UNIVERSITI PUTRA MALAYSIA

UNCONSCIONABILITY IN THE LAW AND PRACTICE OF FRANCHISING

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UNCONSCIONABILITY IN THE LAW
AND PRACTICE OF FRANCHISING

By

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To my parents Mohd. Ishan bin Abd. Rahman and Atemah bt. Hashim; my dearest husband Zaidi bin Adam and my son Ahmad Basri.
This study examined the operation of unconscionability in the law of franchising and the nature of existence of unconscionability in practice of franchising. Franchising is relatively a new branch of commercial law and practically opened to various forms of abuses by the franchisors and franchisees. Meanwhile, unconscionability has a rather uncertain scope within the general sphere of contract law. It is therefore, important to also identify the true nature of franchising, the development of unconscionability and its relationship with the relevant contractual theories and other doctrines or notions, the probabilities of unconscionable practices in franchising and the totality of the whole spectrum of the idea of unconscionability from the legal perspectives.

Applying the qualitative approach by means of inductive reasoning using the historical research method, this study found that franchising resulted from the commercial practices or conveniences rather than any legal tradition. It is multidimensional in nature, which incorporates, among other, the concept of
contract law, a notion of licence and some features of usufruct. Unconscionability is the most proper doctrine to deal with the abuses and unfair practices that occur in franchising. In fact, there are probable occurrences of unconscionable practices in franchising in Malaysia based on the empirical studies of actual cases. As unconscionability is still evolving and the formulation of another parameter could still be contemplated, a new parameter is proposed in this research whereby the broad doctrine of unconscionability encompasses fairness, good faith, fair dealing and undue influence, while inequality of bargaining power and honesty in certain circumstances become the supporting factors in proving unconscionability.

From this research, it is concluded that unconscionability is the situation whereby the contract is entered into, negotiated and obtained. As the contract is a bargain, when the bargain is unconscionable it becomes unconscionable bargain. Unconscionability is an essential doctrine in the law of contract and the formulation of the new parameters of unconscionability in the contract law is also applicable to the law of franchising. The parameters can assist in promoting conscionability in the franchise business environment locally and internationally.
Dengan menggunakan pendekatan kualitatif secara pentaakulan inductif melalui kaedah kajian berkaitan sejarah, kajian ini mendapati bahawa francais terhasil daripada amalan-amalan atau kemudahan-kemudahan komersil dan bukan daripada sebarang amalan perundangan. Ianya bersifat berbilang dimensi antaranya konsep undang-undang kontrak, idea lesen dan beberapa ciri ‘usufruct’. Ketidakberhibaan adalah doktrin yang paling sesuai untuk menangani penyalahgunaan-penyalahgunaan dan amalan-amalan tak adil yang berlaku dalam francais. Secara fakta, wujud kemungkinan amalan-amalan tak berhiba dalam francais di Malaysia berdasarkan kajian-kajian empirikal kes-kes sebenar. Disebabkan ketidakberhibaan masih lagi berkembang dan perumusan had yang lain masih boleh lagi dilakukan, kajian ini mencadangkan suatu had baru dimana doktrin ketidakberhibaan yang luas mencakupi keadilan, suci hati, urusan adil dan pengaruh tak berpatutan, manakala ketidak seimbangan kuasa dalam berurusan dan kejujuran dalam beberapa keadaan menjadi faktor-faktor yang menyokong pembuktian ketidakberhibaan.

Daripada kajian ini, maka dapatlah dirumuskan bahawa ketidakberhibaan adalah suatu keadaan dimana suatu kontrak dimasuki, dirundingkan dan diperolehi. Memandangkan suatu kontrak adalah merupakan suatu urusan, apabila urusan itu tak berhiba ianya menjadi urusan tak berhiba. Ketidakberhibaan adalah doktrin asas dalam undang-undang kontrak dan perumusan had-had baru ketidakberhibaan dalam undang-undang kontrak akan juga terpakai kepada undang-undang francais. Had-had ini akan
membantu menggalakkan keberhibaan dalam persekitaran perniagaan francais di peringkat tempatan dan antarabangsa.
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In the name of Allah, the Most Compassionate, the Most Merciful. Praise is only to Allah (s.w.t.) for His Benevolence wills me to complete this thesis. May the blessing and peace of Allah be upon Prophet Muhammad (s.a.w.) and upon his family.

