

**INVESTIGATION OF UNFAIR TERMS IN  
STANDARD FORMS OF CONTRACTS:  
THE CASE OF WATER SUPPLY PROJECTS IN SRI LANKA**

**Thuduwage Thajanga Sanjeewani**

**179181N**

Dissertation submitted in partial fulfilment of the requirements for the  
Degree of Master of Science in Construction Law and Dispute Resolution

Department of Building Economics

University of Moratuwa

Sri Lanka

**August 2023**

## DECLARATION

I declare that this is my own work, and this dissertation does not incorporate without acknowledgment any material previously submitted for a degree or diploma in any other University or institute of higher learning, and to the best of my knowledge and belief, it does not contain any material previously published or written by another person except where the acknowledgment is made in the text.

Also, I hereby grant to the University of Moratuwa the non-exclusive right to reproduce and distribute my thesis/dissertation, in whole or in part in print, electronic or other medium. I retain the right to use this content in whole or part in future works (such as articles or books)".

.....  
T.T. Sanjeewani

10.08.2023  
.....  
Date

I hereby acknowledge that Ravirajasinghe Sanjeepan has followed the dissertation process set by the Department of Building Economics.

.....  
Prof. Anuradha Waidyasekara  
Dissertation Supervisor

10.08.2023  
.....  
Date

## **ABSTRACT**

### **Investigation of Unfair Terms in Standard Forms of Contracts: The Case of Water Supply Projects in Sri Lanka**

Standard forms of contracts have acquired a vital place in the construction industry. The decision of selecting suitable forms of contracts for a construction project has become a challenging task faced by the industry. This is one of the most important decisions that a client has to make when selecting the most suitable contract for a specific project, since this decision paves the pathway to the success of a project. Professionals involved in water supply projects in Sri Lanka also must adhere to these forms of contracts as they strive to avoid possible claims and disputes and improve their process.

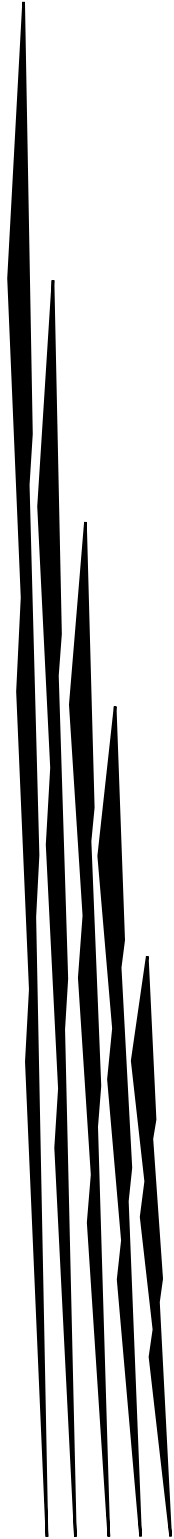
However, most standard forms of contracts include unfair contractual terms which may impact one or more parties to a project. Most research reveals that unfair terms are generally included in standard forms of contracts. Therefore, several strategies are now being utilized in the construction industry to minimize claims and disputes. This study focuses on the impact of unfair contractual terms in standard forms of contracts on contractors in the case of water supply projects in Sri Lanka.

Accordingly, a qualitative research approach should be conducted to achieve the above stated aim. A descriptive literature survey was first conducted to gather information. Expert opinion surveys were used to collect data for this research project. The gathered qualitative information was then analyzed through content analysis. Through the expert opinion survey, the impact on parties of the contract due to unfair contractual modifications were recognized, and strategies and recommendations were identified in order to minimize these issues.

Different respondents presented different claims and disputes in the expert opinion survey, such as a breach or cancellation of the contract, the claim of a changed scope of work, etc. Also, they identified several reasons for changing the contract terms in the Forms of Contracts: according to this, resource-based factors (poor material selection, material storage problems, etc.) are the main reason for such changes. Then, respondents identified the impact of these cancellations on the contractor, due to unfair contractual terms in standard form of contracts. Unfair contractual modifications may occur due to misunderstandings among project parties due to the number of variation orders, nullifying of the contract, the parties never lawfully entering the contract, delay of construction work of project parties due to variation orders, loss of coordination between project parties, delay in the completion of a project, and so on.

