European private law approach towards standard form contracts.

Structure of work. ***(conclusion)***

The work consists of an introduction, three chapters elucidating the key aspects of the research, and conclusions. Each chapter is divided into subsections for detailed consideration of individual issues of the topic. The content of the work reflects a consistent transition from theoretical analysis to practical recommendations, which contributes to a deep and systematic study of the approach of modern European private law to standard form contracts.

CHAPTER 1

CONCEPTUALIZATION AND THEORETICAL FRAMEWORK OF STANDARD FORM CONTRACTS

1.1 Definition of a contract

Generally, a contract is a legal document that states and explains a formal agreement between two different people or groups, or the agreement itself:

In the English legal system, the term “contract” is not properly defined. This is due to the absence (limit) in the codification of laws. This is attributed to the unique nature and development of the law of contract evolved in England evolves around the action of assumpsit and practical cases. However, contract is defined by the textbook authors in their books although these definitions serve solely for purposes of illustration and cannot be declared as a comprehensive one.

According to Cheesman:

“A legally enforceable agreement is referred to as a contract.”

While Treitel stated that:

“A contract can be described as an agreement that is either upheld by the law or acknowledged by the law as impacting the legal rights and obligations of the parties.”

Definitions from Various Legal Frameworks.

A contract is defined in Section 145 of the German Civil Code (BGB) as an agreement between two or more parties to create, alter, or end a legal relationship. This is the first point of view from a continental (civil law) perspective. The goal to establish legal obligations and mutual consent are the main points of emphasis.

France: Article 1101 of the French Civil Code (Code civil) defines a contract as an arrangement wherein one or more people bind themselves to one or more others to provide, perform, or refrain from performing a certain action. It highlights the agreement's legal force and the responsibilities it establishes.

2. **Scandinavian Perspective**: Sweden: A contract is defined in Swedish law as an arrangement between two or more parties that establishes legally binding duties. The global concepts of offer and acceptance, which are requisite in creating a contract, are described in Sections 1–9 of the Swedish Contracts Act (Avtalslagen).
Section 1724 of the Czech Civil Code (Občanský zákoník) defines a contract as an agreement between parties to create, alter, or cancel rights and duties. This is the third perspective from Eastern Europe. It emphasizes the need for both parties to agree and the desire to establish legal consequences.

Poland: According to Polish law, a contract is an agreement between parties that establishes, alters, or terminates legal relationships. This definition is found in Article 60 of the Polish Civil Code (Kodeks cywilny). The objective to establish legally binding commitments and the significance of mutual consent are emphasized in the code.

Important Discussions and Unresolved Issues

1. **Mutual Intention and Consent**: - It generally acknowledges that a contract is only valid when there is mutual consent and an intention to create legal obligations. The degree to which these components are emphasized and perceived, however, may vary. Common law systems, like those in the US and the UK, for example, frequently place high value on the objective expression of intent, while civil law systems are more concerned with the parties' subjective agreement.

2. **Written requirements and formality**: - The requirement for formalities and written requirements in contracts is up for dispute. While certain legal systems, including common law systems, may uphold oral agreements if there is adequate proof of mutual consent, other legal systems, especially civil law countries, may require some contracts to be in writing to be enforceable.

3. **Inconsistency and Equitableness**: Another topic of discussion is the fairness of contract conditions or the idea of unconscionability. While civil law systems may have various procedures to promote fairness, such as the principle of good faith, common law systems frequently contain doctrines to remedy unconscionable contracts.

4. **Consumer Protection**: There are a good number of significant differences in the degree of consumer protection that contract law provides. For instance, member states are obliged to abide by directives from the European Union that aim at safeguarding consumers against unfair contract conditions. Comparing contract laws in various jurisdictions becomes more difficult as a result.

The fundamental idea of a contract as an agreement establishing legal duties is constant, but the details might differ greatly, as can be seen by underlining the arguments and providing these definitions with legal references. A deeper comprehension of the idea of a contract and the various legal traditions that influence it is offered by this comparative method.

The American Law Institute encapsulated the doctrine of contract as:

“A promise or set of promises is referred as a contract if a law permits a duty to perform them or if there is a legal remedy for their break.”

From the above definition, one can affirm that as long as the court can recognize an agreement, then the contract is deemed to be valid. This therefore narrows the requirements to be met for a valid contract to be formed.

1.2 Definition of Standard Form Contract

A standard form contract is a written agreement that creates legal obligation between two or more parties. It can either refer to the physical or digital document itself that intends to create the legal relations resulting from the agreement. In simpler terms, it is a set of promises to do that the law recognizes as a duty, and if breach, there are consequences.

These types of contracts are pre-drafted and are used on a regular basis for a particular type of transaction, hence bearing the name a standard form. It is also known as contract of adhesion, a boilerplate contract. The terms of the contract are usually non-negotiable and presented on a take it or leave it basis.

For example, the terms of the license agreement to purchase an online software is presented in a standard form contract in which the buyer must agree before he can download and use the software.

Black’s law dictionary defines standard form contracts as:

“A standard-form contract created by one party and signed by a weaker party, typically a customer, who is obligated to abide by the contract's terms and conditions with little to no choice. It also known as Adhesive contract, either take it or leave it deal, leonine contract, contract of adhesion.”

In Lithuanian civil code, standard form contracts contain provisions that are preprepared and are used repeatedly by one party to a contract without any modifications in the negotiation with another party. Standard form contract shall be binding if the party presenting the contract gives adequate time to the other party to get acquainted with the conditions of the contract. This is contract will be void if it is contrary to the criterion of good faith.

In the German Civil Code as stated in section 305 (1) clause (1) of the BGB (*Bürgerliches Gesetzbuch*) define AGBs (*Allgemeine Geschäftsbedingungen*) as;

"All those contractual terms which are formulated in advance for a multitude of contracts which one party the issuer (Verwender)) presents to the other party upon entering into a contract."

Standard form contracts are termed and named differently in different jurisdictions. It may sometimes be referred to as boilerplate agreements or contract of adhesion or it also be referred to as the common standard-form contract as we may say. Standard form contracts denote to the contracts that are formulated by one party in advance.

1.3 Historical Evolution

Medieval Period

Contracts were mostly oral, with few written records. The catholic church used standard form contract for transactions like land leases. Leasing of lords' estates became more frequent in Western Europe beginning from 1200, as opposed to direct management. However, in England, direct management increased at the same time and continued until the fourteenth century, after which leasing increased. In England, the increase in direct management can be attributed to

increased freehold tenure security, whereas the increase in leasing can be attributed to improved leasehold tenure security as well as higher living conditions.

16&17 Centuries

The introduction of insurance policies in the 16th and 17th centuries marked a significant shift towards standardization. Insurance was not included in Roman law at the time, as it was a new institution. Furthermore, guilds did not handle this issue.
As insurance got more popular, it became necessary to offer coverage for rare incidents in policies. This period saw the enhancement and the emergence of insurance contracts for example, marine contracts. The need to cover unpredictable and unforeseen events led to the creation of standard insurance policies that carried specific terms and conditions that were evenly applied across various transactions. The specific changes include, among others standardized terms, providing templates that could be used with minimal modifications, and made parties understand clearly it terms. They were model policies introduced that had certain essential terms that common risks making it easier for insurers to be able to manage multiple contracts efficiently. Some of the effects of these changes include wider adoption in various sets of industries. Business recognized the benefit of using standardized terms to streamline traction. Furthermore, standard form contract allowed insurers to manage risks accurately and effectively by clearly defining the scope coverage and exclusion. To add, standardization led to greater efficiency in drafting and execution of contracts and reduced administrative costs.

Industrialization Era

Standard-form contracts emerged from scientific advancements in the 19th and 20th centuries, leading to the industrial revolution. Industrialization led to advancements in production,

marketing, and distribution, resulting in a new contract paradigm. Mass production and delivery of products and services led to the development of new contracts that replaced conventional ones based on equal bargaining and negotiation.

The usage of these standardized contracts was unavoidable in the evolving economic circumstances. The absence of guild and labor laws left a gap that was addressed by state restrictions, such as in France, or by manufacturers creating their own norms through factory discipline codes. Due to the prohibition of trade unions at the period, these rules were generally one-sided and included lengthy provisions. The manufacturer determines if a provision applies to their specific laborer. The system was then expanded to include additional branches and services, such as products sales, power, water and gas delivery, railway, and transportation.

Present

Currently, the utilization of standard form contracts has greatly increased in modern day transactions. However, as most elements of life and contract may be, there are advantages and disadvantages. Standardization in the commercial sphere has proven to be effective and efficient. Additionally, using standardized structure reduces transaction and agency expenses by eliminating the creation of new contracts, and the need for parties to negotiate. The contract's contents and situations are more clearly understood and contextualized. Courts and both legal and academic experts have expressed their concerns with conventional contracts. Jurists are concerned about the consumer's vulnerability and potential exploitation in such situations. This raises the question of whether the contract was read and understood by the parties involved (in most cases understood by the consumer or the party to whom the contract is giving to). Furthermore, there is no universal formula for business transactions. Some parties may not receive adequate treatment as a result of this transaction.

