

The Consumer Protection From Arbitrary Terms In The Context Of Jordan Legislative

Mohamed Fahmi Ghazwi, Mohammad Khalil Abu-Baker, Mash`alMofleh Aljarrah

Article Info	Abstract
<p>Article History</p> <p>Received: November 27, 2020</p> <p>Accepted: January 17, 2021</p> <hr/> <p>Keywords Consumer, Protection, Arbitrary Terms, Jordan</p> <p>DOI: 10.5281/zenodo.4446271</p>	<p><i>The consumer protection is considered the most important part in commercial trade in terms of satisfaction and one of the most important issues need a much focus. This paper addressed the issue of how the Jordanian legal system provides protection to a consumer from the arbitrary terms. The main objective was to identify the arbitrary terms which should the Jordanian Civil Law, Competition Law and NSCP provide protection. This paper clarified that Jordan legal system covers the issue of consumer protection in only few laws, which fall short of providing absolute protection to the consumer in terms of arbitrary terms. The paper adopted a purely doctrinal nature of study that focuses on the primary and secondary sources. The paper concluded that Judiciary plays an important role in interpreting the arbitrary terms mentioned in compliance contracts then nulling, removing or adjusting them, whereas the compliant attribute isn't offered in all consumption contracts.</i></p>

1. Introduction

Nobody can deny the importance of markets to meet the consumers' desires that bring them aspects of entertainment and welfare to have what they need from commodities. This led to increasing in dangers that threaten consumers physically and mentally specially after the development of propaganda and advertisement about these products that could make the customer forget their possible disadvantages. The consumer protection as a goal doesn't justify every legal way that seeks to achieve this goal. The issue isn't a struggle between two parties as far as a control of the contract balance between them. Because of the dangers that the consumption process includes in all its stages and to prevent the consumer from what he has of commodities and services and protect him to be a victim of his consumption trend, the law should protect him from arbitrary terms to rebalance in consumption relations that remove disadvantage and danger on the consumer.

The emergence of the consumer project made it a must for a consumer not to be viewed as a contractor and a weak or potential party in a contract but as a main element in the economic life and an economic partner in the contemporary era.

Problem of the study

The problem of the study lies in surrounding and understanding the law to protect the consumer from arbitrary terms in a contract through answering the following partial problems:

1. What are the aspects of contract imbalance between a consumer and a professional?
2. What is the possibility of adjusting or cancellation unfair terms for the consumer by the judge to offer the protection?

Objectives of the study

1. Investigate of the main concepts that the consumer's project is based on which forms the base and the pillar of the law that are the consumer and the professional noting the different in the names of some of the laws.
2. The study aims to offer the consumer's need to protect from the arbitrary terms.
3. The effectiveness of the rules of the civil law to resist the arbitrary terms which the professional sets against the consumer.

Importance of the study

The current study deals with one of the consumer's rights to protect his economic and financial interests by stopping the terms that the producer and seller set for his interest. Thus, there is a persistent need to study this subject and the consumer's need to be protected stems from that the consumer is the less experienced and knowledgeable party, and the less powerful in the economic equation.

Methodology of the study

The researcher adopted through this study the analytical and comparative method try to induct and collect the legal texts related to the subject.

1.0 What the consumer, professional and the arbitrary terms are.

1.1 The Concept of Consumer

What the transactions witness in the temporary era of huge commodities production and offering services resulted in producers to take care of reaching the highest rates of marketing without caring for the consumers' economic and health interests. In addition, we notice an increasing in the unconsciously consumed rate in the properness of these commodities and services to his goals of the contract and without the ability to discover their disadvantages or their rate of meet the specifications. These factors take together the protection requirements on other dimensions. Therefore, its necessary to investigate a definite concept of the first element of this contracted relation which is the consumer. The goal after this concept is to define people that the protection includes in this law and stop people who don't have the properties of a consumer under the frame of protection. This means that a person whom the concept of a consumer applies when its properties are available deserves the legal protection in its all images. As a result of juristic legal diversities, we notice that a lot of definitions that resulted from this issue which may be visibly contradictory to the concept of a consumer. Consequently, these diversities will be dealt in details.

1.1.1 The legal definition of a consumer

Definition of a consumer linguistically is "the person who performs the process of consumption".

When viewing the Jordanian legislation especially in the field of consumer protection, we don't get a clear definition of a consumer in the absence of a consumer protection law, in other words a legislation shortage. Therefore, the legislator tried to set a definition for a consumer through the consumer protection law project for the year 2006 which contained an explanation of the consumer concept in the second Article of the project where it defined him as "The purchaser of a commodity or a service to be consumed and for the goals of this law every beneficiary of a commodity or a service is considered to be a consumer", while the Jordanian consumer protection law project for the year 2013 defined it as "The normal or legal person who gets a commodity or a service for or without a return to meet his personal needs or the others' but this doesn't include the one who buys a commodity or a service to resell or rent it".

Most of the legislations defined a consumer according to the criteria of consumption and based on this a person isn't considered to be a consumer only if he is the ultimate target of the consumption process where he behaves only to satisfy his personal and family needs of the commodities and services".

The French legislator defined a consumer as : "the people who get or use movables or services for unprofessional purpose ". Among the French juristic judgments to define a consumer "the normal or legal person who get or use money or a service for unprofessional purpose".

The Egyptian legislator also defined it in the first Article as "the each every person whom offered one of the products to satisfy his personal or family needs or dealt or the contract is being made with related to this issue", in addition to the definition of a consumer in the Lebanese law where the legislator defined him as "the normal or legal person who buys a service or a commodity or he hires, uses and gets benefit of for goals that are not directly related to his professional activity". It should be noted here that the European guidance didn't define the concept of a consumer but defined the contracts of consumption as "those contracts that held between a merchant and a consumer which the later holds in general for his personal purposes not for professional or business targets".