**Keywords:** *Standard Forms of Contracts, Unfair Contractual Terms, Claims and Disputes, Water Supply Projects*

## DEDICATION



*To my parents  
Who are worthy of being called  
Good Parents*

## **ACKNOWLEDGEMENTS**

This dissertation is a result of much commitment and support given by many organizations and staff members, who contributed in numerous ways to complete this task. A number of people assisted and instructed me to carry out the research successfully. I would like to use this opportunity to convey my gratitude to them.

First, I would like to give my gratitude to Prof. Anuradha Waidyasekara, supervisor of my dissertation, for her encouragement, support and the valuable assistance provided throughout this entire research. The research may not have become a success if she had not provided give her valuable advice. I am also thankful to Mr. A.A.D.W.V.Udayashantha [Technical Officer / Programme Assistant M.Sc. (CL&DR)], Mr. A.Srithayanandarajah (Technical Officer) and all the staff members of the Department of Building Economics, University of Moratuwa for their support given during the research period. I am grateful to all the writers of books, research papers and journal articles which I referred to in order to gather information.

Also, I am thankful to all the interviewees and industry professionals who shared their memories and experiences with me in order to complete the data collection successfully. I am grateful to many persons who helped me in different ways by sharing their experiences in the industry. At last, I give my gratitude to my beloved family, my friends, and all the others who supported me during the period of this study and encouraging me to complete this task successfully.

# TABLE OF CONTENTS

|   |      |
|---|------|
| DECLARATION .....   | i    |
| ABSTRACT.....   | ii   |
| DEDICATION .....  | iii  |
| ACKNOWLEDGEMENTS .....  | iv   |
| TABLE OF CONTENTS.....  | v    |
| LIST OF FIGURES .....   | viii |
| LIST OF TABLES .....  | ix   |
| ABBREVIATIONS .....   | x    |
| <br>  |      |
| CHAPTER ONE .....   | 1    |
| 1. INTRODUCTION .....   | 1    |
| 1.1 Background.....   | 1    |
| 1.2 Problem Statement.....  | 3    |
| 1.3 Aim and Objectives .....  | 4    |
| 1.4 Methodology .....   | 4    |
| 1.5 Scope and Limitations.....                                      | 5    |
| 1.6 Chapter Breakdown .....   | 5    |
| 1.7 Chapter Summary .....   | 6    |
| <br>  |      |
| CHAPTER TWO .....   | 7    |
| 2. LITERATURE REVIEW .....  | 7    |
| 2.1 Introduction .....  | 7    |
| 2.2 Importance of Standard Forms of Contracts to the Construction   |      |
| Industry .....  | 7    |
| 2.2.1 Benefits and Drawbacks of Standard Forms of Contracts .....   | 8    |
| 2.2.2 Elements in Standard Forms of Contracts.....                  | 10   |
| 2.3 Different Standard Forms of Contracts Used in the Construction  |      |
| Industry .....  | 11   |
| 2.3.1 Federation International des Ingenious Conseils (FIDIC) ..... | 12   |
| 2.3.2 Standard Bidding Document (SBD) .....                         | 13   |

|   |        |
|---|--------|
| 2.3.3 New Engineering Contracts (NEC) .....   | 13     |
| 2.3.4 Joint Contract Tribunal (JCT).....  | 14     |
| 2.4 Unfair Contractual Terms in Standard Forms of Contracts .....   | 14     |
| 2.5 Impacts due to Unfavourable Modifications to Contractual Terms in<br>Construction Contracts.....  | 16     |
| 2.6 Reasons for Changes to Contractual Terms in Forms of Contracts .....  | 19     |
| 2.7 Impact to Construction Stakeholders due to Unfair and Unfavourable<br>Modifications to Contractual Terms in Construction Contracts..... | 22     |
| 2.8 Chapter Summary .....   | 28     |
| <br>CHAPTER THREE .....   | <br>29 |
| 3. RESEARCH METHODOLOGY.....  | 29     |
| 3.1 Introduction .....  | 29     |
| 3.2 Research Design.....  | 29     |
| 3.3 Research Approach.....  | 29     |
| 3.3.1 Quantitative Approach.....  | 30     |
| 3.3.2 Qualitative Approach.....   | 30     |
| 3.3.3 Research Approach Adopted in this Study .....   | 31     |
| 3.4 Research Process.....   | 31     |
| 3.4.1 Initial Study.....  | 32     |
| 3.4.2 Literature Survey.....  | 32     |
| 3.4.3 Data Collection: Expert Opinion Survey .....  | 33     |
| 3.4.4 Data Analysis .....   | 34     |
| 3.5 Chapter Summary .....   | 35     |
| <br>CHAPTER FOUR.....   | <br>36 |
| 4. DATA ANALYSIS AND FINDINGS .....   | 36     |
| 4.1 Introduction .....  | 36     |
| 4.2 Expert Opinion Survey.....  | 36     |
| 4.3 Analysis of the Findings and Discussion.....  | 39     |