The complexity grows with the second layer of standardization. The multiplicity of standard contracts occurs when a single seller uses the same contract for several transactions.

1.4 Significance of standard form contract

Standard form contract emerges as a solution to market inequalities in achieving an equilibrium between the needs of market providers and the consumer. there was a vital development in the area of consumer protection in trade with the increase of usage of the standard form contract. It serves as a vehicle through which exchanges can be effectively made. It marks certain significance.

Efficiency in mass production and risk management

The rise of standard form contract, leveled the playing field with the mass production that accompanied industrialization of the 19th and 20th century and largely driven by economic efficiency. Instead of entering an individual contract and modifying the terms with costumer, a business that used a standard form could substantially reduce the costs of transacting and this gave room for efficient mass distribution of goods, and also potentially resulted in cheaper goods and services for the consumers. Standard form also produce efficiency in the domain of risk management. It promoted business to be in a position to best understand the risk they can bear most effectively and allowed them to make an exclusion of those which are difficult to calculate and make risks uniform for all similar transactions, therefore it minimizes the cost of the product and service.

Reduction agency costs

Standard form contracts also reduce agency costs in mass market transaction by removing agents' authority to agree to any changes in the terms of the contract which may reallocating risks to principal and result in related costs if those risks are materialize. The use of this standard form

contract is relevant to e-commerce given that one factor for its efficiency is that there is little or no necessity for business to use human agents to complete transactions.

1.4 Theoretical framework

Standard form Contract are grounded by key legal doctrines and principles that regulate their use. These frameworks offer a preparatory terrain that analysis the balance and imbalances of contractual freedom and the protection of parties. The primary theories and doctrines relevant to standard form contracts include:

1.4.1 Freedom of contract

Freedom contract refers to that principle which allows individuals and entities the freedom to engage in an agreement without any (little) legislative interference to determine the terms and conditions of their contract except in situation of illegality and respect of compliance and regulatory aspect. Thus, they enjoyed the autonomy of tailoring their contract as they see fit. This flexibility in formulating contracts by plays an important role in commerce and negotiation a it fosters innovation and adaptability in numerous fields where agreements play keys roles. The pure doctrine of freedom of contracts exists in four distinct senses:

i. Each person is free to negotiate the terms of their contract without coercive interference;
ii. Where a contract drafted by parties privy to it, the provisions stated in the contract should not be interfered with and should be given full legal effect;
iii. Individuals as well as entities should be able to select who they enter into a contract with; and,
iv. there should be freedom not to contract.

The era of liberal thought, industrialization, and economic theory in the 19th century put contractual freedom at the center of commercial dealings. This theory is to the effect that the law should interference minimally with agreements with agreements created by competence parties. Although the criticism of laissez-faire, caveat emptor let to the exemptions of this principle.

A landmark case of freedom of contact is the of Carlill v Carbolic smoke Ball Company 1893 and also the case of Parker v South Eastern Railway Company 1877. These English cases relate to the contemporary business world in numerous ways. It states the relevant of clear communication in contractual agreement, fairness values, integrity, and mutual understanding.

The 'freedom of contract' allows parties to legally bind themselves based on their free choice. Parties freely accept terms and conditions and assume legal responsibilities. Disadvantageous terms for one party can be agreed if both parties have equal negotiating power and freely accept the terms and conditions. However, if a party enters a contract through duress, deception, false information, or concealing of material facts, the contract is null and void. It is because these variables contradict free will.

All other contract law provisions mirror the concept of 'freedom of choice'. This is similar to the concept of 'discharge', where one party partially completes a contract and the other party accepts and pays for the remaining portion. Similarly, if any term is breached, the other party has the option of terminating his own responsibility and the entire contract, or continuing the deal and accepting payment for the violation.

1.4.2 Unconscionability doctrine

Unconscionable dealing is that doctrine in contract law that contains unjust terms that one could consider are one-sided and it is in favor of the party with the higher bargaining power. It is usually

unenforceable since no reasonable person would agree to it (reasonable man Test). Ag party instigating that type of contract would not be allowed to benefit from it lack consideration and enforcing the contract will be unfair to the weaker party.

This doctrine is based on equity and protection of consumers as evidence in precedent cases such as Árpád Kásler and Hajnalka Káslerné Rábai v OTP Jelzálogbank Zrt, Mohamed Aziz v Caixa d´Estalvis de Catalunya, Tarragona i Manresa (Catalunyacaixa), Chesterfield v. Janssen and Aylesford v. Morris. In Fry v. Lane, the court granted equitable relief for unconscionable conduct, and it was decided that transactions could be put aside if the affected party entered a contract due to poverty and ignorance. These cases are English case are utilized for the purpose of the research due to the following reason: The influence of English contract law across many European states, the historical context of these case as they offer a historical evolution of legal principles can provide a deeper appreciation of current regulations. To add, these cases, provide valuable insights into judicial reasoning and the application of legal doctrines which can be relevant for the understanding of similar issues in European jurisdiction. This case is regarded as the most significant English decision in unconscionable dealings. Unconscionable dealing is based on four elements.

i. weakness in the complainant.
ii. unconscionable conduct of the defendant.
iii. substantive unfairness; and
iv. absence of advice for the complainant.

The doctrine of unconscionability is commonly utilized by courts, to invalidate unfair conditions in contracts of adhesion. This defense is likewise outlined in the Uniform Commercial Code (UCC). The Uniform Commercial Code was originally designed for sales of goods contracts, but

it can also be applied to other contracts by analogy. In the case of Williams v. Walker-Thomas Furniture Co, unconscionability is described as "a lack of significant decision-making on the part of one party combined with contract conditions that are overly favorable to the other party."

While discussing the evolution of this concept, John R. Peden states that:

"A cycle that began with the Aristotelian notion of fairness and the Roman legislation laesio enormis, which in turn served as the foundation for the mediaeval church's notion of a just price and condemnation of usury, comes to an end with unconscionability." These ideas pervaded the Chancery Court's use of its discretionary powers to prevent numerous unjust commercial practices throughout the seventeenth and eighteenth centuries. The push toward economic individualism in the nineteenth century toughened the execution of these capabilities by emphasizing the parties' freedom to establish their own contract. while the pacta sunt servanda principle was predominant, the consensual theory permitted exceptions in situations where one party was coerced or forced into a contract by fraud, or where a fiduciary overruled the other. These were rare cases, though, and they needed very strong evidence.

One of the primary laws for consumer protection in the EU is governed by the Treaty of Rome. In this treaty there is provision that for the weaker party to avoid certain contract that are based on certain behaviors that are unfair to certain parties to the contract. According to the PECL and the DCFR;

PECL, Article 4: 109(1): excessive benefit of unfair advantage

(1) If a party was reliant on or had a trustworthy relationship with the other party at the time of the contract's conclusion, was in financial distress or had urgent needs, was unprepared, ignorant, inexperienced, or lacked bargaining skills, and (b) the other party knew or should have known of

this and, in light of the circumstances and the goal of the contract, took some sort of an advantage of the first party's situation in a way that was egregiously unfair or took an excessive benefit, then the party may avoid the agreement.

DCFR, Article 7: 207(1) Unfair Exploitation

A party can avoid a contract if it was dependent on trust, exploited by another party, or in financial distress. However, no party can profit from another's ignorance or take advantage of someone who acted in good faith. This allows a party to be harmed by an intentional or careless act to avoid the agreement.

1.4.3 Good faith

Good faith in contractual agreement is seen globally to moralize contractual relationships, and to temper the imbalance that could be because of the doctrine of the autonomy theory. Good faith aims to protect the mistaken belief of a party to a contract. Good faith is belief to be an open norm, whose content cannot be established in an abstract manner but which depends on the circumstances of the case in which it is being applied to.

In public international law, good faith is a fundamental principle according to the Vietnam Convention on the Law of Treaties, signed on the 23rd May 1969 in its article 26, it provides that;

> *"Every treaty in force is binding upon the parties to it and must be performed by them in good faith"*

Articles 31 also show more light

> *"A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in light of its object and purpose"*.

Good faith plays a more major role beyond this application to treaties in general, it is said to be a regulator where the said international treaties set out, more or less explicitly, to give good faith its full relevance in interpersonal relations.

The Vienna Convention of 11th April 1980 on international sale of good portrait this situation perfectly. Article 7(1) provide that; "observance of good faith in international trade" thus it defines good faith as a guideline for the interpretation of the entire international trade. Therefore, it is exhibited with a moral connotation, as a term used to regulate business life.

Article 5 of the UNCITRAL Convention on independent guarantees and stand-by letters of credit of 1995 in like manner provides that; *"in the interpretation of this Convention, regard is to be had to its international character and to the need to promote uniformity in its application and the observance of good faith in the international practice of independent guarantees and stand-by letters of credit"*

Furthermore, PECL, explicitly refer to good faith as a tool which is use in the interpretation of the whole corpus, as provided in article 1: 106*: "These Principles should be interpreted and developed in accordance with their purposes. In particular, regard should be had to the need to promote good faith and fair dealing, certainty in contractual relationships and uniformity of application"*. Just like any other international texts, PECL promote good faith among parties to the various contract, but their disposition must be read. Good faith acts as a regulating principle in interpreting international texts as well as interpreting the contract itself.

