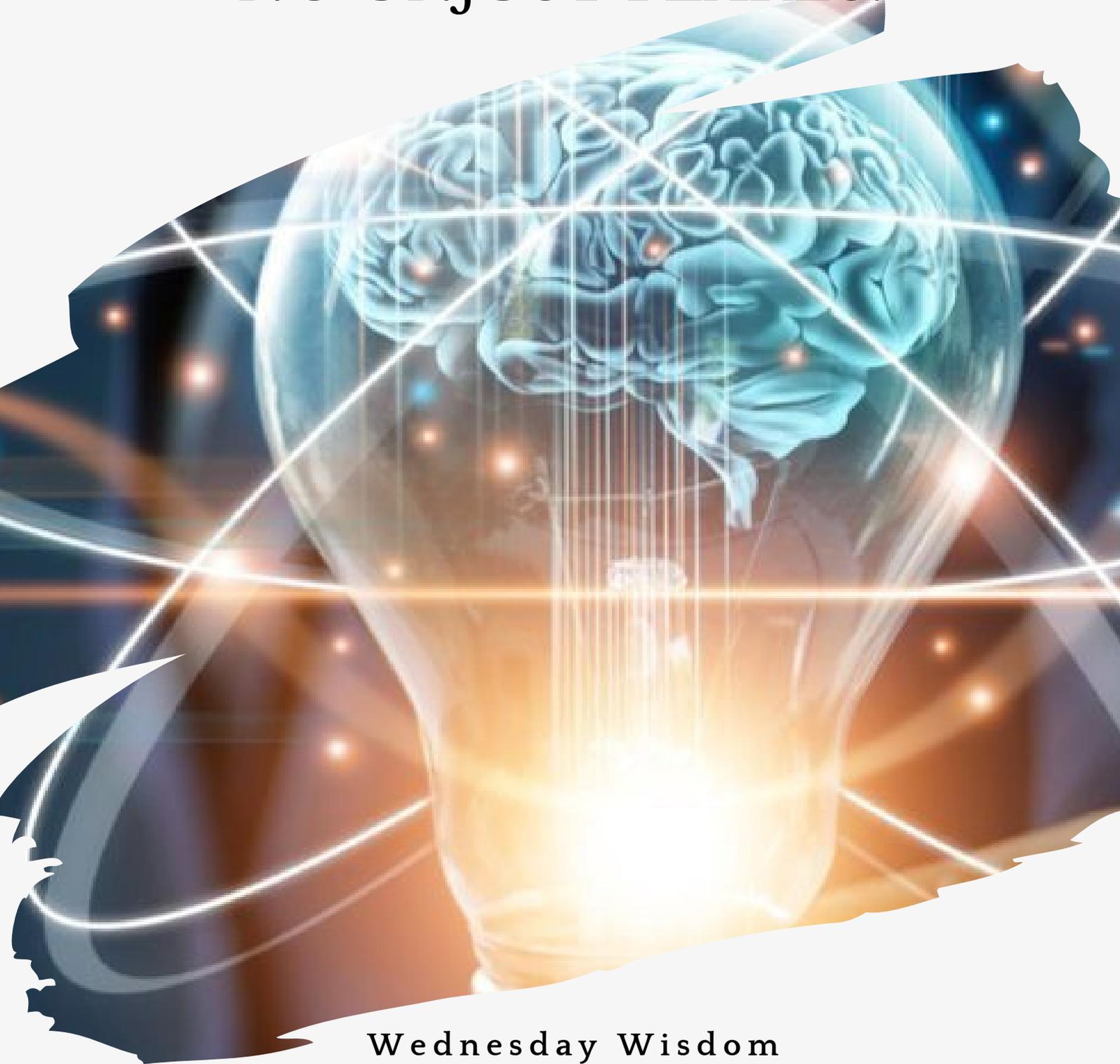


REASONABILITY IN LEGAL AFFAIRS : BALANCED TERMS, NO UNJUST FLARES.



Wednesday Wisdom
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REASONABLE [1], is a common word used by most of us many times during the day in our professional and personal interactions. The word adopts vivid connotations in various contexts.