|  |        |
|--|--------|
| 4.3.1 Different Standard Form of Contracts Followed by the<br>Organizations when Procuring Water Supply Projects ..... | 39     |
| 4.3.2 Importance of Standard Forms of Contracts in the Water Supply<br>Projects.....                                   | 39     |
| 4.3.3 Benefits and Drawbacks of Standard Forms of Contracts .....  | 42     |
| 4.4 Unfair Contractual Terms in Standard Forms of Contracts .....  | 51     |
| 4.5 Reasons for Changing Contractual Terms in Forms of Contracts.....  | 53     |
| 4.6 Claims and Disputes Met Due to Unfair Contractual Terms in Standard<br>Forms of Contracts .....                    | 56     |
| 4.7 The Impact to the Parties of the Contract Due to Unfair Contractual<br>Modifications .....                         | 57     |
| 4.8 Strategies and Recommendations to Minimize the Issues .....  | 58     |
| 4.9 Chapter Summary .....  | 59     |
| <br>CHAPTER FIVE .....   | <br>60 |
| 5. CONCLUSIONS AND RECOMMENDATIONS .....   | 60     |
| 5.1 Introduction .....   | 60     |
| 5.2 Overview of Research and Conclusions of the Study.....   | 60     |
| 5.3 Contribution to Knowledge .....  | 63     |
| 5.4 Recommendations.....   | 63     |
| 5.5 Chapter Summary .....  | 64     |
| <br>REFERENCES .....   | <br>65 |
| APPENDIX I: INTERVIEW GUIDELINE.....   | 75     |
| APPENDIX II: INTERVIEW TRANSCRIPT .....  | 82     |

**LIST OF FIGURES**

Figure 1.1: Chapter Breakdown of the Research ..... 6

Figure 3.1: Research Process ..... 32

Figure 4.1: Professional Experience of the Respondent ..... 38

## LIST OF TABLES

|   |    |
|---|----|
| Table 2.1: Benefits and Drawbacks of Standard Form of Contracts .....                     | 10 |
| Table 2.2: Delay Factors .....  | 21 |
| Table 2.3: Termination Clause in Form of Contracts .....                                  | 23 |
| Table 2.4: Variation Clause in Forms of Contracts .....                                   | 25 |
| Table 2.5: Extension Clause in Form of Contracts .....                                    | 25 |
| Table 4.1: Composition of Experts .....   | 37 |
| Table 4.2: Responses for the Importance of Standard Forms of Contracts .....              | 40 |
| Table 4.3: Responses for Benefits of Standard Forms of Contracts .....                    | 43 |
| Table 4.4: Relevancy Level .....  | 43 |
| Table 4.5: Responses for Drawbacks of Standard Forms of Contracts .....                   | 49 |
| Table 4.6: Relevancy Level .....  | 49 |
| Table 4.7: Responses for Unfair Contractual Terms in Standard Form of Contracts           | 51 |
| Table 4.8: Reasons for Changing Contractual Terms in Standard Forms of<br>Contracts ..... | 54 |

## **ABBREVIATIONS**

|       |   |  |
|-------|---|--|
| CIDA  | - | Construction Industry Development Authority          |
| DSC   | - | Different Site Conditions                            |
| EOT   | - | Extension of Time                                    |
| FIDIC | - | Federation International des Ingenious Conseils      |
| ICE   | - | Institution of Civil Engineering                     |
| ICTAD | - | Institute of Construction Training and Development   |
| IFCE  | - | International Federation of Consulting Engineers     |
| IFHPW | - | International Federation of Housing and Public Works |
| JCT   | - | Joint Contract Tribunal                              |
| NEC   | - | New Engineering Contracts                            |
| PM    | - | Project Manager                                      |
| SBD   | - | Standard Bidding Document                            |
| UK    | - | United Kingdom                                       |
| US    | - | United States of America                             |