The notion of good faith is used sometimes in a much more precise manner. It could refer to an instance where a person acted upon the belief of acting within the applicable law as in the Lizardi case.

In French international private law, it was decided in the *Lizardi* case that a French national entering into a contract in France with a foreigner, "should not be required to know the laws of the different nations and their provisions concerning minority, legal majority and the extent of contractual obligations which can be undertaken by foreigners with regards to their legal capacity; the contract will be valid as long as the French party acted without rashness, without carelessness and in good faith".

1.4.4 Doctrine of Superior Bargaining Powers

The doctrine of superior bargaining power is to the effect that, the court shall not enforce any contract in which one of the parties to it is being exploited by the other through the use of “superior bargaining power” to conclude an unfair contract (one which is void of good faith).

In the cases of Clifford Davis Management Ltd. v. W.E.A. Records and Macaulay v. Schroeder Publishing Co. Ltd., this doctrine was successfully applied. “In the latter instance, the plaintiff was granted copyright rights by two songwriters through a typical form contract. The terms of the contract obligated the songwriters for a period of five years, with the possibility for the plaintiff to extend the contract to ten more years. Despite having a strong negotiation position, the company failed to fully disclose the terms of the contract to the songwriters prior to both parties signing it. The contract was an intricate legal agreement drafted by attorneys.

This is predicated on the notion that, although negotiation is essential to a freely entered contract, in Standard Form contracts, the strong offeror uses his position to obstruct negotiations. Although it is not a need in and of itself, the bargaining process is surely one sign of a freely entered contract.

The formation of standard form contract has shown that it has not be created based on equal bargaining power of the parties. Standard form contract recently does not suit the ideal traditional

marketplace due to the inequality of bargaining power of each party. In the ideal competitive marketplace, buyers and sellers possess equal bargaining power, so that their intention creates a legal relationship will be express voluntary. However, the perfect competitive market of economic theory remains a myth. According to Mariner.

There are a huge number of differences between buyers and sellers, in both information and the ability to make choices and purchases. Buyers may be disadvantaged in two ways, that is, unable to make voluntary and influenced choice or unable to make a desired purchase.

Therefore, the use of standard form contract is characterized by inequality of bargaining power, there is a probability of them being the instrument of economic pressure because their terms could be drafted in favor of the stronger party who made them.

1.4.5 Principle of Consent of Contract

Freedom of Contract requires unanimity ad idem, which means that the parties must reciprocate in order for the agreement to be legal. It would not result in a legitimate contract unless the mutuality is expressed in the agreement. For example of a case like Bundesverband der Verbraucherzentralen und Verbraucherverbande – Verbraucherzentrale Bundesverband e.V. v. Deutsche Bank AG (C-92/11). The law will not recognize an agreement in which one party forces the other party to accept its goods or services while the other party has no such purpose. Consent is a contract. This remark by academicians emphasizes the necessity of consent in a contract. A contract is used to legally bind oneself and others in certain terms and conditions. This is a type of private law in which two parties voluntarily agree to create law for themselves to the scope of their contract. Consent is the essence of the contract. Consenting makes both parties legally accountable for non-performance of the agreement. This consent idea establishes balance in a contract. An offer

from one party indicates a willingness to change the relationship and bind both parties for a specific consideration. Acceptance from the other party confirms their ultimate assent to the contract conditions.

The consent approach suggests that both parties should have a general understanding of the contract, without necessarily knowing every detail. The rule of consensus is incorporated in statutes and common law principles. The Unsolicited Goods and Services Act of 1971 contains the same provisions. Contract law examines the validity of a deal and whether it was properly enforced. Courts prioritize enforceable bargains without compromising the quality of the parties' agreement, as evidenced by several case laws.

Standard form contracts, unlike other types of contracts, are known by its characteristic which make it bias as some will say but however its relevance to enterprises as well as consumers can be set aside. This prompt legal scholars, legislative bodies and courts to analyze how unfair nature of standard form contract in other to be able to set in place restraining orders which don’t only benefit the weaker party in such contracts, but it also aids in the development of and betterment of standard form contract.

1.4.6 The principle of undue Advantage

This refers to a situation where one party to a contract gains excessive or unfair benefits at the expense of the other party. The EU directive (93/13/EEC) provides guidelines to assess whether a contractual term constitutes undue advantage. These guidelines are Transparency if the terms are clearly communicated. Furthermore, bargaining power as earlier mention other parts of the research and fairness. The case of Mohamed Aziz v Caixa d´Estalvis de Catalunya, Tarragona i

Manresa (Catalunyacaixa) the court assessed that fairness of mortgage terms and found some unfair clauses.

Not all benefits in a contract are considered undue advantages.

- Mutual Benefit. Terms of the contract that provides both parties with mutual benefits, even when one party appears to pay more, are generally not considered undue.
- Market-Driven Terms. Terms that reflect standard industrial practices and are widely accepted may not be considered undue even if they favor one party.
- Regulatory compliance. Terms that are designed to protect public interest are not considered an undue advantage. For example, a clause in a financial services contract that limits liability in accordance with regulations.
- Customary Practice. Terms that align with customary practices are generally not considered an undue advantage to one party. For example, contracts that includes standard charges for delay is customary to the shipping industry and are not considered excessive.

1.5. The Court Reaction to Standard Form Contract

1.5.1 The Strict Contract theory

Initially, courts from different jurisdictions, organizations, national and international bodies such as; European courts, English courts, etc. applied rigorous contract theory to the new type of contract. They used the same laws and concepts to both regular and Standard Form contracts without distinguishing between them.
Applying rigorous contract theory to Standard Form contracts resulted in serious inequities.

The landmark case of L'Estrange v. F. Graucob Ltd. underlines the issue. The plaintiff signed a standard contract and acquired a slot machine. The standard form includes a language stating that

any implied or express condition, statement, or warranty, whether statutory or not, is excluded. The customer sued for reimbursement for a malfunctioning computer that violated an implied assurance of appropriateness for its intended purpose. The plaintiff stated that the small and difficult-to-read print prevented her from reading the full contract. Judge Scrutton L.J. ruled against the plaintiff, stating that once a party signs a contract without fraud or trickery, they are obligated regardless of whether they read the content.

1.5.2 Modern Response towards Standard Form Contracts

It was realized that placing both conventional and Standard Form contracts on the same scale is creating great imbalance and injustice to the vulnerable party. Courts began to move from a rigid contract theory in such circumstances. This shift in approach was likely due to the quick adoption of new contract forms, which increased the risks of vulnerability and exploitation for weaker parties in such contracts. However, the variation was minor in character. The courts attempted to resolve the issue using ordinary contract theory. They used various tactics and devices to strike a balance and address the concerns of weaker parties. These tools were based on established or novel principles and doctrines.

These include the doctrines of unconscionability, public interest, greater bargaining power, informed notice, and reasonable expectations. Williams v. Thomas Furniture Co. is a case that highlights the shift away from established approaches. This case highlights the importance of applying the doctrine of unconscionability to provide relief for believers. However, it has significant roots in traditional approaches.

Standard form contract as well as any other contract has it pros such as;

- it less time consuming,

- it reduces transactions costs,
- it assures uniformity and quality of contracts and,
- it helps determine risk.

These features make standard form contract to stand out among the other types of contracts and it is one of the reasons for its widespread. Although there are certain cons of standard form contract such as it promotes unfair trading, limit freedom of contracts, but based on its undeniable importance to the world of contracts, it is more of a blessing and it promotion is relevant to many societies. However, standard form contract cannot be practiced without the underlining rules that govern them in order to safeguard the interest of the weaker party privy to the contract.

CHAPTER 2

LEGAL AND INSTITUTIONAL FRAMEWORK OF STANDARD FORM CONTRACTS

2.1 European Union Legislation

In 1957 the European Union (EU) signed the treaty which established the European Economic Community. This treaty contained the first elements of consumer protection on which consumer protection legislation in EU was developed. It was regarded as the primary laws for consumer protection in the EU and it provided that the Union must safeguard consumers interest as well as their rights. The treaty also emphasizes on a high level of protection of consumers as well as the consumer protection requirements should be considered when implementing other Union policies and activities.

Following the Treaty, the 1975 Council Resolution established the five fundamental rights of consumers. This decision marked the formal beginning of consumer protection policies in the EU, as well as the adoption of the EU's first specific program on consumer protection. The EU will implement these policies to guarantee that consumer protection policy keeps up with developments in society and the economy. Directives that are incorporated into the national legislation of each EU Member State are another way to keep consumer protection policy current. The EU now contains roughly 90 directives dealing to consumer protection issues, and when enforcing one of the directives against a trader or supplier, the relevant national legislation's rules must also be reviewed.

The EU legislation on consumer protection only addresses specific situations; consequently, additional directives are required to establish a more comprehensive scope and application. The most effective consumer protection directives are the Directive on unfair terms in consumer

contracts, the Directive on injunctions for the protection of consumers' interests, the Directive on consumer rights, and the Directive on alternative dispute resolution for consumer disputes. These directives outline how to react with certain scenarios and also specify how to apply them. The European Union's Charter of Fundamental Rights is also a primary consumer protection statute, confirming the high level of consumer protection required by Union policy. The Charter is a single text covering the fundamental rights safeguarded by the EU. It was announced at the Nice European Council on December 7, 2000, but it had no legal impact. Only on December 1, 2009, did it become legally binding on EU institutions and national governments.

