

## **Legal Safeguards to Control Contractual Imbalance through Framing a Protective Consumer Regime in Consumer Contracts**

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### **Abstract**

Of late, the issue of consumer contracts has received significant attention from policymakers due to the important expansion of family loans and the resulting financial crises and economic instability in the entire world. Consumer contracts are characterized by the presence of two parties: a vendor party, which is often a financial company, and a weak party, which is the consumer. The vendor party usually sets conditions that suit its interests, including conditions that are arbitrary and have a clear legal defect that harms the weak party in the contractual relationship, creating a clear imbalance between the rights and obligations of the two parties. Utilizing the descriptive and analytical research approach, this article examines the legal safeguards to control contractual imbalance by framing a protective consumer regime in consumer contracts. The research not only invites readers to reconsider perceptions but also aims to enrich our understanding of legal safeguards to control contractual imbalance in consumer contracts.

**Keywords:** Consumer, contracts, imbalance, Jordanian legislation, safeguards

### **Introduction**

The consumer contract has become a controversial subject of legal controversy. It is known as the contract that links the vendor to the consumer, which allows the latter to obtain the good or service to meet his personal and family needs. The act of consumption is also considered a contract concluded within the framework of private law or the use of a public service or facility, whether to achieve a purely personal or family purpose. The consumer contract is defined as the contractual pattern that brings together two parties, a vendor party on the one hand and a consumer on the other hand. The consumer's goal is to obtain a good, product, or service for his personal or family use, while the other party's goal is to define what he has produced or contract in general within the framework of a vendor activity, unlike the other (Masada, 2011).

The obligation to educate and keep the buyer updated is considered one of the most important conditions that the legislator has placed on the seller, which provides important protection for the buyer because the relationship between consumers and vendors is often unequal. In other words, the latter party or the

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vendor has the technical, legal, and economic capabilities, unlike the first party, “the consumer or buyer”, who does not have full experience and knowledge of the contractual conditions. Another safeguard is the invalidity of the arbitrary conditions contained in the contract concluded between the provider and the consumer.

In this context, the Consumer Protection Law specifies arbitrary conditions in Article 22/B, which stipulates that any condition that leads to an imbalance between the rights and obligations of both the provider and the consumer, contrary to the interest of the consumer, is considered particularly arbitrary. It also waives or limits the obligations or responsibilities of the provider beyond what is stipulated in this law or any applicable legislation and includes a waiver by the consumer of any right assigned to him under this law or any applicable legislation, which includes granting the supplier the right to amend or terminate the contract at his discretion.

Nowadays, there is a need to search for the necessary legal mechanisms to establish adequate protection from all forms and arbitrary actions that involve harm to the consumer and that affect consumption in various fields considering the current economic development (Donnelly & White 2008). There will be also another key search for these available means within Jordanian law, shed light on them, and evaluate these available means. The authority of the civil judge to restore the contractual balance of consumer contracts can also be investigated by analyzing the decisions of the Jordanian Court of Cassation. The authority of the judge to intervene to transform contractual conditions, restore the obligation to its legal framework, and add validity to it can also be discussed in two independent areas, as each one has its path and area of attraction. The first area is related to the role of will in forming contracts and establishing obligations and is governed by a principle, which is the binding force of the contract, as it is an area that has declined and lost its lustre and attractiveness, and its importance is constantly declining (Al-Taher, 2020).

On the other hand, the second area relates to the role of the judge in the contract, which has grown and expanded with the development of the concept of the contract and techniques for dealing with the contract and their acquisition of economic, social, and ethical dimensions. These dimensions are related to the role of the judge in searching for the appropriate part resulting from the contract’s violation of the legal rule. With this, the legislator needs to intervene and try to rebalance consumer contracts and provide the greatest protection for the consumer. In addition, there will be an analysis of the reality of Jordanian law and legislator’s reactions to these points and prepares recommendations to address the problems existing in Jordanian law (Al-Taher, 2020).