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Approval Sheet No. 1

I certify that an Examination Committee met on 22 February 2008 to conduct the final examination of Zahira Binti Mohd. Ishan on her Doctor of Philosophy thesis entitled "Unconscionability in the Law and Practice of Franchising" in accordance with Universiti Pertanian Malaysia (Higher Degree) Act 1980 and Universiti Pertanian Malaysia (Higher Degree) Regulations 1981. The Committee recommends that the candidate be awarded the relevant degree. Members of the Examination Committee are as follows:

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I hereby declare that the thesis is based on my original work except for quotations and citations which have been duly acknowledged. I also declare that it has not been previously or concurrently submitted for any other degree at UPM or any other institutions.

ZAHIRA BINTI MOHD. ISHAN

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BIBLIOGRAPHY

BIODATA OF THE CANDIDATE
LIST OF CASES

A & M Produce Co. v. FMC Corp. (1982) 186 Cal. Reporter 114
A & M Thompson Pty Ltd v. Total Australia Ltd [1980] 2 NSWLR 1
ACCC v. CG Berbatis Holdings Pty Ltd and Others (2000) 96 FCR 491; 169 ALR 324
ACCC v. CG Berbatis Holdings Pty Ltd (2003) 197 ALR 153
ACCC v. Kwik Fix International Pty Ltd (May 2002)
ACCC v. Samton Holdings Pty Ltd and Others (2002) 189 ALR 76
AG of NSW v. World Best Holdings Ltd [2005] NSWCA 261; 223 ALR 346
Agip (Africa) Ltd. v. Jackson [1990] Ch 265
Agro Holdings Ltd. v. Flexi-Coil (Australia) Pty Ltd [1999] FCA 1658
Alec Lobb (Garages) v. Total Oil [1983] 1 WLR 87; [1985] 1 All ER 303
Allcard v. Skinner (1887) 36 Ch D 145
American International Assurance Co Ltd v. Koh Yen Bee [2002] 4 CLJ 49
Armendariz v. Foundation Health Psychcare Servs, Inc, 6 P.3d 669, 690 (Cal. 2000)
Atlantic Oil Co v. County of Los Angeles, 69 Cal 2d 585
Australian Blue Metals v. Hughes [1963] AC 74

Ball Marty Medical Corp v. St Jude Medical, Inc, 1988 US Dist. LEXIS 15498
Basnol Abol & Others v. The State Government of Sarawak & Other Appeal [2004] 2 CLJ 553
Bell v. Lever Bros [1932] AC 161
Benincasa v. Dentalkit Sri (Case C-269195) [1988] All ER (EC) 135
Binions v. Evans [1972] Ch 359
Black v. Wilcox (1976) 70 DLR (3d) 192
Blomley v. Ryan (1956) 99 CLR 362
Bobux Marketing v. Raynor Marketing Ltd [2002] 1 NZLR 506
Bridge v. Campbell Discount Co Ltd [1962] AC 600
Bridgewater and Others v. Leahy and Others [1998] 194 CLR 457, 158 ALR 66
Burger King Corp. v. Hungry Jacks Pty Ltd (2001) NSWCA 187