2.1.2 E-Commerce Directives

The E-commerce Directive focused on developing an effective European regulatory framework while also acknowledging the worldwide character of electronic communications. As a result, the directive aimed to help the EU create a strong and uniform negotiating position in international forums. The directive assumed that, in order to allow for the unhindered development of electronic commerce, the legal framework must be consistent with international rules that do not harm European industry's competitiveness or impede innovation in that sector.

The E-commerce Directive established a legal framework that includes (i) general provisions such as definitions (Article 2) and their implications for the Internal Market (Article 3), (ii) principles governing market access, contracts concluded electronically (Articles 9 to 11), and the liability of intermediary service providers (Articles 12 to 15), (iii) implementation issues, and (iv) final provisions.

The E-commerce Directive has been accused for having holes in its protection, particularly in the liability framework for technological intermediates, resulting in a lack of protection for

fundamental human rights. At the same time, the directive has shown to be a significant initial success in accomplishing the goals for which it was enacted, namely establishing an acceptable legal framework for information society services and eliminating legal uncertainty, as confirmed by multiple later studies.

3.2 National Laws and Regulations

The contract form is the external embodiment of the parties' consent to each other's wills, which, as a legal fact, results in the formation of an agreement. For the contract to be legitimate and have legal consequences, the parties' will must be manifested, regardless of how or in what form this performance takes place. The parties' will is the essential precondition for concluding a contract; without their assent, there can be no contract. When a form (legal form) is required by law for a certain contract, the parties are not permitted to enter into such a contract without the prescribed form. In the case of a contract for which no form is prescribed by law, the parties may agree on the fulfillment of a specific form as a necessary condition for the contract's conclusion. In this situation, the contract is also formalized. Form, therefore, does not serve as proof in these contracts, despite appearances to the contrary.

When it comes to contracts, it's often unclear whether an oral or written agreement is sufficient. Different legislations address this issue differently. There is also a variation in how contracts can be changed or supplemented. The competent right is defined by the locus rigid actum (lex loci actus), which means that the country takes the lead in the action. This rule requires that the form be reviewed based on the location where the contract was concluded.

GERMANY

Section 305 para. 1 clause 1 BGB defines AGBs as "all those contractual terms which are formulated in advance for a multitude of contracts that one party (the issuer (Verwender) presents to the other party upon entering into a contract." Terms may apply to the entire contract or certain parts of it. A conventional lease agreement includes most fundamental terms, save for the names of the parties, lease object, rent, and lease start date. In contrast, payment conditions in a purchase agreement may only apply to specific parts of the deal.

According to section 305 BGB, AGBs must be pre-formulated for application in many contracts; thus, statutory provisions will not apply if the pre-established terms are intended for one-time use only. German courts have considered non satisfactory if standard terms are intended to be used at least three times, even when used in transactions with the same party.

Standard terms are defined regardless of whether they are part of a contract, apart from it, or attached to the contract document. AGBs can be exhibited publicly at the issuer's premises, such as through a notice. German courts recognize unilateral acts, such as declarations of consent, as AGBs if they are freely formulated in a pre-established agreement.

The Act on Actions of Injunction for the Protection of Consumers (Unterlassungsklagengesetz) now includes rules for enforcing these provisions, which were previously located in sections 13-24a AGBG. Legal action against improper contract provisions can be taken by anybody, regardless of who entered the contract. This aligns with the public interest in environmental and competition laws. Under section 3 of the Unterlassungsklagengesetz, consumer organizations and chambers of commerce can legally demand that individuals who use illegal standard phrases stop or retract their use.

FRANCE

In the French law, standard form contract needs to be precise as it occupies a special place in the French law. Standard form contract is characterized by inequality between contractors resulting from lack of prior discussion and it includes all hypotheses where the terms and content of the contract are pre drafted and can no longer be reduced.

The French Civil Code distinguish between two groups of contracts, depending on whether the contractual provisions are formed during free negotiation which determines the common will of the contractual parties or the general conditions by one party without negotiations. This section set is what is described as *contrat d'ahesion* in the *Code Civile.*

THE REPUBLIC of NORTH MACEDONIA

Article 20 paragraph 1 of the Law on Obligations of the Republic of North Macedonia states that the intention to enter a contract can be expressed through words, signs, or other behaviors. The law supports informal contracts based on the principle of consulate, as mentioned in Article 59 paragraph 1. Nevertheless, this concept of contractual informality should not be framed or interpreted in absolute terms, but rather as a relatively limited principle, even in contexts where the parties actively manage their relationship and the form in which they express their assent. must be in compliance with Article 3 of the Law, which states that the parties must control their interactions within the parameters established by the Constitution, the Law, and good customs. Furthermore, the general conditions of the contract, as contractual provisions set up for the greatest number of contracts that one contracting party (the compiler) recommends to the other party before or at the time of entering the contract, are mostly found in formal contracts.

The Republic of North Macedonia and the region apply standard contracts virtually identically, as the region has emerged from communism and the implementation of laws and legal reforms

corresponds to European Union law. The standard contracts in this country, as mentioned in the part of contractual terms within the Law on Obligations referring to the general terms of the contract as contractual provisions drawn up for the largest number of contracts that one contracting party (the compiler) proposes to the other party before or at the time of entering the contract, are primarily contained in formal contracts. These states have particular laws and acts in place to protect consumers and small businesses from the unjust conditions of ordinary contracts, such as the Consumer Protection Act.

States Out of Europe

ISRAEL

As earlier stated in the work Israeli legal system is distinct because of it mixed jurisdiction. It is neither part of the common law, nor does it belong to the civil code groups. Israel has supremacy of law in areas of Israel law that are codified. The legislation does not supplement case law but it is the basis of its system. According to Jacobson, the use of standard form contract in Israel has gain more popularity which prompted Israeli Ministry of Justice to appoint a committee to come up with possible recommendation on the nature of the legislation in regards to standard form contract which is considered as a type of contract that may possesses unequal bargaining powers, unfair and unconscionable terms.

The Israeli Contracts Law 1964 was enacted by the Israel parliament (Knesset) on February 12, 1964. Section 1 of the law defines standard form contract as;

… contract for the supply of a goods or services, all or any of whose terms have been fixed in advance by, or on the interest of, the person supplying the goods or service with the object of constituting conditions of many contracts between him and persons undefined as to their identity.

It ratifies the party intending to enter into a standard form agreement. In its section 2, it obliges the party intending to enter into a standard form agreement to apply to the appointed Board for the purposes of the Restrictive Trade Law for approval of the restrictive terms of the contract. In addition, the Israeli Standard Contract Law of 1964 also includes the Consumer Protection Law of 1981 as a country that places great importance on consumer protection. The 1981 Act applies both directly and indirectly: the application of the general rules of contract law to all contracts, including standard form contracts. It outlines the seller's responsibilities to consumers. Section 3 of the Act provides: Nothing shall be done by an agent in the capacity of a dealer an act or omission, oral or in writing or in any other manner which takes advantage of consumer distress, mental or physical weakness, ignorance, lack of knowledge of a language, inexperience, or the exercise of wrongful influence over them, all to make a deal on abnormal or unreasonable terms or to receive consideration above the usual consideration. The above-mentioned subsection of section 2 of the legislation explicitly indicates that Israel is extremely intent on prohibiting the use of standard form contracts. This desire has led to specific legislation by Israel as a firm action toward realizing their great goal, which is to attain a better standard of justice in their everyday business associations, and ought to be viewed as an inviting mode of standard form contract management.

UNITED STATES of AMERICA

The US has a sophisticated legal system that governs standard form contracts, particularly through the application of the good faith and unconscionability doctrines. Comprehensive frameworks for protecting consumers and advancing equity in contractual agreements are provided by the Uniform Commercial Code (UCC) and other state laws. UCC, or Uniform Commercial Code: The UCC plays a key role in regulating standard form contracts in the US, particularly its provisions regarding unconscionability. To protect consumers from being taken advantage of by more

powerful entities, judicial organizations frequently use the concept of unconscionability to invalidate unfair clauses in adhesion contracts. Case Law: Important decisions such as Williams v. Walker-Thomas Furniture Co. demonstrate how the unconscionability argument is applied to provide consumers with a remedy. By establishing a precedent, this case law protects vulnerable parties and evaluates the equity of standard form contracts. European states can learn a lot from the United States' legal system and judicial procedures.

One might ask why the addition of non-European states in this research work which has Europe as the center of its analysis. Apart from some of the reasons mentioned above when discussing these states individually, other reasons are, mentioned these countries go a long way to prove the universal nature of standard form contracts and their principles. Furthermore, it’s worth discussing some of these state like the USA because economic relations which it shares with European states

CHAPTER 3

COMPARATIVE ANALYSIS OF STANDARD FORM CONTRACTS IN EUROPE

3.1 General Overview of SFCs in Germany, Italy and Czech Republic

3.1.1 GERMANY

In Germany law, Standard Form Contracts were specifically regulated by the 1976 AGB-Gedetz. This has been replaced by the 2002 reform of the BGB (Schuldrechtsreform) and the provisions are created with some minor variations, in the section 305 to 310 BGB.