Sometimes, what is reasonable to one may not be reasonable to another, and thus starts the conflict as each one tries to explain the rationale of his/her view to another. We have all heard the story of six blind men and their perspective about an elephant when they are observing different body parts.

Each one believes his perspective to be perfect and goes on to form an opinion around the same.

The word reasonable has a lot of legal significance as well, as most important statutes use the word reasonable in different contexts on multiple occasions. To give certain examples, let's look at the significant statutes of the land and how many sections use the word reasonable within them!

[1] The article reflects the general work of the authors and the views expressed are personal. No reader should act on any statement contained herein without seeking detailed professional advice.

THE CONSTITUTION OF INDIA

Constitution is the base statute in India, and it refers to the word reasonable at least 11 times.

1. Our most important rights as citizens –the fundamental rights are all subject to reasonable restrictions under Article 19[2]. Take, for instance, the fundamental right to freedom of speech and expression is granted to all citizens. However, it is important to note that this right is not unfettered and is subject to restrictions that are deemed reasonable. This concept is further exemplified in one of our recent articles discussing the rights of movie producers.
2. Reasonable is also used in Article 243U which states that a municipality shall be given a reasonable opportunity of being heard before its dissolution.

• INDIAN CONTRACT ACT, 1872

If we examine the provisions of the Indian Contract Act, we observe that the term "reasonable" is mentioned more than 12 times.

- i. Section 46 states that when the specific time for contract performance is not mentioned, it is expected to occur within a **reasonable timeframe**. Determining what constitutes a reasonable time in each specific case is a matter of fact.
- ii. Section 49 states that if the location is not specified, the promisor must apply to the promisee to appoint a **reasonable place** for the performance of the promise, and to perform it at such place.
- iii. Section 27 states that any agreement in restraint of trade is void. However, an exception is covered about cases of sale of goodwill being subject to **reasonable restrictions** (as found by the Court. Generally, any legal challenge to a non-competition obligation imposed by employers on their employees falls under this section.
- vi. The Contract Act also refers to the concept of reasonable diligence on multiple occasions:
 - Section 212 speaks that an agent is always required to act with reasonable diligence
 - Section 56 states that an agreement to an impossible act is void.

[2] Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of 4 [the sovereignty and integrity of India], the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence.

·However, there is an exception which states that if the promisor^[3] could have known with reasonable diligence that the promise is impossible or unlawful, then the promisor is required to make a compensation for the loss which such promisee^[4] sustains through the non-performance of the promise.

i. Section 67 states that fulfilment of a promise is conditional upon availability of reasonable facilities^[5].

When one looks at the provisions, the interpretation of word reasonable becomes extremely important in the context of each case. Also, what is reasonable for one may not be reasonable for another.

Apart from statutes and laws, the use of the word reasonable in contracts is also very common. Often, contracts refer to:

- i. Discharge of obligations in a reasonable manner by the parties;
- ii. Determination of confidentiality of any information through the standard of a reasonable person. For instance, the clause may state that:

The "Confidential Information" shall include, without limitation, plans, business opportunities, proposed terms, pricing information, discounts, any other proprietary information, research, any equipment etc. either identified as confidential at the time of disclosure or should be understood by a reasonable person under the circumstances to be confidential in nature

iii. Reasonable precautions to be taken by parties while performing the contractual obligations;

For instance, the clause may state that **Each Party shall take reasonable precautions to maintain business continuity and perform its obligations.**