Campbell Soup Co v. Wentz 172 F.2d 80 (3d Cir 1948)
Carboni v. Arrospide, 2 Cal Rptr 2d 845 (Cal App 1991)
Carter v. Boehm (1766) 3 Burr 1905; 97 ER 1162
Casio (Malaysia) Sdn Bhd v. Wahab Tuan Idris [2001] 2 ILR 117
Cassidy v. Ministry of Health [1951] 2 KB 343
Cawthon v. Phillips Petroleum 124 So 2d 517 (1960)
Central London Property Trust Ltd v. High Trees House Ltd [1947] KB 130
Chai Singh v. Budin bin Abdullah (1918) 1 FMSLR 352
Cheng Hang Guan & Ors v. Perumahan Farlim (Penang) Sdn Bhd& Ors [1993] 3 MLJ 352
Cheo Lean How v. Fock Fong Looi [1985] 1 LNS 48
Chia Keng Beng v. M.T.A. Taynappa Chitty (1900 & 1901) 6 SSLR 6
Chin Choy & Ors v. Collector of Stamp Duties [1978] 1 LNS 26
Chung Kiaw Bank Ltd. v. United Overseas Bank Ltd [1970] 1 MLJ 185
Clifford Davis Management Ltd v. WEA Records Ltd [1975]1 All ER 237
Coe v. Esau 377 P 2d 815 (1963)
Comb v. Combe [1951] 2 KB 215
Connie A Nagrampa v. Mailgroups Inc; The American Arbitration Association No. 03-15955 (9th Cir 2005) 3379; 413 F 3d 1024; 2005 US App LEXIS 12782, June 28, 2005
Cooke v. Lamotte (1851) 15 Beav 234
County Asphalt Inc. v. Lewis Welding & Engineering Corp (1970) 323 F Supp 1300
Credit Lyonnais Bank Nederland NV v. Burch [1997] 1 All ER 144
Creswell v. Potter [1978] 1 WLR 255

Datuk Jaginder Singh & Ors v. Tara Rajaratnam [1983] 2 MLJ 196
Davies v. Directloans Ltd [1986] 1 WLJ 823
Dayan v. McDonald’s Corp, 466 NE 2d 958, 972 (Ill App Ct 1984)
Dellneed Limited v. Chin (1987) 281 EG 531
DHN Food Distributors Ltd. v. Tower Hamlets LBC [1976] 1 WLR 852
Dr A Dutt v. Assunta Hospital [1981] 1 LNS 5
Dunkin' Donuts of America, Inc v. Minerva, Inc, Bus Franchise Guide (CCH) 9988 (11th Cir 1992)
Dymocks Holdings Pty. Ltd. v. Top Ryde Booksellers Pty. Ltd. & Others [2000] NSWSC 795

Earl of Aylesford v. Morris (1873) LR 8 Ch App 484
Earl of Chesterfield v. Janssen (1751) 2 Ves Sen 157; 28 ER 82
Earl of Oxford's Case (1615) 1 Chan Rep 1; 21 ER 485
Elkins v Husky Oil Co, 455 P 2d 329 (1969)
Employees Provident Fund Board v. Bata Shoe Company (Malaya) Ltd [1968] 1 MLJ 236
Errington v. Errington [1952] 1 KB 290

FN Roberts Pest Control Co v. McDonald 208 SE 2d 13 (Ga App 1974)
Faccenda Chicken Ltd v. Fowler [1985] 1 All ER 724
Far Horizons Pty Ltd and Rodney Hackett v. McDonalds Australia Ltd (2000) VSC 310
FCT v. Williamson (1943) 67 CLR 561
Federated Engine Drivers Association of Australia v. BHP (1911) 12 CLR 409
Flores v. Transamerica Homefirst, Inc, 93 Cal App 4th 846; 113 Cal Rptr 2d 376 (2001)
Foakes v. Beer (1884) 9 App Cas 605
Freeman & Lockyear v. Buckhurst Park Properties (Mangal) Ltd [1964] 2 QB 480, [1964] 1 All ER 630
Fry v. Lane [1889] 40 Ch D 312; [1886-90] All ER Rep 1084