According to section 305 para.1 clause 1 BGB defines AGBs as "all those contractual terms which are formulated in advance for a multitude of contracts which one party (the issuer (Verwender)) presents to the other party upon entering into a contract". The provision of the contract may cover either the entire contract or constitute a fracture of it. for instance, in a standard lease agreement, most of the contractual terms will be included with the exclusion of the names of the parties involved, the lease object, the rent and the beginning of the lease. An instance where the standard form contract may constitute just a part of the contract is where it is used as a condition for payment for instance in a purchase agreement.

Section 305 (2) provides for the offeror (verwender) to expressly draw attention of any standard terms and conditions which is being applied to the contract to the other party. In case where it If it is impossible to inform the other party explicitly, at least a prominent notice must be display. Standard terms cannot be considered as part of the contract unless the consumer accept the terms.

In regards to drawing the attention of the standard terms to the other party, it is only necessary if the terms are physically not part of the contract. It became irrelevant to display focus to those terms to the consumer if the entire contract is a standard form contract and it is just a provision in it.

Contracts with business parties (unternehmers) are exempt from the aforementioned clauses; in these situations, the pre-AGB-G case law on the fundamentals of contract law still governs. In actuality, this means that while it is required to make reference to the general terms, it is not required to convey them to the other party, who is entitled to learn about them under reasonable circumstances. If the parties have a long-standing business relationship (ständige Geschäftsbeziehungen) in which they have previously adopted such terms, or if terms are widely used in a particular trade, there is no need for any explicit reference to terms and conditions. Terms pertaining to the delivery of specific public services are subject to special incorporation regulations.

The contract does not contain "unexpected" terms. According to section 305c BGB, terms are deemed "unexpected" if they include obligations that are so out of the ordinary that customers would not typically anticipate seeing them in a contract. This is in line with previous case law. The well-known principle (added only by the 2002 amendment) that the interpretation that is less favorable to the person proposing the terms and conditions, usually the seller, applies when they are vaguely worded is found in paragraph 2 of the same article (section 305c (2) BGB).

Scope

The scope of application of sections 305 to 309 BGB is defined and constrained by section 310 BGB.

By excluding businesspersons and legal persons from the application of sections 305 para. 2 and

3, 308 and 309 BGB, the protection of business contractors is diminished in accordance with section 310 para. 1 BGB. Because businesspeople and legal entities (like stock corporations or limited liability companies) are thought to possess the legal knowledge necessary to negotiate and enter into agreements, they are given a different level of protection when it comes to AGBs. In other words, they do not need the same level of protection as consumers.

As a result, they will only be subject to a few provisions of the AGB law, for instance, the

invalidity of clauses that unfairly prejudice the contractual partner against good faith

and fair use obligations and fair dealing requirements (section 307 BGB).

Furthermore, legal transactions pertaining to family law, company law, or succession law are not covered by the legal framework for standard terms. Additionally, the regulations do not apply to collective bargaining agreements (Tarifverträge) or the law of industrial relations (kollektives Arbeitsrecht). They are not subject to control in this regard because there is no need to protect one party in a collective bargaining agreement between an employer or employers' association and a trade union. They do, however, apply to individual employment contracts (section 310 para. 4 BGB); however, the specifics of the field must be considered when implementing these regulations in the context of labor law.

Implementation of the EU Directives 93/13

The Gesetz zur Regelung des Rechts der Allgemeinen Geschäftsbedingungen (Law on the Regulation of Standard Terms and Conditions)implemented the Directive 93/13/EEC on unfair terms and was later integrated into the German civil code(BGB) during 2002 reform (Schuldrechtsreform). key principles such as fairness and transparency, are reflected in sections 305–310 BGB, which regulate the use of standard terms in contracts. This implementation has set

a requirement for businesses to clearly notify consumers of availability of standard term in a contract. These sections also invalided ambiguous terms. This implementation ensures that the as an alignment with the Directive's goals with regards to consumers protections from unfair and detrimental terms in contractual agreements.

3.1.2 ITALIAN CIVIL CODE

The Italian civil code, originating in 1942 yet firmly grounded in the ideology of the Enlightenment, does not envisage any form of direct and substantive control on the fairness of contract bargains. Jus privatorum as Private law, promotes individuals to pursue their interests by allowing them a significant degree of autonomy and self-determination and making sure of formal equality. The Italian civil code only allows for limited control over contract content in certain circumstances.

The 1942 civil code indeed addressed the subject of contract formation and content, which have gone through significant modifications in present day. The introduction of uniform contract terms piqued the legislator's interest. Those are contracting whose terms are imposed on the other party by one party (usually the one with the stronger bargaining position) using a standard form adopted for several similar transactions, rather than the result of a negotiation process and the final convergence of the parties' wills.

According to Article 1341(1) cc, standard contract terms produced by one party are binding on the other party if they were aware of them at the time of contract formation or should have been aware of them with reasonable diligence. Article 1341(2) cc states that certain sorts of clauses (often known as clausole vessatorie) are ineffective unless specifically approved in writing. These clauses are those that, in the favor of the party who prepared them beforehand, limit liability, give the other

party the ability to withdraw from the contract or suspend its performance, or impose time limits involving forfeitures; limit the other party's ability to raise defenses; restrict the freedom of contract in dealings with third parties; provide for a tacit extension or renewal of the contract; include arbitration clauses; or deviate from the courts' jurisdiction.

In contracts made by adhering to forms or formularies created to uniformly regulate specific contractual relationships, Article 1342 further states that when terms added to such forms or formularies are incompatible with the original terms of said forms or formularies even if the latter have not been struck out they take precedence over the original terms. The application of article 1341(2) is unaffected by this.

In summary, Article 1341(1) states that simply being aware of a term is enough to make it binding. Article 1341(2) requires the adherent to pay attention to the most burdensome terms to compensate for failure to respect the principle of parties' freedom.

Lastly, terms that limit or exempt one party's liability for cases of fraud (dolo) or gross negligence (colpa grave) by rendering them void (nulli) are strictly prohibited by article 1229 cc. Additionally, a party cannot limit or exempt liability in situations where the debtor or his auxiliary acts in a way that violates duties arising from public order. It should be mentioned that this article covers all obligations (obbligazione), not just those arising from contracts.

3.1.3 Czech Republic

Articles 1379, 1432, and 1435–1437 of the Canadian Civil Code served as the model for the CzeCC's regulation of contracts of adhesion (smlouvy sjednávané adhezním způsobem). Any contract whose essential terms have been decided by or directed by one of the parties without giving the weaker party a genuine chance to affect the content of such vital terms is subject to the

restrictions on contracts of adhesion. Two rebuttable legal presumptions qualify the burden of proving that a contract is a contract of adhesion. The first is the assumption that the party who entered into a commercial relationship with the entrepreneur that was outside of that party's control is the weaker party. Additionally, it is assumed that the contract of adhesion is one that was reached with the weaker party using a standard form that is employed in business or other comparable circumstances.

To a certain extent, consumer law rules can serve as a standard for evaluating a clause that is especially detrimental. The severity of the disadvantage shall not be greater than in the event of legal actions involving consumers, who the legislator deems especially deserving of protection. This clause must be followed. Entrepreneurs may, however, omit it from their agreements with one another unless one party can demonstrate that a provision that was suggested by the other party and was not included in the actual contract wording is extremely against fair dealing principles and business practices.

Consumer a Protection

In essence, any provision in consumer contracts is subject to an unfairness evaluation. The application is not restricted to terms that are not specifically negotiated or to terms that are standard. A clause that addresses the obligation's primary topic or the evaluation of the mutual consideration's sufficiency is the only exemption, as long as it is written in an understandable and straightforward manner. The UCTD's Article 4(2) is followed in interpreting this exception. It goes without saying that a fair clause should match the otherwise relevant law.

There is a list of unjust terms that are prohibited under the CzeCC. The list was somewhat influenced by the one in the UCTD Annex. The Czech legislator, however, took a more stringent

stance. Instead of merely being a collection of assumptions, as is the case with the gray list under the UCTD, the clauses that are forbidden as unfair without further consideration essentially form a blacklist. Furthermore, even though the UCTD does not enumerate certain instances, some clauses are prohibited.

The legislator approved a set of standards to be used in evaluating unfairness. The CJEU's ruling in Mohammed Aziz v. Caixa d'Estalvis de Catalunya, Tarragona i Manresa (Catalunyacaixa), case C-415/11, is the source of the practice.

It is further emphasized that the clause must be clear and understandable. The legislator did not, however, explicitly say that a term is necessarily unfair if it lacks clarification. It could be a surprising phrase included in the normal terms, it could be nonexistent, or it could be interpreted in the consumer's advantage. The test of injustice also considers comprehensibility and clarity, as long as the phrase is included in the contract.