After presenting these definitions of the concept of a consumer in different laws, the concept of a consumer will be discussed and investigated where we find the concept of a consumer contains many elements; the first element lies in the personality of a consumer and the second element is the target which the a consumer follows and ends with the commodity that the consumer will possess. This will be discussed consecutively to compare the concept of a consumer based on the consumer protection project for the years 2006 and 2013.

1.2 Jurisprudence and the judiciary for a consumer

The concept of a consumer represents disagreement issue in legislation, Jurisprudence and judiciary. Disagreement appeared about what's meant by a consumer where views are divided into trends; the first views a consumer as a person behaves outside his professional activity regardless the target of this behave which reverses the second trend that adopts the goal or purpose. There are two definitions for a consumer one is narrow and the other adopts an extended concept and this will be discussed respectively in the following two items:

1.2.1 The extended trend to define a consumer

A consumer in the extended trend means "everyone who contracts for consumption, in other words using money or a service". The argument of supporters for this trend to increase the protection range where protection doesn't only include who contracts with a market to benefit absolutely even the person who possesses it wants to use it in professional targets. It unnecessary that the position of contract meets the contractor needs or whom he spends on. This trend agrees with what the Jordanian legislator has set in the second Article of the consumer protection project.

According to this definition of a consumer protection in the extended trend considers a real estate dealer who buys furniture for his office as a consumer and this also applies for any professional who contracts to for a commodity or service to be consumed or used associated with his trade or profession without the goal to get profit, and thus he is included with guarantees that the legislator singled out a consumer.

Through the previous definitions we found out it extended to protect a professional outside his specialization range where the supported jurisprudence of this trend distinguishes between a professional and nonprofessional consumer and a professional and nonprofessional based on two criteria:

A. Lack of jurisdiction criteria

It is the most extended criteria since it agrees with the comparison that conducted by the consumption laws between professional and nonprofessional where it's considered to be a consumer who behaves outside his professional specialization range as the professional who isn't specialized appears to be weak like the normal consumer. The professional finds himself facing a professional contractor in a weak position based on protection like a consumer who uses a product completely.

B. Direct relation criteria

This criterion is based on connection between the held contract and the professional that is practiced and so the consumer idea can be defined through the content of the relation that connects a legal behave and practiced professional. Thus, the French jurisdiction added a term to consider the professional who contracted not for his specialization is a consumer which is that the contracted commodity or service has a direct connection to his specialization. Based on that, for a professional to be a consumer his contract content shouldn't be a fulfillment to one of his profession works, and if his contract dues to his professional activity, his job shouldn't state the goals of his profit. From contracts that has a direct connection to the professional activity of one side of the two parties are the contracts that contributes in a way or another in running the economic process of the project such as making products and offering and marketing services.

This trend has been adopted by the French of jurisdiction where it considered a professional person who contracts outside of his specialization as a consumer.

According to that, we noticed that the judiciary set a difference between a consumer an unprofessional because unprofessional is always considered to be a consumer, but a consumer is not in all cases considered to be unprofessional; he can be unprofessional but he can contracted a commodity or service outside his specialization.

Subsequently, we find that the extended trend defined a consumer as everyone who behaves in a legal way in order to use commodities and services for his professional or personal usage. Therefore, the unprofessional can be a normal person, a company or a product and so it contains trade transactions among producers themselves i.e. transactions related to their professional activity provide that these transactions are outside their professional activity.

1.2.2 The narrow concept of a consumer

The definition of a consumer based on the narrow concept is "everyone who contracted to satisfy his family and personal needs" or "everyone possesses or uses commodities or services to be consumed", and according to this he doesn't acquire the advantage of a consumer based on this trend who contracted for the goals of his job or project.

We notice through this definition there is a condition that the target of contract is to satisfy family or personal needs to the contractor to be considered a consumer and included with protection that the legislator set for a consumer. According to this definition, if the shop owner bought a calculator to help him in his work, who isn't considered to be a consumer based on this definition as what he contracted on doesn't meet a personal or family need but it related to trade and job.

The French consumption law project issued in 1993 defined consumers as "people who get or use movables or services for unprofessional usage". Among the French jurisprudence diligences concerning this issue is the attempt to find a definition for a consumer in the narrow trend, some of them are "the normal or legal person who gets or uses money or a service for unprofessional goal" or "a person who becomes a party in a contract of supplying money or services because of his unsupplied personal needs".

Based on the French judiciary, we find the French Court of Cassation adopted the narrow trend of a consumer definition for most of rules issued by. It refused to consider a professional as a consumer if he holds a contract directly related to his job practices, and therefore, a professional in this case doesn't have the protection which the law set to a consumer.

The French Court of Cassation refused the insurance company to be considered as a consumer when concluding a loan contract to buy computer programs needed for the company management, and it considered the loan contract is a work directly connected to with its activity to the company because its target is to sponsor purchasing necessary computer programs to run the company system.

We notice through the definitions of a consumer who support this trend that most of them agreed with each other and these definitions are the narrowest because they restrict to the person who contracted to satisfy his family or personal needs and by this definition the merchants and professionals who are contracted for trading or professional targets are prevented from getting protection that the law set for a consumer. The tightening in narrowing the concept of a consumer to exclude him even from a person who behaves for the targets of his profession partially and the professional who behaves professionally even if his behave outside his professional specialization since he is less ignorance than a consumer who behaves for personal targets.