## **Literature Review**

Research has recently documented the Legal Safeguards to Control Contractual Imbalance in several lifestyles. Bakdar (2016) identified the various objective interests of the consumer in their new forms in light of the scientific and technological progress that has affected industrial and commercial products. This research also included the definition of the consumer, whether in its narrow or broad scope. It also addressed the legislator's view of this legal point to stand on the most prominent guarantees stipulated by the legislative system for consumer protection, foremost of which is the Consumer Protection and Fraud Suppression Law, to highlight the various mechanisms used to protect the weak party in the pre- or post-contractual relationship.

From a different lens, Fadilat (2017) discussed the obligation to inform, which consists of two main parts: the obligation to disclose data related to the use of the product done by means of the label and the obligation of the producer to warn, which must be complete, clear, visible, and attached and linked to the product. Moreover, Al-Sayed (2017) examined the legislative differences regarding the nature of contracts concerned with protection against unfair terms and clarifying the position of the Algerian legislator towards this. Therefore, the results indicated the importance of considering the presence of any legislative desire aimed at real protection of the consumer against unfair terms.

Also, Kaziz Al-Hadi (2022) addressed the legal restrictions or controls that the legislator imposes on the consumer when exercising his right to withdraw from a contract concluded remotely so that he does not exceed in his use of this right for which it exists, which is to restore balance to the contractual relationship between the professional and the consumer. The results found that the most important of these restrictions are the restrictions about the contract and the period of withdrawal. The current study differs from previous studies in that it addressed the guarantee of the right to withdraw as part of the guarantees. This study is, therefore, more comprehensive and broader in its search for a general protective system by establishing many models that exist in more than one legislation, including the French legislator who established a guide for arbitrary conditions, and this is not present in this study.

## **Research Questions**

Given the detailed introduction and literature review, the research problem lies in answering the following research questions:

- What are the legal means and safeguards in Jordanian law to regulate consumer contracts?

- How effective are these laws in controlling defects and arbitrariness in some conditions and restoring the contractual balance between the two parties in consumer loan contracts?

### **Methodology**

Discussing the emerging legal safeguards to control contractual imbalance through framing a protective consumer regime in consumer contracts as an analytical and applied study amid legislative developments requires using the descriptive and analytical research approach as it is appropriate for the nature of the current research study (Abdel Qader, 2010). Appropriating the descriptive and analytical research approach means describing various issues and problems and solving problems and questions that fall within the scope of scientific research. The collected data is also analyzed through a descriptive-analytical approach so that explanations and conclusions can be drawn (Majdoub, 2021).

### **Discussion and Analysis**

This section presents the related discussion and analysis related to the research problem.

#### **The conditional protection dedicated to the consumer through the right of withdrawal**

The conditional protection dedicated to the consumer through the right of withdrawal is expounded by addressing the nature of the right of withdrawal and legal regulation of the right of withdrawal.

##### **A. The nature of the right of withdrawal**

Withdrawal is a legal term that has the connotation of a legal term and a synonym in the language, in addition to a special legal nature that distinguishes it from other connotations. Therefore, it is necessary to understand it through two sections. In the first section, the definition of the right to withdraw is addressed, while the second section explains the legal nature of the right to withdraw.

##### **First: The definition of the right to withdraw**

This term is not strange to the law, as it was stated in Article (107) of the Jordanian Civil Law No. (43) Of 1976 and its amendments as Item (1) states that payment of the deposit at the time of concluding the contract indicates that each of the contracting parties has the right to withdraw from it unless the agreement stipulates otherwise. Item (2) states that if the one who paid the deposit changes it, he loses it, and if the one who receives it changes it, he returns it, and the like. It was also mentioned in Article (105) of the same law regarding the promise to sell.

Some have defined the right of withdrawal as the power of one of the contracting parties to renounce the contract and dissolve it without this being dependent on the will of the other party. French jurisprudence also defined it as a declaration of a counter-will through which the contracting party is obligated to withdraw his will and consider it as if it had never been, to strip it of any effect it had in the past or will have (French Civil Code in Arabic-Dalloz, 2014). The option of withdrawal is the consumer's right to reconsider the contract he concluded and abandon it within a specific period that varies depending on the location and status of the contract (Ben Abbas, 2001; Berg, 2001; Brahmi, 2000).