Although there is no such thing as an unjust term, the customer may claim that the clause is fair. The unjust term is deemed invalid by the Supreme Court and certain authors. There are no noteworthy repercussions from this difference. Consumers are not the only ones who can argue that the word is unjust. An organization for the protection of consumers may commence proceedings against the entrepreneur to require it to desist from the use of an unfair word. This is the application of Article 7 of the UCTD and Directive 2009/22/EC of April 23, 2009, on injunctions for the protection of consumers' interests.

Further Insights

The adoption of Act No. 395/2009 Coll., on Significant Market Power in the Sale of Agricultural and Food Products and its Abuse, was prompted by issues with supply chains for the distribution of food and agricultural products. The misuse of substantial market power is generally forbidden by section 4 of this Act. In addition to this, the same clause forbids certain contractual arrangements. For instance, abuse can occur when contractual terms are negotiated or applied in a way that significantly unbalances the parties' rights and obligations, or when a payment or other consideration is negotiated or obtained in exchange for no service or other counter-performance, or when the counter-performance is disproportionate to the value of the consideration that was actually provided.

Such provisions can be revoked. In order to implement Directive (EU) 2019/633 on Unfair Trading Practices in Business-to-Business Relationships in the Agricultural and Food Supply Chain, an amendment to this Act is now being prepared. Furthermore, the unfairness of the default interest or debt maturity provisions must be brought out. Clauses that are so egregiously unfair are voidable. The implementation of Directive 2011/7/EU on Combating Late Payment in Commercial Transactions is embodied in this regulation.

3.2 *COMPARATIVE ANALYSIS OF GERMANY AND ITALY*

3.2.1 Rule of Incorporation

In Italy, the case-law has concentrated on the interpretation of articles 1341–42 cc in respect of signed contracts. It is actually rather surprising that there was no case law in Italy on the time of incorporation. The necessity of conoscenza or conoscibilità is required at a time when the contract is concluded, so the clausole generali di contratto inserted in a receipt sent after the conclusion of the contract are not enforceable because, in at least one case decided at the last instance, it is made

clear that reference to the moment the party fanalized the contract excludes the enforceability of clauses where the adherent has the opportunity to know them after the conclusion of the contract. Unless it is otherwise evident that the party knew them or should have known them.

On the other hand, contracts with a business party (unternehmer) remain subject to pre-AGB-G contract law principles. In practice, there is a duty to refer to general terms but not communicate them to the other party, who has the right to learn about them under reasonable conditions. Explicitly mentioning terms and conditions is unnecessary if the parties have a long-standing commercial relationship (ständige Geschäftsbeziehungen) and have previously adopted them, or if the terms are common in a specific trade. Terms related to public services are subject to special incorporation rules.

The contract excludes any "unexpected" terms. Terms are considered 'unexpected' if it contains certain obligations that consumers would normally not expect to encounter in a contract (section 305c BGB). This reflects pre-existing case law. Paragraph 2 of the same article contains the familiar principle (added only by the 2002 amendment) that when the general terms and conditions are obscurely worded, the interpretation which is less favorable to the person proposing them, usually the seller, applies (Section 305c(2) BGB).

3.2.2 Rule on Interpretation

Italy only recognizes the contra proferentem rule outlined in Article 1370 cc. The Italian civil code prioritizes objective interpretation rules over subjective ones, making this article limited in practical applications. The code defines two types of interpretation rules: subjective (articles 1362-66 cc) and objective (articles 1366-71 cc). Subjective norms take precedence over objective norms, which serve as a supplement. Subjective research of a term may lead to useful results, regardless

of its objective meaning. Article 1362cc states that "in interpreting a contract one must find what the common intention of the parties was, and not limit oneself to the literal meaning of the words; in order to find out the common intention of the parties, one must take into account their behavior as a whole, even after the conclusion of the contract." This is the first rule to be applied in order to determine the true intention of the parties. Only when there is still interpretative doubt can one turn to the rules of objective interpretation. The reason why article 1370 has not been applied in practice is due to the residual role that objective rules of interpretation play.

In German law proceedings to set aside unfair standard terms (Unterlassungsklage), standard terms are analyzed to determine if they can be interpreted in a way that harms the customer's interests. In the event, the use of such a standard term is prohibited under the principle of "kundenfeindlichster Auslegung".

The ambiguity Rule

The ambiguity rule (Unklarheitenregel) in section 305c para. 2 BGB applies when interpreting a clause fails to produce a clear and obvious result. When in doubt, the clause is interpreted in favor of the contractual partner, limiting their rights to the least extent possible. This interpretation applies when a term restricts a contractual partner's rights to the point where it would be considered invalid under standard terms regulations. The contractual partner benefits from this solution as it renders the term null and void, allowing for the application of more favorable legal rules. In other words, this procedure encourages standard term issuers to clearly and unambiguously lay out their terms, reducing the risk of a clause being declared null and void or remaining in the contract. It also benefits customers in cases of doubt.

3.2.3 Judicial Administered Test (fairness control)

The BGB then includes a 'grey' and 'black' list of unfair terms. The grey list under section 308 includes terms that could significantly disadvantage clients. The German legislator uses terms like 'reasonable', 'particular importance', 'unreasonably high', and 'inadequately specified' to provide judges with sufficient flexibility in determining whether an unfair disadvantage exists based on specific circumstances. These terms are known as Klauselverbote ohne Wertungsmöglichkeit and are subject to judicial appraisal.Case-by-case analysis.

section 309 identifies terms whose invalidity is not subject to appraisal (Klauselverbote mit Wertungsmöglichkeit). Such terms might be: the seller excludes liability for defective goods, the seller limits liability to repair only, or to third parties (e.g., manufacturer).

The two lists are completed by section 307, which lays down a general test (Inhaltskontrolle) for terms that do not fall within section 308-9 Standard business terms are invalid if, contrary to the requirement of good faith, they unfairly disadvantage the user's contractual partner. The latter is the key requirement of the fairness test. In determining whether there is a significant disadvantage, the judge must identify and weigh the interests of the two parties with respect to the particular type of contract under review in the aggregate, and that the contract's objectives.

This clause is especially crucial for maintaining fairness in business-to-business agreements because, as section 310 clarifies, the lists in section 308–9 only apply to agreements that are not made with an undernehmer. Naturally, this does not imply that a clause in a business-to-business contract that appears in one of the two lists cannot be deemed unfair under section 307.

According to the second paragraph of section 307, if a provision cannot be reconciled with the fundamental principles of the statutory rule from which it deviates, it is presumed to be an unreasonable disadvantage. Scholars and courts typically distinguish between default rules based

on consideration of equity (Bestimmungen mit Gerechtigsgehalt), that is, those that reflect the need to protect the weak party, and those that simply have a practical use (Bestimmungen mit Zweckmässigkeitfunktion). This is in cognizance with earlier case law on section 242 BGB holding that a term that modifies the "directing image" (Leitbild) of the contract given by default rules is contrary to good faith. Only non-compliance with the former may be deemed to result in unfairness.

According to section 307(2)2, terms are also unfair if they restrict fundamental rights or obligations that stem from the nature of the contract in a manner that creates the possibility that the purpose of the agreement will not be realized. Therefore, when an exemption clause addresses the contractual obligations (Kardinalpflichten), or those that are essential to achieving the goals of the agreement, it may be deemed unfair. Naturally, these clauses only create a presumption that can be disproved, for instance, by demonstrating that the customer has received an additional benefit in exchange for the disadvantage. when one term or condition is ineffective, the remaining terms and conditions of the contract still apply (section 306(1) BGB), and any applicable legal provisions take the place of the ineffective terms and conditions (section 306(2) BGB).

Italian fairness control

Articles 1175 (fair behavior), 1337 (good faith in negotiation and pre-contractual liability), 1358 (party behavior while condition is pending), 1366 (interpretation according to good faith), and 1375 (performance according to good faith) cc all specifically mention the general principle of good faith, which supports Book II (obligations). Additionally, the Relazione al Codice Civile specifically mentions a duty of good faith with regard to contratti d'adesione. However, it appears that there is no judicially developed definition of its precise meaning or content. Courts have never

made an effort to rationally and clearly articulate the standards and guidelines that occasionally led them to determine whether a particular behavior was or was not "in good faith." Traditionally, judgments pertaining to good faith are supported by merely stating whether a particular behavior conforms or does not conform to "correctness and loyalty," "respect of the word given, and protection of the expectations raised."86 "solidarity": it is challenging to determine the causal relationship between the final decision and good faith as a criterion for such a decision because the precise conditions that make good faith a (decisive) argument in favor of one party are not stated.

Furthermore, courts have occasionally been hesitant to apply good faith as a ratio decidendi out of concern that doing so would compromise the predictability and legal certainty of their rulings. The 1966 ruling by the Corte di Cassazione, which held that "a behavior which is contrary to loyalty, correctness, and social solidarity cannot be unlawful and cannot be a source of liability for damages as long as it does not entail at the same time a violation of someone else's rights embedded in other rules," is a fairly well-known example of this caution. Stated differently, unless there is a concurrent violation of other legally protected rights, a simple violation of good faith may not have legal repercussions.