Among the narrow definitions for a consumer is "the unprofessional normal customer person or the consumer legal person if he doesn't use services for a professional target". The goal from excluding the professional from protection is that the professional who behaves for his job needs will be more motivated than a person who behaves for a private target and thus he will defend himself well. If a professional was found in a weak position, his protection will be by special rules not consumption rules.

After mentioned these two trends, we will find a moderate trend between them in order to avoid criticism that the two trends may expose. Based on that an objective opinion is addressed which lies in searching for a balance in knowledge, science and experience. Searching for a person who lacks such this experience and science deserves protection whether if he uses a commodity or service for his personal or family needs or outside his profession; since he lacks this experience, he deserves protection.

1.2 concepts of the arbitrary terms in different concepts

The concept of freedom contract is based on two principles, the first is the freedom of the contractor to choose whom he wanted to be contracted with. The second is the freedom of the contract parties to negotiate seeking their interests. Beside these two principles emerged another one which is suitable and complements them which is the binding force for the contract that seeks to decide the (sanctity of a contract).

After the emergent of a contract form that covers the aspects of transactions after the Industrial Revolution, assaults directed to the contract freedom emerged which based on two principles, the first freedom of choosing the other contractor, and the second freedom of negotiations to reach the interests of the parties. The second term of this principle disappears completely with contract based on the form of the contract.

it found out here that the principles that the contract form is based on differ in their shape and content from contract according to the usual classic way which requires a special treatment based on respect of freedom of contractors' will. Therefore, the practical fact produced forms of contracts full of arbitrary terms as a result of inequality between the two parties of the contract which makes the strong team (the legislator of a contract) to prepare it in order to achieve his interests which resulted in imbalance of the standards that the legislator seeks to confirm in the society.

The economic force that one of the parties has because of the monopolistic power produced a legal production and a new form of contracts which is the contract of compliance. The weak party that is the purchaser doesn't possess the discussion of its conditions or negotiation in its items, and one of practice tool of force is which the strong contractor guarantees of terms full of abuse and injustice that are later called the arbitrary terms, which they based on the general rules seem to be normal terms that don't compromise the safety of satisfaction but in their fact they are injustice and unfair terms, and thus it isn't subject to individual negotiations between a professional and a consumer and it is written obviously without any effect from the consumer in the content of a contract. In this requirement we will present the arbitrary terms in the first section and the elements of the arbitrary terms in the second one.

The Jordanian consumer protection law (2013) stated the arbitrary terms but didn't define the arbitrary term, whereas it mentioned items and considered them arbitrary terms if they are mentioned in a contract in the Article (22/B) of it.

The French legislator defined in the Article (5) of the law No. (78/23 F) issued on 10/1/1978 the arbitrary terms as "those that seem by a professional on unprofessional or consumers through abuse in using economic superior and permit the professional to obtain exaggerated advantages".

In this law the French legislator banned abuse depending on weakness of a consumer economically and technically because this spoils a contract, and it worked to reduce these terms depending on the actual equality instead of legal equality devoted in in the civil law.

Most of the definitions mentioned concerning this that the arbitrary term should be set in a contract between a consumer and a professional, in other words between the one who imposes and the compliant and edited previously by the first one and gives obscene advantage to the latter which imbalances the contract. The term is considered to be arbitrary if it only means to damage the compliant party.

After we identified the arbitrary term, we move to define the elements which make the term an arbitrary one in the next section.

2.0 The legal protection of a consumer from the arbitrary terms

2.1 Will Defects Theory

2.1.1 The fault:

The fault is what in the contractor mind pushes him to think the unreality which mean an illusion not the reality.

It could a fault that prevents a contract to be concluded and also if the fault is in the content of a contract or in the establishing cause for commitment or in the existence of the cause. The Article (152) of the Jordanian Civil Law stated on(if the fault happened in the content of a contract, in one of the contracts terms or in the cause the contract is invalidated).

The fault can be followed by disadvantage in the contractors satisfaction on forming or concluding a contract which is called shaming fault and it should be essential and the other's contractor knowledge should be

connected to. The Article (138) of the Jordanian Civil Law stated on this kind of material fault as ((the contractor can invalidate the contract if he makes a fault in a desired matter as an attribute in the cause or the other's self contractor an attribute in him)).

A decision of Jordanian Court of Cassation stated on (since the purchaser can't practice trade in a trading shop that can't be licensed on his name, so he bought the shop by fault in a desired issue as an attribute in the contract cause which enables him to invalidate the contract based on the Article (153) of the civil law .The fault could be influenced on the contract concluding or the contractors will that is the fault deals with a secondary issue that doesn't impact the contract's interest, doesn't prevent the contract to be concluded and prevent contractors from a desired description. An example of that is the fault in counting and the value of contracted matter if it wasn't accompanied with unjust obscene. This fault has been stated in the Article (155) of Jordanian civil law on (a contract isn't influenced by only a fault in counting or writing but it should be corrected), and this kind of fault doesn't result in invalidity or termination of the contract but the fault should only be corrected. The Jordanian Court of Cassation ruled as (The records of the Lands and Survey Department are considered official, and they are not challenged except by forgery.If the plaintiff proves that the employee entrusted with the task of writing the official bond, which is the sale contract in question, has erred in the part number and district number, this may be corrected according to the text based on the Article (155) of the civil law)

2.1.2 Deception with outrageous injustice

The Article (143) of Jordanian civil law defined deception as (one of the contractor fraudulent or actual means that cause him to be satisfied, unless he is satisfied with it).