According to (Abdel-Baqi, 2004; Masada, 2011), there are several terms used to express this option, such as a period to think, the right to regret, or the right to withdraw. The term reconsideration of contracts was used to refer to the consumer's option to withdraw from the contract, as it includes, in addition to the consumer's right to withdraw, his right to exchange the item sold without withdrawing the concluded contract. However, despite the many names, they denote one name, which enables the consumer to terminate the contract voluntarily within the framework of an unilaterally binding consumer contract. This research is consistent with this opinion, which considers withdrawal as a license to voluntarily abandon the completion of the contract through which he exercises the option of withdrawal.

## **Second: The legal nature of the right to withdraw**

The legal nature of withdrawing from a contract in consumer contracts raises the question: Are we facing an old contracting mechanism rooted in the general theory of obligations, or is the right to withdraw a new and independent legal system added to what was previously raised? This question must be answered by developing legal hypotheses, as follows: Is it possible to withdraw a contract based on a promise to contract unilaterally? A promise to contract is an agreement between two people whereby one of them informs the other to conclude a specific contract within a specific period, and the other party accepts this promise about whether to decide to conclude this contract or reject it until a later time. It is noteworthy that this promise to contract is binding on one side (Article (105) of the Jordanian Civil Law No. (43) Of 1976 and its amendments).

The promise may be mixed with the right to withdraw in terms of duration, as the period for thinking about the promise represents the time given to the beneficiary of the promise to announce his desire to him in the final contract. In addition, the possibility of withdrawal represents the right granted to him not to announce his desire, as there is an overlap in the text of Article (105) of the Jordanian Civil Law No. (43) Of 1976 and its amendments. However, the

possibility of withdrawal of a promise in a contract is fundamentally different from the right of withdrawal granted to the consumer because it aims to remove one of the parties after exchanging consent according to a sound will regarding all elements of the contract. It also concerns a right of withdrawal that he possesses that may lead to the conclusion of the contract and not its removal (Abu Bakr, 2016).

It is also argued that it is a sale with the possibility of cancellation as agreed upon. Failure of one of the contracting parties to implement the contract that fulfils the necessary legal elements and conditions according to the text of Article (246) of the Jordanian Civil Code assumes that the contract is valid and then moves to the implementation stage. In other words, the failure of one party to implement a part arising from the contract entitles the other party to request termination of the contract. This is what makes this case likened to the case of a beneficiary of the right to withdraw to recover his obligation, which interferes with the implementation stage of the professional law act.

On the other hand, the right to withdraw does not consider the contracting party to be in breach of the contract, so cancellation constitutes a breach of the contract obligation. Therefore, withdrawing from the contract is not considered a cancellation of it according to the known concept of cancellation because the withdrawal did not result from a professional breach. Rather, the consumer withdraws from the contract for a reason specific and with his final satisfaction with the contract that was not completed, and thus the withdrawal is not a cancellation. The right to withdraw is specially imposed by the Consumer Protection Law and does not affect the principle of will.

On the contrary, it protects this will and protects the will of the consumer from any confusion that the consumer may fall into because he may be ignorant of the subject of the contract. However, before concluding the contract based on an advertisement and specifications provided to the supplier, the buyer receives this commodity and discovers that it is not as it is. In this case, the supplier used his advertising experience to improve the image of the commodity to the consumer; therefore, the legislator seeks to protect this will by giving the opportunity and grace period for the will to be sound (Arara, 2015).

#### **B. The legal regulation of the right of withdrawal**

Article (7/A/1) of the Jordanian Consumer Protection Law stipulates the right of withdrawal, stipulating that if the item is defective, the supplier shall be obligated to return it to the consumer and refund its price based on the request of the consumer or any other person to whom ownership of the item has been transferred. Article (7/A/2) also states that if the supplier is unable to take the

product back due to the defect appearing after the consumer has consumed it; the supplier is obligated to pay the consumer an amount equal to the value of the damage. Article (7/B/1) stipulates that if the service is defective, the provider is obligated to return its price based on the consumer's request if the consumer does not receive that service or if it is possible for the provider to withdraw from providing the service. Article (7/B/2) stipulates that if the defect in the service appears after the consumer has received it in full; the provider is obligated to pay the consumer an amount equal to the value of the damage. Article (7/B/3) stipulates that despite what is stated in Articles A and B of this Article, the supplier and the consumer's written consent may correct the defect that led to a defect in the good or service.

