

"JUST CLICK HERE": A BRIEF GLANCE AT
ABSURD ELECTRONIC CONTRACTS AND THE
LAW FAILING TO PROTECT CONSUMERS

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As e-commerce explodes around the world, consumers' rights have been left behind. Before the completion of virtually every transaction on the Internet, the onus is placed on consumers to read and agree to an onslaught of terms and conditions. Often hidden in the middle of this extremely lengthy list of terms are massive exemption and limitation of liability clauses that deny consumers most if not all of their rights as "equal" trading partners. The common law principle that all onerous clauses in a contract need to be brought to the attention of the consumer for them to be binding seems to have been lost with the invention of the "click here to agree" button for signing online contracts. As the courts in Canada have not provided clear guidance on this issue thus far, other means must be pursued in order to protect consumers from the near-tyrannical control of unencumbered electronic standard form contracts in e-commerce. This paper will describe the principle of sufficiency of notice as it applies to paper contracts, and then contrast it with the newer jurisprudence that has refused to apply the principle to electronic contracts. The reasons for the refusal will be explored, followed by an examination of why the principle of sufficiency of notice needs to be applied and strengthened to respond to the increasingly onerous provisions hidden in electronic contracts. Finally, some other options for achieving the goal of consumer protection from hidden onerous clauses will be briefly explored. These other options include introducing stiffer consumer protection legislation domestically, the creation of international treaties, developing voluntary standards of contracting, and relying on Internet self-regulation.