



## Introduction

1. The **Law of Contract (Amendment) Bill, 2025** proposes significant reforms to Kenyan contract law. The Bill aims at curbing unfair and unconscionable contractual terms, particularly those relating to exclusion, negligence and limitation of liability. The Bill seeks to address longstanding concerns that the existing common law framework has enabled the widespread use of oppressive clauses, particularly in standard consumer contracts, which are often unfair to parties with weaker bargaining power

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## Key Proposed Amendments

2. The Bill seeks to introduce **Section 2A** that defines **Negligence** as breach of an express or implied contractual obligation to exercise reasonable care or skill and **Requirement of Reasonableness** as a term that is fair and reasonable in light of circumstances known or reasonably foreseeable at contract formation.
3. **Section 3A** in the Bill introduces restrictions on excluding liability for negligence. A contract shall not exclude or restrict liability for death resulting from negligence. Liability for loss or damage caused by negligence may only be excluded or restricted where the contract term satisfies the requirement of reasonableness. Further, agreement to an exclusion clause does not amount to voluntary acceptance of risk.
4. The Bill also introduces **Section 3B** that states that in contracts involving consumers, liability for loss or damage arising from defective goods or negligence in their manufacture or distribution by the supplier cannot be excluded or restricted through contract terms or guarantees. An exception that the supplier can rely on is only where the term satisfies the requirement of reasonableness.
5. Introduction of **Section 3C**, which offers strict protection for consumers. Where goods are supplied for consumer use, liability for loss or damage caused by defective goods and negligence in manufacture or distribution cannot be excluded
6. The Bill also introduces **Section 3E**, which limits the exclusion or limitation of liability for breach of statutory conditions and warranties under the **Sale of Goods Act and the Hire-Purchase Act**, particularly in consumer dealings. For non-consumer transactions, exclusion is permitted only if the clause satisfies the requirement of reasonableness. Introduction of this clause significantly restricts limitation clauses in commercial supply, distribution, and asset finance contracts.
7. A new **Section 3F** is proposed and it states that where goods are transferred under contracts not governed by the Sale of Goods Act or Hire Purchase Act, similar statutory restrictions apply. In consumer transactions, any term that excludes or limits liability for the description, quality, sample or fitness of goods is void. In non-consumer transactions, such exclusions are allowed only if objectively reasonable. Similarly, liability for fundamental ownership rights, including title and quiet possession, cannot be excluded unless reasonable. This prevents contractual structuring designed to circumvent statutory protections.

## Key Commercial and Legal Implications

8. If the Bill will be enacted, it will necessitate an immediate review and restructuring of standard contract templates across most sectors such as banking and finance, construction, professional services, supply and distribution, e-commerce, logistics etc. This is because common exclusion and limitation clauses would now become subject to strict statutory controls, rendering many contracts as currently formulated unenforceable.
9. Litigation exposure, particularly in negligence, defective goods, consumer protection, and contractual enforcement disputes, would rise significantly, as courts gain expanded authority to assess fairness and reasonableness.
10. The amendments are expected to reshape commercial negotiations as they tend to strike a balance in bargaining power in standard-form contracting, curtailing supplier dominance and strengthening protections for consumers.
11. Increased regulatory scrutiny, with non-compliant clauses susceptible to invalidation and potential financial consequences.
12. Most disclaimers in consumer contracts will no longer be valid. As a result, businesses will need to review their contracts carefully and update their risk/indemnity plans, including using insurance, setting reasonable liability limits, and putting strong protections in place.

## Conclusion

13. Should the Bill pass, it will present a fundamental shift in contractual enforceability in Kenya, forcing business to make early strategic planning critical for risk management, maintaining contractual certainty and safeguarding business operations.

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