This idea was absent from those working in Jordanian law, including researchers, commentators, judges, and lawyers. This text is more applicable than civil law because of its context and its ability to restrict the general text, as the private text restricts the general text. The Consumer Protection Law is the most recent in terms of clarifying the legal provisions deriving from this text, as the legislator has granted the consumer a right to return the product if the product is defective. However, he did not clarify the lines that differ from the theory of guaranteeing hidden defects found in civil law based on the sales contract. Does he mean that they are the same provisions? On the other hand, does he talk about the right of withdrawal, which does not obligate the consumer to prove the defect, and does not even justify the return, even though it is stipulated that it shall be defective?

With a careful reading of Article (7/A/1) of the Consumer Protection Law, we find that it is somewhat similar to the right of withdrawal intended according to the modern idea that we have addressed. However, item (A/2) of the same article talks about a previous ruling regarding the rules of hidden defects in the sales contract. Also, in Item (B/2) of the same article, he talked about ideas close to the options granted to the buyer in the sales contract in Articles (512-522) of the Jordanian Civil Code, which means that in the absence of a text, we return to the general rules in the sales contract. Item (C) of Article (7) of Consumer Protection introduced a text that, despite the two aforementioned items, the consumer has the right to select the option of repairing the defect or service, as this is an option that the consumer is not forced to make. In the opposite sense of the text, it says that it is not forced, and here the value of this guarantee is shown in that it does not force the good or service.

**The protection dedicated to the consumer through adherence to the right to education**

This right always refers to French jurisprudence and legislation with credit for its birth, the emergence of its idea, and its development. With the spread of its features in their legislation in comparative countries, including the Jordanian Consumer Protection Law, it is, therefore, necessary to identify what this right is and read its legal content through two sections: the nature of the right to education and the legal regulation of the right of education.

**A. The nature of the right to education**

Nowadays, it is necessary to look for a general protective regime in the consumer protection law based on providing important information in advance before the contract through a right. This, therefore, necessitates establishing legislative rules that take into account the contracting parties and their legal positions and accommodate the economic balance between the contracting groups to achieve parity through equal knowledge, awareness, and information. The contract is the source of rights between a creditor and a debtor, where each party owes the other within the framework of the corresponding rights created by the contract according to the quality and nature of the contracted party. Based on the principle of goodwill in concluding contracts in the basic rules in Article (202) of the Jordanian Civil Code, the right to education is legally and judicially linked to the professional party with the most power in the contract and the particularities of the contracted party or its qualities and defects. In all cases, he is required to advise and guide his contracting partner, otherwise, he will be considered to have a deceitful intention that spoils the transaction and spoils everything.

With that, if the traditional previous protection against the powerful party, “the professional trader”, was in the past after his actions, that is, after making the contract, the modern protection has a preventive role and finds its real scope in the negotiation stage that precedes the link between the offer and acceptance. The contract is made by providing the consumer with the necessary awareness of the information he needs to increase his satisfaction and direct his will to contract in a way that prevents him from making a mistake. Upon entering into a contract, the protection of the will of the consumer, which finds its true scope in the negotiation stage in light of the absence of influential information about the goods and services that are the subject of the contract, must be available for the validity of the necessary consent to give the green light from this will. Accordingly, it should not be a defective or spoiled will.

It is of utmost importance to protect the contractual will of the consumer as a source of expression for the contract, as its strength elements must be



integrated through awareness of all the contents of the contract to be achieved in the broad sense. With it, the consumer can determine the reality of widespread awareness of the product or service that is the subject of the contract. Research into the role of the right to education in protecting consumer satisfaction in the stage of calling for negotiation requires clarifying the concept of this last right by defining it with the education and information before contracting through an analysis of its subject, the conditions for establishing it, and the penalty resulting from breaching it (Bou Mediene, 2010).

Right of education has emerged as an independent legal obligation capable of accommodating the various synonyms that express the necessity of cooperation between contracting parties, attracting the various concepts surrounding it and formulating contractual obligations based on the good faith of this concept, which has intersected since ancient times with the concept of fairness. Therefore, legislation is now bolder and clearer in drafting a contract that requires information, where the supplier, for example, must inform the consumer of the characteristics of the product, its composition, method of use, potential risks, and the expected duration of use of the product (Bou Mediene, 2010).