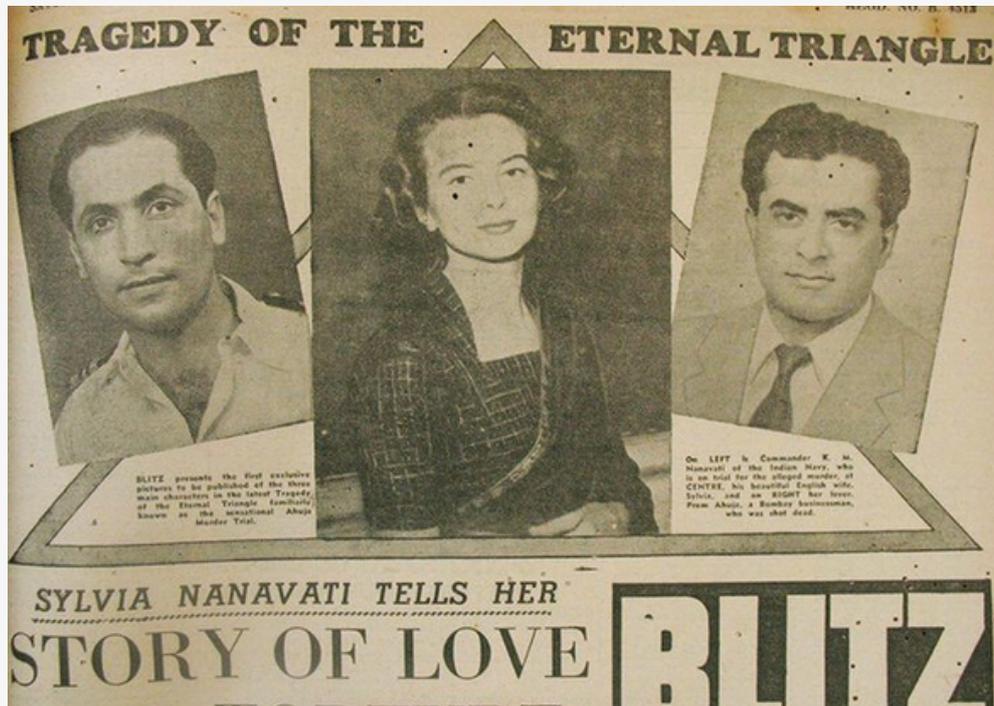
iv. Standards of efforts is always a highly debated point as clients generally insist on best efforts and service providers want to limit the standards to reasonable efforts; The task of determining reasonability of an action turns the fate of many legal battles as if the actions are found to be within the bounds of reasonability the same would not be considered as a breach.

[3] The one who makes the promise

[4] The one in whose favour the promise is made

[5] If any promisee neglects or refuses to afford the promisor reasonable facilities for the performance of his promise, the promisor is excused by such neglect or refusal as to any non-performance caused thereby.

This determination is no cake walk and often depends on multiple factors and circumstances. Many a times, the perceptions of the judges and jury also weigh a lot on their decisions. In the earlier days, India witnessed lot of jury trials, but this system was discouraged as the prejudices of the jury would outweigh rationale.



The Nanavati judgement[6] nailed this further. In this case, a navy officer had killed his friend, who had an illicit affair with his wife. He pleaded not guilty.

The jury acquitted the officer considering that in the given circumstances any reasonable person could be provoked, and the killing was an act of self-defence in spite of the fact that the naval officer had walked into the room of his friend with a fully loaded revolver and had admitted the crime immediately thereafter. The case captured the media attention then as the officer was portrayed as a wronged husband by a playboy friend. It is reported that the tabloids sold heavily then covering the entire trial and often toys like Nanavati revolver sold bigtime[7]. It also seemed that the jury sympathized with a dejected husband.

This acquittal was considered unreasonable, and the matter was again considered by a judge and finally the officer was convicted[8] in view of the clear evidence. This judgment led to the decline of jury system in India and finally,

[6] 162 (1) Cri. L. J. 521

[7] The Honourable Murder The Trial of Kawas Maneckshaw Nanavati : [03_aarti.qxd \(sarai.net\)](http://03_aarti.qxd(sarai.net))

[8] This conviction was upheld by the Supreme Court and the Supreme Court judgement uses the word reasonable 59 times.

The Supreme Court's judgement in the context of reasonableness (more so in the context of a reasonable time) in **Veerayee Ammal vs. Seeni Ammal (19.10.2001)[9]** is worth considering.

This case pertained to sale of an immovable property and dragged for more than two decades in the judiciary as the parties continuously litigated for four rounds from trial court, First Appellate Court to High Court and finally till the Apex Court of the land.

An Agreement to Sale was entered into between the parties on 5th January 1980, and the parties specifically intended to conclude the sale by 15th June 1980 with exchange of part consideration. It was clear from the agreement that the property was to be used for residential purposes and the seller was required to take necessary steps to clear the property of certain obstructions (like a telegraph pole). The seller did not fulfil the obligations of completion of sale and contended that the agreement was abandoned by the purchaser.