The Jordanian legislator derived this definition from the Islamic jurisprudence where deception according to Islamic jurists is a delusion to who want to contract and its two kinds: actual by showing the contracted on the wrong it was such as dyeing an old dress or the old car, and giving incorrect data in contracts based in the correctness of these data.

A side of jurisprudence thinks that deception is one image of fault as far as finally lead to imagine the unreality and this the shaming judgment of fault of will, but we tend to the opinion that differentiates between deception and fault where it appears clearly in the range of each. The fault is extended more than deception where fault includes the influence and no influence, and the difference also appears in proving, where proving deception is much easier than proving fault since it is a psychological issue which is difficult to reveal , and what the matter is the Jordanian legislator differentiated between fault and deception and treated each with private rules.

It is conditioned deception with unjust obscenemany terms concluded as follows:

First: using deceptive ways:

These ways could be saying once lying, and this means damage depends on lying to delude the other contractor (deceived) and makes him to be satisfied to contract based on false information. The contractor couldn't conclude a contract without the false emphasis issued by the deceiving contractor ..

The formed lying to deceive is by will with false data based mainly on the correctness of these data, and these contracts are the trust sales ones Lying by itself isn't considered to be deception only if a lying gives private data and information related to an issue of an importance for the other party, and he knows that the other party attaches importance to this issue particularly in contraction. If the exaggeration in a propaganda and profit reached the limit of deception by changing and blurring the truth where it is difficult to realize, then to lie is considered deception.

The ways of the deceptive contractor uses could be actual ones and not saying and they are represented in all means of pretending, acting and falsify the truth which can surprise the other contractor and motivates him to conclude a contract , and the criterion of considering whether the actions which the contractor performed are conception or not is a personal criterion differs according the deceiver and who is deceptive based on his degree of deception, acumen and stupidity.

Among the examples of actual deception is selling an old dress after dyeing it as it's new or dyeing a car to hide its defects and selling it after that as it's free from detects.

The deception could be in silence that if there is an issue and seen by the other contractor which affects his satisfaction, and the silence whom he contracted with him is considered to be deception leads to be appealed in a contract. The Article (144) of Jordanian civil law stated on this kind of deception as (intended silence on a incident or a circumstance is considered deception if the one who is deceptive wouldn't conclude a contract if he knew this incident circumstance).

It came in the decision of the Jordanian Court of Cassation (the defendant's silence on the incident of nullifying the implementation procedures on the real estate and re-registering it in the name of its fourth defendant owner Jamal in accordance with the judicial rulings issued to him and acquiring peremptory degree and the Jordanian Commercial Bank organizing an deputyship that is not defensible to the defendant Nile and the latter selling the commodity based on this deputyship makes bad intention available and formed a change in the meaning of

Article (144) of the Civil Law, and in this case the plaintiff has the right to demand the annulment of the contract and the recovery of the price he paid for the defendant's bad intention) .

Second: deception is a cause for contracting

In order that deception to be a cause for appealing a contract the fault that the deceived contractor did should have a degree of strength that he wouldn't accept the contract unless he fell in and this what the last item of Jordanian civil law stated as (make him accept that he wouldn't accept another) .

Third: deception should result in unjust obscene:

The Jordanian legislator as opposed to the Egyptian legislator connected deception to the unjust obscene, once deceived, it is not obligatory to invalidate it and once unjust obscene it is not obligatory to invalidate it, too; deception should couple unjust obscene, and this what the Article (145) stated on (if one contractor deceived another and certified that the contract is done by unjust obscene, the deceived one has the right to invalidate the contract).

As stated in the decision of the Jordanian Court of Cassation (if adjudication doesn't prove that the defendant used fraudulent against it, it resulted in deceiving the adjudicator and then pushed it to conclude the contract with the adjudicator against it, so the case of invalidation of the contract for unjust isn't achieved according to Article (145) of the Civil Law).

the Jordanian legislator in the Article (149) permitted invalidation the contract because of unjust obscene without deception in interest, endowment and country money, where the Jordanian legislator in the Article (149) stated as (the unjust contract isn't invalidated by unjust obscene without deception but only in interest, endowment and country money). The text of the Article (149) of the civil law is considered to be an exception to the public rule which makes a condition which is coupling unjust obscene with deception.

In addition, the easy obscene accompanied with deception doesn't affect the contract but only in the case of interest because of his debt owed to his money and the patient behaved a disease of death if he owes an easy debt owed to his money, and this is the rule of the Article (147) of the Jordanian Civil Law (If obscene hits even if it's easy the interest money for debt or deadly patient and his debt owed to his money, the contract depends on removing obscene from creditor, otherwise it will be validated).

The deception with unjust obscene resulted in proving the deceived right to invalidate the contract because of deception accompanied with unjust obscene and the right to invalidate the contract shall be forfeited in the case of deceiving death, clear or implied permission and the impossibility to return the position to what it was before he contracting, and this is what the Article (150) stated on clearly in the Jordanian Civil Law (the right is forfeited in invalidation for deception and unjust obscene and the contract is binding of the right owner's death by invalidation and disposal of what is contracted on as a whole or partially including permission and its damaging, consumption and increasing). But deception accompanying with easy obscene previously mentioned is resulted in that it is based on creditors' permission or stop injustice.

After studying deception from unjust obscene as a defect of will, it should be evaluated in the consumer protection field from the arbitrary terms, and does the theory by itself achieve effective consumer protection in facing the arbitrary terms or not?

Some think that deception theory with the unjust obscene is an ineffective way because the obscene is the imbalance of corresponding performances, and there is no connection between compliance and imbalance of corresponding performances in addition that you have to resort to court for filing invalidation claim which requires expenses and difficulty in proving led to endeavor inhibition of consumers to adopt this way.

