

SPECIAL ISSUE

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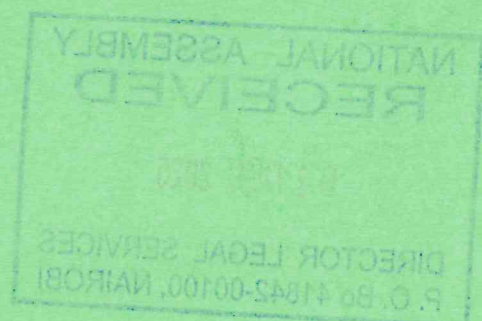
NATIONAL ASSEMBLY BILLS, 2025

NAIROBI, 5th November, 2025

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THE LAW OF CONTRACT (AMENDMENT) BILL, 2025

A Bill for

AN ACT of Parliament to amend the Law of Contract Act

ENACTED by the Parliament of Kenya as follows—

1. This Act may be cited as the Law of Contract (Amendment) Act, 2025.

Short title.

2. The Law of Contract Act (hereby referred to as the “principal Act”) is amended by inserting the following new section after section 2—

Insertion of new section 2A in Cap. 23.

Interpretation.

2A. (1) In this Act, unless the context otherwise requires—

“negligence” means the breach of an obligation arising from an express or implied term of a contract to take reasonable care or exercise reasonable skill in the performance of a contract;

“requirement of reasonableness” means a term that is fair and reasonable to be included in a contract having regard to the circumstances which were or ought to have been known when the contract was made.

3. The principal Act is amended by inserting the following new sections after section 3—

Insertion of new sections in Cap. 23.

Prohibition against exclusion of liability arising out of negligence.

3A. (1) A person shall not, by reference to a contract term, exclude or restrict liability for death resulting from negligence.

(2) A person shall not, by reference to a contract term, exclude or restrict liability for loss or damage resulting from negligence, unless the term satisfies the requirement of reasonableness.

(3) Where a contract term excludes or restricts liability for loss or damage resulting from negligence, an agreement to the term by a person shall not indicate the person’s voluntary acceptance of risk.

Prohibition against
exclusion of liability
arising out of breach
of contract.

3B. (1) This section applies between contracting parties where one party is a consumer.

(2) As against a party dealing as a consumer, the other party shall not, by reference to a contract term—

(a) exclude or restrict liability for loss or damage when the supplier is in breach of the contract; or

(b) claim to be entitled—

(i) to render a contractual performance substantially different from that which was reasonably expected of the supplier; or

(ii) in respect of the whole or any part of the contractual obligation, render no performance at all.

(2) Despite subsection (1), a term that satisfies the requirements of reasonableness may be relied upon by the supplier.

Prohibition against
exclusion of liability
arising sale of
defective goods.

3C. (1) In the case of goods supplied for consumer use, liability for loss or damage shall not be excluded or restricted by reference to a contract term contained in or operating by reference to a guarantee of the goods where the loss or damage—

(a) arises from the goods proving defective while in consumer use; and

(b) results from the negligence of a person concerned in the manufacture or distribution of the goods.

(2) For the purposes of this section—

(a) goods are regarded as in consumer use when a person is using them or

has them in possession for use other than exclusively for the purpose of a business; and

- (b) anything in writing is a guarantee if it contains or purports to contain a promise or assurance that defects will be made good by complete or partial replacement or by repair, monetary compensation or otherwise.

Prohibition against exclusion of liability in sale of goods or hire purchase agreements.

3E. (1) A person shall not exclude or limit their liability for loss or damage by reference to a contract term where the liability arises from breach of—

- (a) a condition or warranty provided under section 14 of the Sale of Goods Act; or
- (b) a condition or warranty provided under section 8(1) of the Hire-Purchase Act.

Cap. 31.

Cap. 507.

(2) As against a person dealing as a consumer, liability shall not be excluded or restricted by reference to a contract term where the liability arises from breach of—

- (a) a condition or warranty provided under section 15, 16 or 17 of the Sale of Goods Act; or
- (b) the condition provided under section 8(2) of the Hire Purchase Act.

Cap. 31.

Cap. 507.

(3) As against a person dealing otherwise than a consumer, the liability specified under subsection (2) may be excluded or restricted by reference to a contract term unless the term satisfies the requirement of reasonableness.

Prohibition against exclusion of liability in other agreements.

3F. (1) Where the property in goods passes under or in pursuance of a contract not governed by the law of sale of goods or

hire purchase, subsections (2), (3) and (4) apply as regards the effect to be given to contract terms excluding or restricting liability for breach of obligation arising by implication of law from the nature of the contract.

(2) As against a person dealing as a consumer, liability, in respect of goods corresponding with the description or sample or the quality or fitness for a particular purpose of goods, shall not be excluded or restricted by reference to such term.

(3) As against a person dealing otherwise than as a consumer, liability in respect of goods corresponding with the description or sample or the quality or fitness for a particular purpose of goods may be excluded or restricted by reference to such a term in so far as the term satisfies the requirement of reasonableness.

(4) A person shall not exclude or limit their liability by reference to a contract term unless the term satisfies the requirement of reasonableness where the liability is in respect of—

- (a) the right to transfer ownership of the goods or give possession; or
- (b) the assurance of quiet possession to a person acquiring the goods in pursuance of the contract.

MEMORANDUM OF OBJECTS AND REASONS

Statement of the objects and reasons for the Bill

The principal object of this Bill is to amend the Law of Contract Act to protect parties to a contract against unfair and unconscionable terms. The Law of Contract Act provides for the application of English common law principles in contract law which has resulted in the use of unfair and unconscionable terms. Therefore, the Bill seeks to prevent parties from relying on such unfair and unconscionable terms.

Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms

The Bill neither delegates legislative power nor limits rights and fundamental freedoms.

Statement on whether the Bill concerns county government

The Bill does not concern county governments in terms of Article 110 of the Constitution.

Statement as to whether the Bill is a money Bill within the meaning of Article 114 of the Constitution

The enactment of this Bill shall not occasion additional expenditure of public funds.

Dated the 10th April, 2025.

ADEN DAUD MOHAMED,
Member of Parliament.