Jurisprudence has defined the right to inform and educate consumers as a contractual duty imposed by law on a professional vis-à-vis a non-professional contracting party by providing evidence of the contracted matter and the transaction and appropriate mechanisms for a procedure such as stipulation and publicity. Breach of this duty shall entail the contractual liability of the professional party (Colin & Morn 1993). The development of the right and duty of education in terms of features and content makes it distinguished from the concepts surrounding it by its comprehensiveness in content, as its relationship to it is an original concept that engages all other concepts without merging with them. The development of its concept has contributed to the distinction of its content by absorbing all legal institutions, which led to the pattern of its development from a legal duty to a subordinate obligation to a general and comprehensive obligation and right. Therefore, the right to education has transformed from a mere functional obligation borne by the debtor by Sharia law to a special obligation that represents part of the general, protective economic regime. In addition, the right to educate and inform the consumer becomes part of the essence of the contract (Bou Masoud, 1999).

## **B. The legal regulation of the right of education**

The development of the concept of the contract with economic depth has recently led to doubts about the decline of the principle of the authority of the will. The legislator is convinced that the parity that has dominated the legislative

discourse is just an illusion, and he is required to reorganize the structure of the legal positions in the contract based on their balance. Within the protection framework of the less fortunate party in the transaction “the consumer”, the legislator must regulate the legal positions in the contract to safeguard his rights and interests and curb economic power to face practices that seek to woo the consumer in methods mixing honesty and truth with an imagination without enabling the consumer to resist the seller’s offers. The consumer finds himself in a weak position in the balance without resistance (Al-Ayari, 2006).

Thus, this requires abandoning neutrality by creating new concepts to preserve the balance of the contract on the one hand and protecting the will from corruption or even its execution on the other hand. A new concept of education and information is currently emerging included within the framework of the general theory of obligation and is now regarded as a contractual obligation (Bou Masoud, 1999). The development of the concept was confirmed after the inability of traditional theories, regarding the various defects of consent, to achieve the due protection of the will and restore the imbalance of the contract (Bou Masoud, 1999).

The right to education has developed in an upward pattern. The general obligation and right are stipulated in the general theory of obligations, in addition to a special obligation in consumer contracts in the Consumer Protection Law, where the regime represents part of the general protective economic regime (Al-Qahwaji, 0000). It is noted that the Jordanian legislator has stipulated the right of education in the Consumer Protection Law in Article (3/A), as the consumer has the right to obtain complete and correct information about the good or service he purchases and the terms of sale for it. In the same context, Article (3/B) stipulates that the consumer must obtain complete and clear information before completing the purchase process about the obligations he owes to the supplier and the supplier’s rights vis-à-vis the consumer. The consumer must obtain proof of his purchase of the good or service or the basic details of the purchase process and obtain complete and correct information about the supplier and his address.

In Article (6/B/2 and B/3), the legislator also spoke about a breach of the contractual obligation represented by information. The legislator considers the presence of a breach of contractual obligations in the following cases:

- Incorrect information provided to a consumer about the goods or services, or concealment of any essential information from the consumer.
- Incorrect information provided to the consumer before completing the purchase process regarding his obligations to the supplier or the supplier’s

rights to confront him, or the supplier's concealment of any related essential information to the consumer.

It has become imperative to obtain the necessary awareness before concluding a contract to accommodate the development of means of communication, the emergence of modern technology, and the transformation of human beings from the world of words and images to the world of numbers, and from the physical world to the virtual world. This contributes to reviving digital commerce and concluding electronic contracts via open networks. The right to education is the result of ancient contractual relations, as it was linked to the emergence of contracts and was integrated into modern legislative policy, which contributed to drawing a new pattern as a preventive legal mechanism that precedes contracting (Bou Masoud, 1999; Connolly & Bannister, 2007).