Garry Rogers (Aust) Pty Ltd v. Subaru (Aust) Pty Ltd [1999] FCA 903
Gateway Realty Ltd v. Arton Holdings Ltd (No. 3) (1991) 106 Nova Scotia Rep (2d) 180
Geraldine E Goss, et al v. CAN Wildlife Trust, Inc, Ct of Special Appeal of Maryland, 2004
Gertrude Overstreet v. Contigroup Companies, Inc, (5th Cir 08/23/2006)
Goldsworthy v. Brickell [1987] All ER 853
Gonzalez v. A-1 Self Storage, 350 NJ Super 403, 2000 NJ Super LEXIS 496
Goodman v. Dicker 169 F 2d 684 (1948)
Gregg v. Tasmanian Trustees Ltd [1997] 143 ALR 328

Hart v. O'Connor [1985] 2 All ER 880; [1985] AC 1000
Hill v. Mobile Auto Trim, Inc, 725 SW 2d 168, 171 (Tex 1987)
Hoffman v. Red Owl Stores, 26 Wis 2d 683, 133 NW 2d 267 (1965)
Hoffnagle v. McDonald's Corp, 522 NW 2d 808 (Iowa 1994)
Holee Holdings (M) Sdn Bhd v Chai Him & Ors [1997] 4 MLJ 601
Hospital Products Ltd v. United States Surgical Corporation (1984) 58 ALJR 587
Hughes v. Metropolitan Railway Co (1877) 2 App Cas 439

Interfoto Picture Library Ltd v. Stiletto Visual Programmes Ltd [1988] 1 ALL ER 348
Ismail v. Treats Inc, 2004 ACWSJ 23892

Jefferson Loan Co v. Livesay, 175 NJ Super 470, 1980 NJ Super LEXIS 841 (Cty Ct)
Jirna Ltd v. Mister Donut of Canada Ltd [1972] 1 OR 251; (1973), 40 DLR (3d) 303; [1975] 1 SCR (SCC)
John Lee and Son (Gratham) Ltd v. Railway Executive [1949] 2 All ER 581
Jones v. Citigroup, Cal Ct App 01/26/ 2006
Jones v. Morgan [2001] EWCA Civ 995
Jorden v. Money (1854) 5 HL Cas 185
Judge v. Blackfin Yacht Corp, 357 NJ Super 418, 2003 NJ Super LEXIS 56 (App Div)
Jumbunna Coal Mine No Liability v. Victorian Coal Miners Association (1908) 6 CLR 309

Kemayan Engineering (Sea) Pte Ltd v. Sunyap Development Sdn Bhd [2002] 1 CLJ 22
Kerl v. Dennis Rasmussen, Inc, 2004 WI 86, ¶7, ___ Wis.2d ___, 682 NW 2d 328 ¶6
Kheng Soon Finance Bhd v. MK Retnam Holdings Sdn Bhd (Bhagat Singh s/o Surian Singh & Ors, Interveners) [1996] 2 MLJ 31
Khoo Yong Seng v. Ng Choo Peng & Anor [2003] 2 CLJ 191
Kugler v. Romain, 58 NJ 522, 543, 279 A 2d 640 (1971)

L'Estrange v. F Graucob Ltd [1934] 2 KB 394
Laresse v. Creamland Dairies, Inc, 767 F.2d 716,717 (10th Cir 1985)
Lebron v. Citicorp Vendor Fin, Inc, 2004 Tex App LEXIS 6447
Legal & General Franchising Ltd v. Hill, Ch Div, (Transcript: John Larking), 16 May 1997
Leong Hup Holdings Bhd v. Tuan Haji Ishak bin Ismail & Ors [1995] MLJU LEXIS 881; [1995] 334 MLJU 1
Liberty Fin Mgmt v. Beneficial Data, 670 SW2d 40, 49 (Mo Ct App 1984)
Lloyds Bank v. Bundy (1975) QB 326
Louth v. Diprose (1992) 67 AJLR 95

