

The Consensual in the Adhesion Contracts

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Abstract

Increasingly, we live in a more contractual way. The most common types of contracts used nowadays are “Adhesion Contracts” that individuals and groups are obliged to enter into.

Such contracts in which no terms and conditions are allowed to be negotiated by weaker parties have become the basis for contractual relations. This partially stems from speedy and proficiency characteristics of modern life, and partially from the need for increasing productivity to the maximum extent possible.

Contracts of Adhesion are usually standardized and pre-arranged contracts, where little or no opportunities to negotiate the terms and conditions of the contract is provided. This raises the question of the role of the natural sense of equity and disparity of the present forms of Adhesion Contracts. One party usually has all preponderant bargaining power, and uses it to draft the contract primarily to his advantage in offering goods or services.

The party with greater bargaining power not only has more overall power in drafting the terms and conditions of the contract, but also in using the technical and technological information related to the goods or services which are the subject matter of the primary contract. On one hand, this lowers the chance of such terms and conditions being read and also means they are likely to be ignored even if they are read by the party of lesser bargaining power. On the other hand, it makes the party of lesser bargaining power ignorant of the basic services and goods which are the subject matter of the primary contract.

This study deals with the natural sense of fairness and equity applied in the current Contracts of Adhesion. The terms, conditions, duration, termination and

acceptance of the contract are set by one dominant party, and the other party has little or no ability to negotiate more favorable terms, and is thus placed in a “Take It or Leave It” position. Therefore, the weaker party has no choice but acquiesce to the terms of the contract.

Unfairness or inequity of Adhesion Contracts doesn't imply, however, that these contracts are invalid. There is nothing unenforceable or even wrong about Adhesion Contracts, if the basic elements and conditions of the contract in addition to competence of the contracting persons are available.

Contracts of Adhesion prevailed nowadays are unfair in that the party with greater bargaining power always imposes his various terms and conditions on the weaker party. This implies that Contracts of Adhesion, in their present forms, lack justice which is the basic element for protecting the interests of persons entering into such contracts.

In conclusion, Contracts of Adhesion are entirely well thought out, prepared and literally implemented to achieve the goals and protect the interests of the party with dominant bargaining power. Also, they exclude the needs of the weaker party on a “Take It or Leave It” basis. It is this unjust that causes imbalance in such contracts. Thus, we should work to protect fairness in all types of Adhesion Contracts whose pre-arranged terms, provisions and conditions cannot be bargained and discussed by weaker parties. This is in addition to arbitrary requirements that lead to imbalance in such contracts.