3.3 Future Trends

Possibilities of Harmonization

Currently, the scope of standard form contracts covered by unfair terms rules varies by country. Certain regimes only apply to consumer forms. For example, as a minimum harmonization regulation, the EU's Unfair Contract Terms regulation (UCTD) mandates member states to include consumer forms in national law implementing the UCTD. Unfair terms rules in some European countries specifically address these issues. This is true, for example, for Ireland's Unfair Terms in

Consumer Contracts Regulations. Outside of Europe, another example of unfair terms regulation that only addresses consumer forms is the unfair terms provision of New Zealand's Fair-Trading Act. Some other regimes go slightly beyond consumer forms, although they nevertheless fall within the ambit of regulation. One example is Australia's regulation. The Australian Consumer Law's unreasonable conditions clause applies to both consumers and small enterprises, which are viewed as being in a comparable situation to consumers. Other regimes encompass all business forms rather than focusing on consumers. In Europe, examples include Germany and the Netherlands, both of which go above and above the UCTD-mandated minimum of consumer forms, including business-to-business agreements that favor the drafting party. Regimes, for example, prohibit conditions that generate 'a considerable imbalance in the parties' rights and obligations' or that are 'excessively and unreasonably damaging to the... adhering party. Furthermore, unfair terms legislation typically results in an unjust term being rendered unenforceable. Furthermore, it is common in unfair terms regulation that, except from the offending phrase, the remainder of the contract remains in effect. Unlike the aspects listed above, one important aspect of unfair terms regulation that varies among regimes is the breadth of standard form contracts covered. It should be noted that the harmonization of standard form contracts within the European Union provides an opportunity for a fair business environment. In my opinion the EU should adopt a legislative framework targeting standard form contracts. This should not be limited to just consumer contract even thought even though consumers had more focus in this research, but the legislation should encompass several types of contracts, including business to business agreements, to ensure that the is a uniformity in fairness and transparency. Such legislation should promote fair competition, enhance consumer confidence and promote

cross border commerce by providing predictable legal environment. Additionally, the legislation should incorporate modern technologies to address the evolving digital age.

Integration of Blockchain technology

Blockchain technology is a system that records transactions across multiple computer systems. It has over recent times influenced the formation of not just contracts but standard form contracts. It has helped in the formation of contracts like automated drafting with a clear presentation of information to both parties. This is because the is little or no need for human resources in drafting this type of contract. Also, with the ability to generate what one will call smart contracts, the is a reduction in the likelihood of disputes over contracts terms and also drafts base of an objective criteria.

The are various changes which blockchain technology brings to standard form contact. With a cloud system which is easily accessible, standard form contracts can be stored in this blockchain systems and accessible by many parties with a huge reduction of physical documents. Furthermore, the universal nature of blockchain technologies will further help cross border transaction. To add, one can go further into these changes without mentioning how easy it will be for regulatory compliance by businesses. With various company adopting automated system, they are designed to compile and conduct ongoing monitoring on 24 hours 7 days a week basis (a night day watch man). As such the transparent and immutable nature of blockchain technologies records facilitates audits and regulatory oversight, ensuring that standard form contracts adhere to legal standards. A review of the literature on specific examples of SFCs revealed a lack of a thorough assessment of the textual and documentary aspects of SFCs, which are especially relevant when extending these

concepts and regulations to future technologies such as smart contracts. Instead, prevalent opinions are either based on outmoded conceptions from paper versions of these contracts, or on industry and corporate philosophies that fail to adequately address the requirements of consumers/users in the digital age. Perhaps a more nuanced and critical examination of the 'desirable' traits that a digital, networked environment can support is the more appropriate question going ahead. Boyd (2008) identifies permanence, searchability, and a limited audience as characteristics of a networked public. Perhaps determining which of these elements a blockchain-based smart contract system can improve or distort is a worthwhile endeavor.

Challenges to these systems could include risks of cyber attackers, living business with the duty to implement data protecting measures. Also, there will be the need to create or regulate/modify traditional dispute resolution mechanisms. Generally, blockchain technologies provide and increase efficiency, transparency and reduce need for intermediaries and minimize disputes. However, the adaptation of such a system requires and address of the challenges mentioned above.

Increased Digitalization

This refers to the integration of digital technology into everyday life, transforming how business operates and how contracts are formed, executed and managed. Digitalization has influenced the formation of standard form contracts through various means namely, the use of online platform for E-commerce websites and mobile apps and digital market facilitates the creation of contracts. Secondly, automated contract generating tools like Contractsafe LLC have greatly reduced the time and effort required to draft contracts and ensure consistency. Of course, you cannot talk on

formation of contract via digitalization without mentioning the use of electronic signatures. This has streamlined the contract formation process and reduced the need for physical presence.

The question one will ask is what are some of those changes digitization has on standard form contract. They are present and flow from accessibility and convenience. With templates available online with some websites providing user friendly interface that guide users through the contracts formation process, this ensures that the terms are clearly understood. These tools allow for the creation of dynamic contract templates that can be customized based on user input. This provides a degree of personalization while maintaining efficiency, regulatory compliance and ensuring that the interest of parties is clearly stated in standard form contracts. Digital contracts can include interactive features, such as clickable terms and embedded explanations, to help users understand the contract better.

There are several approaches to addressing the injustices of business to consumer standard form contracts, including regulating the content of the contracts themselves, offering several remedies in cases of unconscionability, and requiring disclosure or more express assent. One aspect that is common to all these alternatives and should be thoroughly investigated is how prior digital Standard Form Contract were legally regarded as textual things. This entails investigating how a user and reader might come across a contract as part of a digital interface, as well as how conceptions of real effort signal to courts a ‘reasonable communicativeness' in these settings. This could also entail investigating interpretations of procedural unconscionability in relation to factors such as awareness, agreement, presentation, and meaningful choice. All these factors must be considered not only when talking about digital contracts, but also for automated contracts with the advent of smart contract technology. As mentioned above when talking on blockchain

technologies, the is always the right of cyber attack and data breach and to top it up with some of these tools operating on devices with high operating systems, not everyone can access it.

CONCLUSION

1. The study has thoroughly examined the existing legal frameworks governing standard form contracts in Europe. It is evident that while there are efforts to address the issue of unfair terms, there is no single consolidated framework governing standard form contracts across the European Union. In Germany, the legal framework for standard form contracts is well-defined under the BGB, which includes specific provisions for AGBs. The German approach emphasizes the need for transparency and fairness, requiring that standard terms be clearly communicated to the other party. However, the scope of these regulations is limited to consumer contracts, leaving business-to-business agreements with less protection. In Italy, the civil code addresses standard form contracts through articles 1341 and 1342, which require specific approval for certain burdensome clauses. The Italian approach focuses on ensuring that the adherent is aware of the most onerous terms, but it lacks a comprehensive framework for evaluating the fairness of all contract terms. The Czech Republic has adopted a more stringent approach, influenced by the Canadian Civil Code, which includes specific provisions for contracts of adhesion. The Czech legal framework emphasizes the need for clear and understandable terms and provides a mechanism for evaluating the fairness of contract terms, particularly in consumer contracts. Despite these efforts, the lack of a unified framework across the European Union creates inconsistencies and gaps in consumer protection. This calls for the development of a comprehensive legislative framework that harmonizes the regulation of standard form contracts across all member states, ensuring a consistent level of protection for consumers.
2. The effectiveness of consumer protection laws and judicial practices in Europe has been assessed, particularly in safeguarding individuals from unfair terms and practices in

standard form contracts. The analysis of court interpretations in jurisdictions like Germany, Italy, and the Czech Republic reveals that while there are mechanisms in place to protect consumers, there is still room for improvement. In Germany, the courts have developed a robust body of case law addressing the fairness of standard form contracts. The principle of "kundenfeindlichster Auslegung" (interpretation most unfavorable to the customer) is applied to ensure that ambiguous terms are interpreted in favor of the consumer. However, the effectiveness of these protections is limited by the scope of the regulations, which do not apply to business-to-business contracts. In Italy, the courts have been cautious in applying the principle of good faith, often relying on other legal provisions to address unfair terms. The lack of a clear and consistent judicial approach to evaluating the fairness of contract terms has led to uncertainty and inconsistency in consumer protection. The Czech Republic has taken a more proactive approach, with courts applying a comprehensive fairness test to evaluate the terms of standard form contracts. The adoption of a blacklist of unfair terms provides a clear framework for protecting consumers, but the effectiveness of these protections depends on the willingness of the courts to rigorously apply the fairness test. To enhance the effectiveness of consumer protection laws and judicial practices, it is essential to provide judges and other members of the judicial system with comprehensive training on the laws and principles governing standard form contracts. This will ensure that they are well-equipped to handle cases involving unfair terms and provide consistent and effective protection for consumers.