The researcher thinks that although the theory of deception with the unjust obscene may achieve an easy consumer protection in general, but this theory doesn't achieve any protection to the consumer in facing the arbitrary terms because of disagreement on ruling between deception with unjust obscene and the arbitrary terms. Through our study deception with unjust obscene we found that what resulted from deception with unjust obscene resulted in a contract invalidation, and this right isn't demised and ended by the death of the deceived person and clear or implied permission based on the Article's text (150) of Jordanian Civil Law. The arbitrary term is resulted in a condition invalidation and the contract period is valid and this what the Articles (204) and (924) have stated on concerning the arbitrary terms and compliance contracts. This also what court of Cassation has settled of a condition invalidation and consider the contract to be correct. It was stated in the esteemed Court of Cassation decision related to contracts of compliance (the conditions and exceptions mentioned in the insurance contract which excludes covering low car value and allowance for deactivation due to the accidentare invalid based on the Article 924 of Jordanian civil Law because it aims to drop the right of the insuredor diminish it, and the target where the insurance contract was settled contradicts which are arbitrary terms and it's not obligatory to be activated) .

The cassation court also considered the additional condition mentioned in the lease where the lessor makes a condition on the tenant in the event that the hired is not evacuated in the end of the contract period, the fare becomes JD 20000 is an arbitrary term and has no legal value.

In addition to, the deceived contractor should prove the deception and unjust obscene that he could invalidate the contract, while the contractor who asks for invalidate the arbitrary term hasn't to prove that the term is an

arbitrary one or he got damage resulted from this condition and what is he asked to is to hold on that this term is arbitrary before the court.

2.2 The role of judiciary in protect a consumer from the arbitrary terms

Judiciary plays a major role in defining the arbitrary terms in the contraction field. The judge under authorities that law gives him can interpret conditions of contract then explain whether the term is arbitrary or not. After the judge comes to that the term is arbitrary, he interferes and adjusts this term or removes. Therefore, I will divide this into two sections as follows:

2.2.1 The role of a judge in interpreting the arbitrary terms:

Referring to Jordanian Civil Law and also Consumer Protection Law Project for the year 2013, we find the Jordanian legislator didn't set a definite criterion to the arbitrary terms issue, thus, the judge of the issue has an extended authority in defining the arbitrary terms without control from the Cassation Court if his conclusion of this term is agreeable and acceptable.

Except that we find the Jordanian legislator interfered directly to face the arbitrary terms in the compliance contracts, and thus the Article (204) of Jordanian Civil Law stated as (if the contract is done by compliance and included arbitrary terms, the court has a permission to adjust these terms or exemption the compliant party from them according to what is required by justice, it is void otherwise).

The Article (240) also stated on (1. Suspicious is interpreted to the benefit of a debtor. 2. Despite that, it isn't permitted to interpret ambiguous statements in compliance contracts to be damaged to the benefit of the compliant party).

What is benefited from that is that the judge estimated authority in adjusting the arbitrary terms oversteps his known authority in interpretation the contracts. On the other hand, the legislator singled out the compliance contracts with a special text that he didn't permit to interpret these contracts and conditions mentioned in to be damageful to the benefit of the compliant party even if the latter is the creditor.

We find also that the Jordanian legislator extended the judge authorities in interpreting the arbitrary terms mentioned in the insurance contracts where the Article (924) stated on (Any of the following conditions mentioned in the insurance contracts drops void: 5. Each arbitrary term if it becomes clear that it's violation has no effect on in the occurred insured accident).Therefore, and based on the previous text, we find the Jordanian Cassation Court has ruled as (The mentioned typed text which holds the car owner full liability if he puts a tank on a truck or a crane has no violation to the law and the contract is the law of the contractors and such these terms are not arbitrary ones).

Jordan Cassation Court also ruled as (Exception of decrease in value is considered to be from compensation in the insurance document a void and arbitrary term since it leaves the insurance contract for its purpose which was settled for as stated in the Article 924 of the civil law and what the cassation court diligence has settled.

Except that what mentioned in the previous texts don't restrict to interpret the arbitrary term in compliance contracts only but it is extended to all contracts. We noticed previously the cassation court considered the condition mentioned in the lease where the lessor made on the tenant an increasing in fare in case not evacuating the hireling is an arbitrary term and a violation to law and doesn't apply to the tenant. Although the consumer protection law for the year 2013 stated the arbitrary terms in item (B) of the Article (22), this text doesn't limit the judge freedom in interpreting of the arbitrary terms and considering the as arbitrary term even if it isn't mentioned in the cases of item (B).

The bottom line is that the judge has an extended authority in interpretation of the conditions of a contract to explain whether the term is arbitrary or not particularly what related to contracts of compliance, but this extended authority given to the judge when the statements of a contract are ambiguous and unclear, then this authority is contacted when the statements are clear, and this what we will deal with in the following two items:

2.2.1.1 Interpretation of ambiguous statements

The ambiguity of the contract statements is the aspect where judge authority theory of will to adopt his positive role in the field of interpretation. The arbitrary terms are usually ambiguous in the edited contacts in order that the other contractor doesn't take care of.

If the statement of a contract is ambiguous or contradictory, it is necessary to interpret the contract to reach the common intention of the contractors, and this is what has the Article (239) of the Jordanian Civil Law stated in the second item as (But if there is a cause to interpret a contract it should looked for the common intention of the contractors without stopping on the literal meaning of words with leading by the nature of dealing and what should be available of trust and honesty among the contractors based ongoing custom in transactions).