Malaya Palm Oil Bulking Co Ltd v. Comm of Stamps, Singapore (1936) 1 LNS 30
Mat Jusoh bin Daud v. Syklt Jaya Seberang Takir Sdn Bhd [1982] 2 MLJ 71
McKinnon v. Secretary, Department of Treasury, 2005 FCAFC 142
McQuire v. Western Morning News [1903] 2 KB 100
Mendez v. Palm Harbor Homes, Inc, 111 Wn App 446; 2002 Wash App LEXIS 768
Miller v. McDonald's Corp, 945 P 2d 1107 (Or Ct App 1997)
Minister for Industrial Affairs v. Civil Tech Pty Ltd [1998] 70 SASR 394
Mobil Oil Corporation v. Jeremy Barnsford, 648 So 2d 119; 1995 Fla LEXIS 10; 20 Fla L Weekly S 11 (SC Florida)
Moorgate Mercantile Co Ltd v. Twitchings [1976] 1 QB 225
Morris v. Burroughs (1737) 1 Atk. 398; West t. Hard. 242
Multiservice Book-binding Ltd v. Marden [1979] Ch 84

NV De Bataafshce Petroleum Maatschappig & Ors v. The War Damage Commission (1956) 1 LNS 72
National Provincial Bank Ltd v. Ainsworth [1965] AC 1175
National Steel & Shipbuilding Company v. The United States 190 Ct Cl 247; 419 F 2d 863; 1969 US Ct Cl LEXIS 167
Neale v. Richardson (1938) All ER 753
Neeta's Herbal (M) Sdn Bhd v. Lim Bak Hiang [2000] 6 MLJ 321
Norton v. Canadian Pacific Steamships Ltd [1961] 2 All ER 785
Novus Franchising, Inc v. Taylor, 795 F Supp 122 (MD Pa 1992)

Olex Focas Pty Ltd v. Skodaexport Co Ltd (1997) 142 ALR 527
Ooi Boon Leong v. Citibank NA [1984] 1 MLJ 22

Paperlight Ltd and others v. Swinton Group Ltd, QBD (Transcript) 5 August 1998; [1998] CLC 1667
Papoo v. Veeriah [1965] 1 MLJ 127
Peterson v. BASF Corp, 618 NW 2d 821, 2000 Minn App LEXIS 1143
Petronas Dagangan Sdn Bhd v. Omar bin Abdul Samad [1996] 4 MLJ 391
Pinnel's case (1602) 5 Co Rep 117a; 77 ER 1471
Poosathurai v. Kannappa Chettiar (1919) LR 47 IA 1
Portman Building Society v. Dusangh and others, Lexis 19 April 2000
Prima Union Plywood (M) Sdn Bhd v. Sri Kemajuan Sdn Bhd [2005] 1 LNS 79
Printing & Numerical Registering Co v. Sampson (1875) LR 19 Eq 462
Pritchard v. Racecage Pty Ltd (1997) 72 FCR 203

R v. Smith (1855) 6 Cox CC 554
Ragunath Prasad v. Sarju Prasad AIR 1924 PC 60
Rasiah Munusamy v. Lim Tan & Sons Sdn Bhd [1985] 2 MLJ 291
Re An Advocate [1964] MLJ 1
Re Parkington & Co's Application 175 LT 181
Re Tan Tye (Deceased); Tan Lian Chye v. British & Malayan Trustees Ltd (1966) 1 LNS 152
Reg. v. Devon County Council, Ex Parte Baker and Another, R v. Durham County Council, Ex Parte Curtis and Another [1995] 1 All ER 73
Results Oriented, Inc v. Crawford, 538 SE 2d 73 (Ga App 2000)
Reynolds v. Skelly Oil Co 287 NW 823 (1939)
Risner v. McDonald's Corp, 18 SW 2d 903 (Tex Ct App 2000)
Rite Color Chemical Co v. Velvet Textile Co, 105 NC App 14, 1992 N App LEXIS 16
Royal Bank of Scotland Plc v Etridge (No 2) [2001] UKHL 44; [2001] 4 All ER 447; [2002] 2 AC 773
Royal Bank of Scotland Plc v. Etridge [1998] 4 All ER 705
Russell v Russell [1897] AC 395