The lower courts found that the said pole was removed in the first week of November 1980 and the purchaser immediately took prompt steps thereafter to call upon the seller through written notices, to complete the sale deed. The purchaser also made a publication in a daily newspaper intimating the people at large not to purchase the property of the seller as the same was the subject matter of agreement to sell executed amongst the parties. On the failure of the seller to comply with the conditions of the Agreement, the demands made in the letters and the notice, the purchaser promptly filed a suit in the month of November, 1980 itself.

The legal action initiated by the purchaser was rightly held by the Trial Court and the First Appellate Court to have been commenced without delay and definitely within a **reasonable time**. The High Court overruled this finding (in second appeal) which was again restored by the Supreme Court.

The word "reasonable" has in law prima facie meaning of reasonable in regard to those circumstances of which the person concerned is called upon to act reasonably knows or ought to know as to what was reasonable. It may be unreasonable to give an exact definition of

[9] Appeal (civil) 7185 of 1997

the **word "reasonable"**. The reason varies in its conclusion according to idiosyncrasy of the individual and the time and circumstances in which he thinks.

The dictionary meaning of the "reasonable time" is to be so much time as is necessary, under the circumstances, to do conveniently what the contract or duty requires should be done in a particular case. In other words, it means as soon as circumstances permit. In Law Lexicon it is defined to mean "A reasonable time, looking at all the circumstances of the case; a reasonable time under ordinary circumstances; as soon as circumstances will permit; so much time as is necessary under the circumstances, conveniently to do what the contract requires should be done; some more protracted space than 'directly'; such length of time as may fairly, and properly, and reasonably be allowed or required, having regard to the nature of the act or duty and to the attending circumstances; all these convey more or less the same idea.

The Court also reiterated the aspect that determining reasonable time of performance of obligations and readiness of the purchaser was a question of fact which is dependent on various factors like (i) from the express terms of the contract; (ii) from the nature of the property; and (iii) from the surrounding circumstances, for example, the object of making the contract. For the purposes of granting relief, the reasonable time has to be ascertained from all the facts and circumstances of the case.

As the American legal philosopher Peter Westen puts it:

“Reasonableness is not an empirical or statistical measure of how average members of the public think, feel, or behave...Rather, reasonableness is a normative measure of ways in which it is right for persons to think, feel, or behave.”

It should be noted that perception is created and twisted easily with circumstances. The authors conducted an online survey to determine perspectives and reasonableness around them and surveyed were encouraged to freely enter their responses on the questions below[10]

[10] All names and situations are purely fictional and any resemblance to anything factual is absolutely coincidental.

Situation 1

Ananda and Bomai have entered into an agreement wherein Ananda has agreed to provide shoes for a specific marathon for certain selected runners. The marathon is scheduled on a fixed date, say 3rd January 2024. Due to sudden floods which occur at Ananda's factory Ananda is unable to provide the shoes in time. Bomai has to obtain the shoes at a higher price from the market and wants to claim the entire compensation from Ananda. Ananda states that he is not responsible for the loss as floods were not a factor in his control.

Question 1 : Do you think Ananda has made a reasonable justification to avoid the loss considering that floods are a natural phenomenon?

More than 60 % felt that this was a reasonable justification.

Section 56 of the Contract Act, 1872 states that an agreement to do an impossible act is void. Whether the manufacturing was impossible due to floods needs to be checked specifically considering the gravity, duration and operational possibilities during the flood.

Question 2: Would your answer change if floods were a common occurrence in the geography where Ananda's factory is located?

40 % of the readers promptly changed the answers and this seems to be a reasonable change as floods being a common occurrence would imply that Ananda had to take reasonable precautions considering floods.

Question 3: Would your answer change if Ananda proves that Ananda had commenced the production of the shoes in the first week and that shoes were partially ready?

This was a mixed bag response, and many felt that this would only indicate towards an intention to not cheat but definitely not a complete discharge of obligations.

SURVEY QUESTION 2

Ananda was supposed to deliver certain materials to Charles. Ananda appointed Bomai to do the necessary delivery to Charles. While appointing, Ananda informed Bomai that the route to Charles is difficult and thus proper packaging is to be done to ensure safe delivery. Bomai does not package the material properly.