If the statements of a contract could be interpreted, the judge should search for the common intention of the contractors which means what he actually wanted, and this what the Jordanian legislator has pointed to in the Article (214/1) of the civil law as (The lesson in contracts is for intentions and meanings not for words and buildings), but this doesn't mean here that adoption will be in the implied will but in meanings and intentions concluding from used statements and formulations or objective evidence and material marks that this objective study doesn't step over to the one that show consciousness and reveal the secrets of soul. This is supported by

the group of factors which the Jordanian legislator permitted to the judge to be led by when interpreting a contract and searching for the common intention of the contractors; these factors are based on the nature of dealing, honesty and trust among the contractors and ongoing custom, and the lesson is in the common intention of the contractors because it's where the two contractors meet there and that is what is adopted regardless any individual intention for any of them that the other contractor doesn't meet with.

However, if there is a doubt to identify the common intention of the contractors that the interpretation of a contract moves back in many aspects each one is possible and can't be overbalanced on the other, the judge in this case the rule where the Article (240/1) of Jordanian civil law stated on that doubt is interpreted for the benefit of the debtor and the contracts compliance are excepted in this rule where in the latter the interpretation should be for the benefit of the compliant party even if he is the creditor.

2.2.1.3 Interpretation of clear terms of a contract

The Article (239/1) of Jordanian civil law stated as (if the statement of a contract is clear it shouldn't be deviated from it by its interpretation to identify the contractors intention). If the statements of a contract are clear, there is no need to search for their owner's intention, but it may emerge some contradiction among clear statements in a contract and the actual intention. Despite the clarity of a statement, some contractors misused the clear expression which led to intention ambiguity. In this case and based on the above it should be adopted with the clear statements that don't need an interpretation.

Except a side of judiciary thinks that even the statement of a text is clear it should be interpreted that the clarity of a statement is different from clarity of intention. The statement could be clear but circumstances indicated that the contractors misused this clear expression; they intended a meaning and expressed it verbally that the meaning is wrong but it is clear in another meaning. In this case the judge doesn't adopt the clear meaning of the expression and should move to the meaning that the two contractors intended, and by this he interprets the clear expression and also deviated from its apparent meaning without misrepresenting or distorting it.

Jordanian Cassation Court adopted this trend where in one of its decisions has come as follows (what is settled the ruling of the cassation court is the legal adapt the facts of case which isn't subjected to the opponents desire and doesn't restrict the court in giving it the correct legal adapt, and because the court of the subject is the holder of authority in interpreting the controversial contracts, conditions and limits that views it fuller to what is meant in the contract getting help in that with all of conditions of the case and circumstances based on the texts stated in the Articles (213-240) of the civil law and it has with this authority to search for the common intention of the contractors without the literal meaning of words with guided of that in the nature of dealing).

The Cassation Court in another decision adopted a contradicted method and took the trend that stated not to interpret the clear statements of a contract where it decided (the court of the subject has the right to interpret the controversial contract, conditions and limits which it views as fuller what is meant in the contract getting help in that with all of conditions of the case and circumstances without getting out of the statements of a contract because the lesson of interpreting a contract and limit the rights of its two parties mentioned in with what it concluded of texts; if the statement of a contract is clear, it shouldn't be deviated fromit through interpreting it to identify the contractors intention as stated in the Article (239/1) of the civil law.

2.2.2The role of a judge in adjusting the arbitrary terms or remove them:

The Article (204) of Jordanian Civil Law stated on (if a contract is done by compliance and included arbitrary terms, the court has a permission to adjust these terms or exemption the compliant party fromthem according to court and otherwise each agreement contradicts this is void).

Looking carefully at the previous text we find it of the public system and thus, it isn't allowed to contradict it and each agreement to contradict the above text is considered to be void, and the lesson from that to protect the compliant party from the owner's of power influence on him.

But this text doesn't give a judge the right to face, remove or adjust the arbitrary term by himself. The owner of an interest should hold on the arbitrary term and ask the court to adjust or remove it. For example, if a person's vehicle is detected by a car accident, and one of the insurance contract condition is not to include the value decrease with compensation – note that the court diligence settled on to consider such an exception an arbitrary termthat should be removed -and the vehicle owner didn't ask for its value decrease and satisfied of asking for repairing costs, in this case the court doesn't have the right to face this term by itself and the rule is for the owner of the vehicle in decrease of its value.

The researcher thinks that this text isn't restricted only to compliance contracts but to any contract includes an arbitrary term because all of the consumption contracts are included within the rules of this text. If we restricted to apply this text to compliance contracts, most of the consumption contracts get out of their rule which are not included in the compliance contracts where a professional takes advantage of his position and technical or legal experience to impose arbitrary terms on a consumer.

Concerning this issue we should also mention that a side of judiciary considered the agreed compensation to be an arbitrary term, and thus the judge has the right to adjust and decrease this term but not cancelling or excluding it if its conditions are met.

When referring to the text of the Article (364) of Jordanian Civil Law, we find it stated on (1.The contractors are allowed to previously determine the value of guarantee by stating it in the contract or a later agreement taking into account the provisions of the law. 2. In all conditions the court is allowed based on one of the two parties request to adjust this agreement that makes the estimation equal to damage and any agreement other than that shall be null and void).

Based on this text the penal clause is a legal condition is prescribed by the text of the law and doesn't lead to imbalance the contract as far as the agreed compensation amount doesn't step over the actual damage occurred to the creditor.