Saad Marwi v. Chan Hwan Hua & Anor [2001] 3 CLJ 98
Samanda Holdings Bhd v. Sakullah Holdings Sdn Bhd & Ors [2006] 5 CLJ 459
Samuel v. Newbold [1906] AC 461
Saunders (Executrix of the Will of Rose Maud Gallie, Dcsd) v. Anglia Building Soc [1971] AC 1004
Seafood Court Estate Ltd v. Asher [1949] 2 All ER 155
Sehulster Tunnels/Pre-Con v. Taylor Bros, Inc/Obayashi Corp, 111 Cal App 4th 1328; 4 Cal Rptr 3d 655(2003)
Shearson Lehman Hutton Inc and Another v. Maclaine Watson & Co Ltd and Others (QBd (Comm Court) [1989] 2 Lloyd's Rep 570
Shelanu Inc v. Print Three Franchising Corp, 2003 ACWSJ LEXIS 4154; 2003 ACWSJ 20329; 123 ACWS (3d) 267
Sherman v. Texas Oil Co 165 NE 2d 916 (1960)
Simmons v. Mobil Oil Corp, Bus. Franchise Guide (CCH) 10493 (9th Cir 1994)
Smith v. Kriska 113 SW 3d 293 (Mo Ct App 2003)
Standard Chartered Bank Malaysia Bhd v. Foreswood Industries Sdn Bhd & Ors [2004] 6 CLJ 320
Tan Boon Kean v. PP [1995] 4 CLJ 456
Tan Kim Hor & Ors v. Tan Heng Chew & Ors [2004] 7 MLJ 224
Tan Say Geok & Ors v. HG Warren [1963] 1 MLJ 179
Taylor v. Johnson (1983) 151 CLR 422
The "Stolt Loyalty" [1993] 2 Lloyd's Rep 281
The Commonwealth v. Verwayen (1990) 170 CLR 394; 95 ALR 321
The Henrik Sif [1982] 1 Lloyd’s Rep 456
The Manchester, Sheffield and Lincolnshire Railway Co v. HW Brown (1883) 8 AC 703
Thomas v. Sorrell (1673) 124 ER 1098
Thomas v. Thomas (1842) 2 QB 851
Ticknor v. Choice Hotels International, Inc, 265 F 3d 931, 941 (9th Cir 2001)
Twinsectra Ltd v. Yardley [2002] 2 AC 164

Union Eagle Ltd v. Golden Achievement Ltd [1997] 2 All ER 215
United States v. Bethlehem Steel Corp, 315 US 289 (1942)

Vaughn v. General Foods Corporation 797 F 2d 1403 (7th Cir 1986); 479 US 1087 (1987)
Vendo Plc v. Mervyn Adams [2002] NICCh 3

WL May Co v. Philco-Ford Corp, 273 Ore 701, 1975 Ore LEXIS 370
Walker v. American Cyanamid Co, 130 Idaho 824, 1997 Ida LEXIS 136
Waltons Stores (Interstate) Ltd v. Maher (1988) 164 CLR 387; 76 ALR 513
Ward v. Kirkham [1967] Ch 194
Warnborough Ltd v. Garmite Ltd [2006] EWHC 10
West v. AGC (Advances) Ltd (1986) 5 NSWLR 610
Willey v. Southwestern Bell Tel Co, 219 Kan 755, 1976 Kan LEXIS 422
Williams v. Walker-Thomas Furniture Co, 350 F 2d 445 (DC Cir 1965)
Winter Garden Theatre (London) Ltd v. Millenium Productions Ltd [1946] 1 All ER 679
Wood v. Leadbitter 13 M&W 838; 153 ER 351

Yewens v Noakes (1880) 6 QBD 530
Yewpam Sdn Bhd v. Mohd. Salleh bin Sheikh Ahmad and Another Suit [2001] 1 LNS 43

Zapatha v. Dairy Mart, Inc 381 Mass 284; 408 NE 2d 1370 (1980); 1980 Mass LEXIS 1260
Zubaidah v. Zulkathar [1963] MLJ 63