As a result, the legislator aims to preserve the contract as an integrated unit and mitigate the effects left by consumer laws and the imbalance they caused in the contract. This is evident by including the concept of the right to education in the contractual relationship as a protective concept to develop its content and achieve the feasibility of ensuring the soundness of will and restoring the imbalance of the contract (Bou Masoud, 1999).

### **The control of contractual imbalance by invalidating arbitrary terms in consumer contracts**

The control of contractual imbalance by invalidating arbitrary terms in consumer contracts is illustrated by addressing the nature of the arbitrary conditions and legal regulation of arbitrary conditions.

#### **A. The nature of the arbitrary conditions**

An arbitrary condition is defined as any condition that leads to an imbalance between the rights and obligations of both the provider and the consumer. Contrary to the interest of the consumer, arbitrary conditions eliminate or limit the obligations or responsibilities of the provider beyond what is stipulated in this law or any applicable legislation, including a waiver by the consumer of any right stipulated for him under this law or any applicable legislation, and grant the supplier the right to amend or terminate the contract at his discretion. Arbitrary conditions include obligating the consumer, in the event of a failure to implement his obligations, to pay compensation that is disproportionate to the damage that befalls the supplier. They also include obligating the consumer, in the event of termination of the contract before its expiry, to pay an amount of money that is disproportionate to the damage that befalls the supplier.

**B. The legal regulation of arbitrary conditions**

The legislator specified the arbitrary conditions in Article (20/B) of the Consumer Protection Law, stipulating that one of the arbitrary conditions is the existence of joint and insurance liability between suppliers who caused or knew of a defect in a good or service sold to the consumer. There is also another safeguard in the consumer's best right stated in Article (21/A) of the Consumer Protection Law, stipulating that any agreement or condition that cancels or restricts the consumer rights stipulated in this law is void. Another key safeguard is that any agreement or condition that exempts the provider from responsibility for any of the obligations stipulated in this safeguard is void.

**Conclusion**

In a nutshell, given the previous discussion and analysis, the results indicate that there are contractual imbalance safeguards in several consumer contracts, including the right of withdrawal. The legal nature of withdrawal from contracting in consumer contracts has a special nature imposed by the Consumer Protection Law, and it does not affect the principle of will. On the contrary, it protects this will and protects the will of the consumer from any confusion that the consumer may fall into because he may be ignorant of the subject of the contract. It is also found that the legislator talks about these safeguards in some matters, including the right to withdraw, in a timid manner, as it would be better for the legislator to clarify the right to withdraw in a sophisticated manner compared to comparative legislation.

Moreover, the results also show that the right to withdraw is somewhat like the idea of safeguarding hidden defects found in Jordanian Civil Law No. (43) Of 1976 and its amendments. However, by projecting the rules of the Jordanian Civil Law No. (43) Of 1976 onto the provisions of the article in the Consumer Protection Law, we find that some points meet, and some points diverge, thus confirming that the right of withdrawal is a right that has a special nature that is unique to any other hypothesis or any other legal assumptions.

Another key result is that the protection established through the right of education to face the powerful party, the professional trader, has a preventive role, that is, before the contract in the negotiation stage that precedes the engagement of the offer in acceptance by providing the consumer with a necessary amount of awareness of the information he needs to increase his satisfaction and direct his will to the contract. It is found that the Jordanian legislator considered this right in the Consumer Protection Law through a special legal regulation found in Article (3/A/B) spoke about this depth in this commitment (Bouchareb, 2012).

## **Recommendations**

Given the previous results, the current article makes key recommendations related to the Consumer Protection Law, as follows:

- The legislator might amend the Consumer Protection Law by clarifying the safeguard of the right of withdrawal very clearly in comparison with Arab and foreign laws such as modern Moroccan law and the Moroccan Consumer Protection Law.
- In other words, it is to explain the right of withdrawal or as a new guarantee for it, which distinguishes it from all previous rules. Another key recommendation is that the Jordanian legislator shall consider certain examples of arbitrary conditions found in contracts, especially in French legislation, which cited several established examples when we face an arbitrary condition as mentioned in this article.
- Importantly, the legislator shall consider these arbitrary conditions by providing the judge with examples of arbitrary conditions in projecting some facts onto these points.
- More importantly, researchers, students, and scholars hope that there will be a modern consumer protection law through profound amendments to this law.

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