Charles does not get a proper delivery and the material is partially damaged. Charles claims damages and Ananda states that only Bomai is responsible.

Question 1: Do you think it is reasonable to hold Bomai solely responsible for the damages?

More than 60 % of the readers thought that Ananda should be responsible. Generally, principal is held responsible for all actions of the agents.

Question 2: Would your answer change if Ananda could see that Bomai had not packaged when he left for delivery?

60 % of the readers found that this would not change the answer, as Ananda is always responsible with Bomai.

Question 3: Would your answer change if you find out that the lifts in Charles premises were not working properly and thus the parcel had to be carried on open stairs and that the package was damaged only on the open stairs?

This was a mixed bag response. 60 % of the readers stated that if it was proven that stairs were solely responsible, then neither Ananda or Bommai were responsible but 20 % felt that packaging should be full proof and take into account that lifts could stop working.

A simple survey of this nature brought out diverse responses and some interesting possibilities.

Considering the broad analysis that is always required to determine reasonableness, it is important that parties also take actions that not only are reasonable but also **appear reasonable on record and are adequately substantiated through supporting documentation.**

The clear provisions of the contract, general business practises, industry standards, correspondence amongst the parties and the intention of the parties plays an important role in determining the surrounding circumstances.

The possibility of applying precedence in determining reasonability is minimal and this opens another debate whether determining reasonability can be outsourced to AI. It is well known that individuals and organizations across the world are using AI to ease their burden of work. Also, many judges have

started using AI to aid them in research and technology seems the way forward. Would this be the way forward or there is a clear necessity for determination in every case?

In one recent international case which has come forward of the Federal Court, **Haghshenas v. Canada (Minister of Citizenship and Immigration)[11]**, the lawfulness of using an AI system called "Chinook" in writing a decision regarding a work permit application was considered.

From the reports available, it is understood that an application was made for judicial review of a decision by an immigration officer (the "**Officer**"). The Officer denied the applicant a work permit designed for entrepreneurs and self-employed foreign nationals seeking to operate a business in Canada (the "**Work Permit**").

One of the requirements for the Work Permit under paragraph 200(1)(b) of Canada's Immigration and Refugee Protection Regulations, SOR/2002-227 (the "**Regulations**") is that the Officer be satisfied that the applicant "will leave Canada by the end of the period authorized for their stay".

In this case, the Officer concluded that the applicant would not leave Canada at the end of their stay under the Work Permit. That is, the applicant's intended aspiration of starting an elevator / escalator business in Canada did "**not appear reasonable**" given the speculative revenue projections for the business and the fact that the company had not obtained the appropriate licenses, among other reasons.

In reaching this decision, the Officer employed Chinook[12], a Microsoft Excel-based tool developed by Immigration, Refugees and Citizenship Canada ("IRCC").

The Court concluded that there was no unreasonableness or procedural unfairness in using the AI system. Although the Decision had input assembled by artificial intelligence, the ultimate decision-making authority was a Visa Officer. The Court emphasized that the focus of judicial review is on the reasonableness of the decision based on the record, regardless of whether artificial intelligence was involved. The argument about the reliability and efficacy of the "Chinook" software was deemed irrelevant since the Officer made the decision and procedural fairness and reasonableness were the main considerations.

[11] 2023 FC 464 (CanLII) | Haghshenas v. Canada (Citizenship and Immigration) | CanLII

[12] According to the IRCC website, Chinook helps with "temporary resident application processing to increase efficiency and to improve client service", with the goal of assisting in the backlog of work permit applications. It "does not utilize artificial intelligence (AI), nor advanced analytics for decision-making, and there are no built-in decision-making algorithms".

Conclusion

Moving forward, it is crucial for all parties to constantly prioritize reasonableness and fulfil their obligations in a normative manner. Maintaining consistent correspondences around their actions can also aid the parties. This would require each one to actively engaging in critical thinking and ensuring that actions are fair and just. By adopting this approach, parties can proactively contribute to a more harmonious and equitable environment.

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[11] [2023 FC 464 \(CanLII\) | Haghshenas v. Canada \(Citizenship and Immigration\) | CanLII](#)

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