If any of the two contract parties takes advantage of his position and technical or legal experience to impose penal clauses aim to obtain advantages and profits at the expense of the other party, the original function of the penal clause changes from a compensation function to threatening one and a way of exploitation and enrichment without a reason at the expense of the contract imbalance which lead to consider such these terms arbitrary ones, and in this sense when a penal clause includes an arbitrary term, the judge is allowed to interfere to adjust it based on the stakeholder.

Regarding the consumer protection law project for the year 2013 we find it gives a judge the authority to nullify or adjust the arbitrary terms or exemption the consumer from where the Article 22/A stated from the legislator on (Although what has mentioned in another legislation the court has the right to rule of nullity of the arbitrary terms mentioned in the concluded contract between a consumer and provider, adjust them or exempt a consumer from them based on the request of the affected, ministry or society, and any agreement other than that shall be null and void).

Except that the judge based on the previous text couldn't expose to the arbitrary term by himself, but it should be held on the arbitrary term by the affected, ministry or society which reverses what has come in the European direction issued in 1993 related to the arbitrary terms. According to the above European direction the national judge in one country of the union who considers the case related to a consumption contract rule to nullify an arbitrary term mentioned in this contract by himself without a need from a consumer to ask for the benefit of a consumer

Previously, I think the role of a judge in adjusting or removing the arbitrary terms based on the stated rules in Jordanian Civil Law isn't enough by itself to offer essential protection to a consumer from the arbitrary terms that the texts are restricted to compliance contracts only although the Cassation Court applied the text on other than that.

3.0 The role of societies in a consumer protection:

Consumer protection societies work directly to protect consumers interests in facing entrepreneurs and professionals who they expose consumers interest to danger where consumer protection law project for the year 2013 in the Article (14/A) stated on (consumer protection societies are established according to the applied legislations after obtaining the minister's approval). These societies have their own ways and methods they follow to achieve their goals represented in defending consumers, and they have the right to bring cases to court, and this what we will study briefly in two separate sections.

3.1 Methods of societies in achieving their goals:

Consumer protection societies follow many method in defending collective interest of consumers, the most important are:

1. **Alarming** : through providing consumers with essential information about characteristics about commodities and services shown in the national market by using brochures, magazines, the way of visual and audible media or voice messages and e-mail.

2. **Boycott**: that consumer protection societies – sometimes – ask consumes to boycott a specific commodity or service and stop purchasing it or not to deal with a specific project. For example, Jordanian consumer protection society called for make dairy in their houses and buy from manual shops that sell dairy with prices at 50% lower than factory prices.

3. Refrain from paying:

Based on this way the society ask debtor consumers to refrain from paying as pressure lever on a creditor to achieve their demands. For example, the consumer protection society asks consumers who have to be due from the Water Authority not to pay these receivables as pressure lever on water Authority to reduce prices of water but this way is double – egged weapon that it may succeeded in achieving the desired target but the danger is that this way may give the right to service or producer to refrain offering a service and holding on that paying is after implantation.

As previously mentioned, it is clear that the role consumer protection society restricted only to alarming and consultant and these societies don't have any executive powers. Through following the periodical leaflets of the society, we notice that the society only ask for refrain or ask government to control and reduce prices.

Regarding the role of the society in facing the arbitrary terms mentioned in consumption contracts, they also don't play any role to protect a consumer from the arbitrary terms and couldn't face the producer's influence on a consumer in imposing arbitrary terms because of weakness of powers given to them.

3.2 The role of consumer protection society in bringing cases to court:

Under general rules, consumer protection society couldn't bring cases to court because the Article (3/1) of Civil Procedure Law No. (14) for the year 1988 stated on (any ask or payment isn't accepted where its owner has no existence interest determined by law) and this interest should personal and direct which means that the one who brings case is the assaulted right owner or legal center or his representative. For example, if any of consumption contract included arbitrary terms, this society couldn't bring case to court by its own name or public of consumers to null or adjust the arbitrary terms).

However, the consumer protection law project gave consume protection society the right to bring case to court where the Article (17) of consumer protection law project for the year 2013 stated on(A. The society when the provider commits any practices violates any legislation affect the consumers interests has the right to bring case to court to stop these practices or correct them, and for this, the society is considered to be the stakeholder in filling claim, complaint or request despite what was mentioned in any other legislation. B. The consumers collective or individuals have the right to mandate any society in writing to file different claims, complaints or requests on their behalf against the provider if he violates the rules of this law or the rulings issued pursuant thereto including cases related to request compensations for detects and get back the price of commodities and services).

Previously we noticed consumer protection law project gave consumer protection societies an active role when decided to give them the right to bring to court which resulted in create serious and effective choices to face the arbitrary terms.

Conclusion and Recommendations

Through this study the researcher came out with many results represented in the followings:

1. The consumer attribute can be given not only for normal people but for some legal ones such as the nonprofit societies, cooperative unions that obtain commodities and services for professional goals because these legal people don't practice professional activity to get their financial incomes or existence in addition to their possible dealing with more experienced people.
2. It's benefited from the Article 2 statement of consumer protection project that benefit from a commodity or service is not only by consumption by owing itself but also with usage if it was of the useful things.
3. The legislator also includes with protection a commodity in addition to everyone who benefits from even if other than him bought it.
4. A consumer isn't qualified with the technical capacity to judge what he seeks to possess or obtain of commodities and services related to quality and durability and he can't perform the technical periodic maintenance for a lot of things.
5. Although the existence of jurists' opinions, we find that the Jordanian legislator adopted the extended trend of the concept of a consumer, while searching for the definition of a consumer for the year 2013 we find at the beginning of the definition he adopted the extended trend, but then added a statement for personal or others needs and this as it's common is a criterion for narrow trend not the extended one, and thus, he didn't define clearly the actual concept of a consumer.
6. A professional as considered to be the opposite party to a consumer in the contracting process can be a normal or legal person.
7. All legislations related to a consumer although they are disagreed in the idiom given to a consumer, they give him the same definition; a professional isn't restricted to a normal person but it also includes the legal one.
8. To determine whether a person consumer or professional depends on the activity he practices if it related to his job or personal usage.
9. Will Defect Theory doesn't offer enough protection to a consumer from the arbitrary terms because of the difficulty of achieving and proving the fault hating conditions and deception with unjust obscene from one side, and difference of judgment between deception with unjust obscene and the arbitrary terms from the other side, in addition to the general rules in deception require coupling deception with unjust obscene, and coupling unjust obscene with deception and not separated only in some exception cases.
10. Judiciary plays an important role in interpreting the arbitrary terms mentioned in compliance contracts then nulling, removing or adjusting them, whereas the compliant attribute isn't offered in all consumption contracts, and thus the role of judiciary in interpreting the arbitrary terms – if the contract is not a compliance one- is very limited and it almost doesn't play any role in interpreting them. Therefore, the judiciary doesn't offer the desired protection for the consumer from the arbitrary terms if the consumption contract doesn't belong to compliance contracts, with the traditional meaning to these contracts.
11. Under the absence of consumer protection law, failure to be passed or enforced, the consumer protection societies don't have any role to protect the consumer from the arbitrary terms and their role is restricted to warn of these terms and call the consumer to boycott and refrain to pay. Consumer protection law for the year 2013 gave consumer protection societies an effective role in facing the arbitrary terms through determining the

societies right to bring collective and individual case to court on the behalf of consumers or interfere with. But this role is still limited under the absence of enforced role of the society.

Based on these results we conclude the following recommendations:

1. We hope that the Jordanian legislator follow the comparative legislations and adjust the concept of a consumer to fit the actual concept that the legislator intended, and more important is that this law is enforced.
2. We think that the legislator should add a private text that makes the seller of a commodity or the provider of a service sometimes a consumer where the characteristics of a consumer are available to make it like “ everyone who contracts for a commodity or service” or “ everyone who holds a legal behave related to a commodity or service”, that target behind adding such a text to be more comprehensive where a seller , or a provider of a commodity or service is viewed as a consumer in some cases.
4. We hope that the legislations regulated to protect a consumer to set a clear criterion to differentiate between a consumer and professional.
5. The legislator has to set a private clear text related to a professional who works outside his specialization to determine whether to be considered as a professional or consumer.
6. Adjusting the texts of consumer protection law project by giving judiciary a wide authority in interpreting the arbitrary terms mentioned in the consumption contracts then nulling or adjusting them which brings balance between the benefit of the two parties of consumption contracts.
7. Adjusting the texts of consumption protection law project by giving the consumption protection society an enforced authority to achieve their goals.
8. Adjusting the texts of consumer protection law project by creating a consumer protection committee to protect a consumer from the arbitrary terms where its missions to control the consumption contracts and protect a consumer from the arbitrary terms .

Reference

- ShendyYusef, a search entitled the legal concept of a consumer , an analytical comparison study, Journal of Sharia' and Law, iss.44, 2010, p.157
- Jaradat, SharBahjat, Protection of a consumer from the arbitrary terms in electronic contracts, MA thesis, Yarmouk University, 2011, p.12
- AthamnehSaleem, a previous reference, p. 69.
- Abdul Baqi Omar, contracted protection for the consumer, a comparative study between Shari'a and law, Munsha't Al-Ma'aref, Alexandria, Iss.2, 2008, p.28
- Jaradat, saharBahjat, a previous reference, p.17.
- Emran, Al-Sayed Mohammad Al-Sayed , consumer protection while concluding a contract, a comparative study, Munsha't Al-Ma'aref, Alexandria, W.D. p.8.
- Jaradat, Sahar Bahjat, a previous reference, p.11.
- Sulaiman, Ahmad Adelnkader, consumer protection in electronic transaction, W.P, 2009, p.20.
- Ibrahim, AdlAlmone'm, Mousa, protection of a consumer, a comparative study, Al-Halabi legal publications, Beirut, Lebanon, Iss.1, 2007, p.434.
- Mohammed Budalym Combating the arbitrary terms in contracts (a comparative study) , Dar Al-Fajr for publications and distribution, Iss.1, 2007,p.2.
- Assarhan, Adnan Ibrahim and Khater, Noury Mohammed, Explanation of the civil law, Resources of personal rights, Dar Athaqafa for publication and distribution, Amman, W.I., 2013.
- Resolution of cassation of rights No. (119/1986) on 25/2/1986 five-pointed body, publication of Adala Centre.
- Resolution of cassation of rights No.(2314/2005) on 16/12/1986 five-pointed body, publication of Adala Centre.
- Assarhan, Adnan Ibrahim and Khater, Noury Mohammed, a previous refence, p.148, and also Asanhoury, AmdelRazaq Ahmad, Mediator in in the condition of the new civil law, theory of commitment in general, Alhalabi legal publication, Lebanon. 3rd Issue, 2009, p.343.
- review Asarhan,Adnan Ibrahim and Noury Hamad Khater, a previous redference, p.148.

Author Information

Dr. Mohammad Fahmi Ghazwi

Assistant Professor, Deputy Dean of Faculty of Law, Al-Zaytoonah University

Dr. Mash' alMoflehAljarrah

Assistant Professor, Head Of Private Law Department, Faculty Of Law, Amman Arab University

Dr. Mohammad Khalil Abu-Baker

Associate professor, Dean of Faculty of Law, Al-Zaytoonah, University