3. The role of European Union directives in the harmonization of standard form contracts has been explored, along with the influence of advancements in technology. The study finds that EU directives like the Unfair Contract Terms Directive (93/13/EEC) and the Consumer

Rights Directive play a crucial role in promoting fairness and transparency in standard form contracts. The Unfair Contract Terms Directive aims to protect consumers from unfair terms by requiring that contract terms be clear and understandable. It also provides a framework for evaluating the fairness of contract terms, ensuring that consumers are not subjected to terms that create a significant imbalance in the parties' rights and obligations. The Consumer Rights Directive further enhances consumer protection by providing additional rights and remedies for consumers in sales transactions. However, the effectiveness of these directives is limited by the varying implementation and enforcement practices across member states. To achieve a truly harmonized approach, it is essential to ensure consistent implementation and enforcement of EU directives across all member states. This can be achieved through regular monitoring and evaluation of national practices, as well as providing guidance and support to member states in implementing the directives. Technological advancements, such as blockchain technology, offer significant potential for enhancing the regulation and monitoring of standard form contracts. Blockchain technology can ensure the transparency and immutability of contract terms, reducing the risk of manipulation and ensuring that consumers are fully informed about the terms of their contracts. The integration of these technologies can also facilitate cross-border commerce by providing a standardized and transparent framework for evaluating and enforcing contract terms. This will reduce legal ambiguities and ensure that consumers are protected regardless of the jurisdiction in which they enter into a contract.

4. The study proposes several reforms aimed at balancing contractual freedom with consumer rights. These include addressing challenges posed by digitalization and enhancing the overall fairness and functioning of standard form contracts. One of the key reforms is the

development of a comprehensive legislative framework that harmonizes the regulation of standard form contracts across the European Union. This framework should include clear and consistent rules for evaluating the fairness of contract terms, as well as mechanisms for ensuring transparency and informed consent. The framework should also provide for regular monitoring and evaluation of national practices to ensure consistent implementation and enforcement. Another important reform is the integration of modern technologies, such as blockchain, into the regulation and monitoring of standard form contracts. Blockchain technology can ensure the transparency and immutability of contract terms, reducing the risk of manipulation and ensuring that consumers are fully informed about the terms of their contracts. To address the challenges posed by digitalization, it is essential to develop clear and consistent rules for digital contracts. This includes ensuring that digital contracts are presented in a clear and understandable manner, and that consumers are provided with sufficient information to make informed decisions. It is also important to ensure that digital contracts are subject to the same fairness and transparency requirements as traditional contracts.

List of Sources

Academic Work

1. Paolisa Nebbia, 2007. Unfair Contract Terms in European Law, A Study in Comparative and EC Law. 484661472-Unfair-Contract-Terms-in-European-Law-A-Study-in-Comparative-and-Ec-Law-Modern-Studies-in-European-Law-PDFDrive-pdf.pdf
2. Mark R. Patterson, 2010. Standardization of Standard-Form Contracts: Competition and Contract Implications. Standardization_of_Standard_Form_Contrac (1).pdf
3. Faton SHABANI1, Valdete MURATI1. Standard Contracts and Their Implementation in Today's Legislation.
4. Michal Malacka. General Commercial Terms and Standard-Form Contracts in International Business Relations.
5. Marko Stankovic and Sanja Maksimovic "Comparative analysis of the temporary service contract in the legal systems of the republic of Serbia, northern Macedonia and European countries" September 2020.
6. Anjo Rheeders. The International Interpretation of Unconcionability Factors Contained in Section 40 of the Consumer Protection Act 68 of 2008.
7. Spark, G. (2013b). Undue influence and unconscionability under the PICC, PECL and DCFR. In Cambridge University Press eBooks (pp. 299–308). https://doi.org/10.1017/cbo9781139382823.013
8. Spark, G. (2013). Unconscionability. In Cambridge University Press eBooks (pp. 279–298). https://doi.org/10.1017/cbo9781139382823.012
9. Micklitz, H. W., "Legislative Technique in Consumer Law"
10. Brownsword, R., "Contract Law: Themes for the Twenty-First Century."
11. Geoffrey Clark, Gregory Anderson and Christian Thomann "A History of Insurance"
12. Primavera De Filippi and Aaron Wright "Blockchain and the Law: The Rule of Code"
13. Melanie Swan "Blockchain: Blueprint for a New Economy."
14. Hillman R, J Rachlinski (2001) 'Standard-Form Contracting in the Electronic Age."
15. Faure M, H Luth (2011) 'Behavioural Economics in Unfair Contract Terms: Cautions and Considerations'
16. Edward J. Malecki and Bruno Moriset "The Digital Economy: Business Organization, Production Processes and Regional Developments."
17. Alexander Novozhilov and Matthias Middell "Digitalization and Law: Trends and Prospects" December 01, 2021
18. Slawson W. David (1971) 'Standard Form Contracts and Democratic Control of Lawmaking Power
19. Roy L. Steinheimer, Jr "UNIFORM COMMERCIAL CODE: AN INTRODUCTION" 1965
20. Christian von Bar, Eric Clive and Hans Schulte-Nölke "Principles, definitions and model rules of European private law."

Regulatory Legal Acts

21. The German Civil Code (BGB) 1900.

22. Italian Civil Code (Codice Civile) 1942.
23. Czech Civil Code (Obcanky Zakonik) 1964.
24. Israeli Contract law 1964.
25. Consumer protection law 1981 (Israel).
26. Law on Obligation (Republic of North Macedonia). 2002.
27. Uniform Commercial Code 1952.

Directives

28. Unfair Contract Terms Directives (93/13/EEC).
29. Consumer protection Directives 2011/83/EU.
30. Directive on Injunction for the protection of Consumers Interest 98/27/EC.
31. Directive on Alternative Dispute Resolution for Consumers Dispute 2013/11/EU.
32. E-commerce Directives 2000/31/EC.
33. Directive 2009/22/EC on injunctions for the protection of consumers' interests.
34. Directive 2011/7/EU on Combating late payment in Commercial Transaction.
35. Directive (EU) 2019/633 on Unfair Trading practices in Business-to-Business in Agricultural and Food Supply Chain.
36. UNIDROIT Principles 2016

Other sources (Electronic Document)

37. https://en.m.wikipedia.org/wiki/Unconscionability#:~:text=Unconscionability%20(sometimes%20known%20as%20unconscionable,are%20contrary%20to%20good%20conscience.
38. https://www.cambridge.org/core/books/abs/vitiation-of-contracts/unconscionability/F155D2A5CCA4CE2D5F3BEDE0E180758
39. https://repository.up.ac.za/bitstream/handle/2263/53182/Rheeders_International_2015.pdf?sequence=1&isAllowed=y
40. https://kluwerlawonline.com/journalarticle/European+Review+of+Private+Law/16.6/ERPL2008069
41. https://www.ccbe.eu/fileadmin/speciality_distribution/public/documents/EUROPEAN_PRIVATE_LAW/EN_EPL_20100107_Principles_definitions_and_model_rules_of_European_private_law-Draft_Common_Frame_of_ReferenceDCFR.pdf#page231
42. https://www.legiscompare.fr/web/IMG/pdf/13._CH_5_Good_faith.pdf
43. https://repository.up.ac.za/bitstream/handle/2263/53182/Rheeders_International_2015.pdf?sequence=1&isAllowed=y
44. https://www.ccbe.eu/fileadmin/speciality_distribution/public/documents/EUROPEAN_PRIVATE_LAW/EN_EPL_20100107_Principles__definitions_and_model_rules_of_European_private_law_-_Draft_Common_Frame_of_Reference__DCFR_.pdf#page231
45. https://www.nyulawreview.org/wp-content/uploads/2018/08/NYULawReview-77-2-Hillman-Rachlinski.pdf
46. https://thelawbrigade.com/wp-content/uploads/2022/10/Mbieh-Rebecca-Mbilufeh-IJLDAI.pdf

47. https://elsevier-ssrn-document-store-prod.s3.amazonaws.com/14/06/24/ssrn_id2458658_code69228.pdf?response-content-disposition=inline&X-Amz-Security-15
48. https://journals.co.za/doi/pdf/10.10520/AJA0035483X_129
49. https://reinci.com/ojs3308/index.php/almisbah/article/download/11/45
50. https://verwaltung.bund.de/leistungsverzeichnis/en/rechte-und-pflichten/102837961
51. https://eprints.lse.ac.uk/75815/1/Rowan_New%20French%20law_2017.pdf
52. https://www.bundeskartellamt.de/EN/Consumer_protection/Protecting_Consumer_Rights/Protecting_Consumer_Rights_node.html
53. https://commons.allard.ubc.ca/cgi/viewcontent.cgi?params=/context/fac_pubs/article/3794/&path_info=Future_of_Unfair_Terms_Regulation_Commercial_Contracts.pdf
54. https://via.library.depaul.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1094&context=bclj
55. https://www.researchgate.net/publication/307622893_Legal_Liability_in_Standard_Form_of_Contract/fulltext/57cd9db708ae057987aab2c4/Legal-Liability-in-Standard-Form-of-Contract.pdf?origin=publication_detail&_tp=eyJjb250ZXh0Ijp7ImZpcnN0UGFnZSI6Il9kaXJlY3QiLCJwYWdlIjoicHVibGljYXRpb25Eb3dubG9hZCIsInByZXZpb3VzUGFnZSI6InB1YmxpY2F0aW9uIn19
56. https://www.legislation.gov.uk/eudr/2000/31/pdfs/eudr_20000031_adopted_en.pdf
57. https://www.europarl.europa.eu/RegData/etudes/STUD/2020/652707/IPOL_STU%282020%29652707_EN.pdf#page16