

What is the reasonableness test?

July 2023

The Unfair Contract Terms Act 1977 ([UCTA](#)) protects consumers and parties with lesser bargaining power from unfair or unreasonable contractual provisions.

A crucial part of UCTA is the so-called “reasonableness test”, which assesses the fairness and enforceability of specific contract terms.

Which terms does the reasonableness test apply to?

The reasonableness test primarily applies to exclusion and limitation clauses which seek to limit or exclude liability for breach of contract, negligence or other claims.

The courts may deem such clauses unfair or unenforceable if they fail the reasonableness test. The test considers such factors as the following when evaluating a contractual term:

1. The relative bargaining power of the parties

The test considers any power imbalance between the parties to determine whether one party can impose unfair terms on the other.

2. Knowledge and awareness of the term

It assesses whether the party affected by the term had sufficient opportunity to understand and appreciate its implications.

3. Inducements or representations made

The test considers any inducements, representations, or special circumstances that influenced the inclusion of the term in the contract.

4. The subject matter of the contract

The court can assess the term’s reasonableness in light of the nature and purpose of the contract, including the risks and liabilities typically associated with such agreements.

5. Availability of alternatives

The test examines whether the party imposing the term offered alternatives, allowed negotiation or if they presented the contract as a “take it or leave it” proposition.

6. Public interest

The reasonableness test may consider the public interest or any social or economic implications of the specific term.

The test seeks to balance safeguarding the interests of parties with less bargaining power while still acknowledging the legitimate business interests of all parties involved.

If the courts deem a contractual term unreasonable under UCTA, they may modify the term or declare it unenforceable. This can result in the affected party not being bound by that particular term. They may be entitled to seek remedies or adjustments to the term to align it with reasonableness standards.

Conclusion

The reasonableness test allows parties to challenge unfair or oppressive contractual provisions and promotes fairness in commercial transactions.

[Sayem Chowdhury](#) can help negotiate or review your commercial agreements and provide tailored advice based on the specific circumstances of a contract. He can help you navigate the complexities of UCTA. Sayem can ensure you thoroughly understand the reasonableness test and its implications in any given situation. Call him today.

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Note: This article is not legal advice; it provides information of general interest about current legal issues.

