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## A Comparative Study of the Illegitimate Condition in Iranian and British Law and its Comparison with the Unfair Condition in Other European Countries

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### Abstract

The importance of the role that the contract plays in an economic system is undeniable. The importance of the matter is such that the law accepts, if it has not decided on it, that it must accept that the parties to the contract enjoy economic freedom of decision when concluding the contract, but that the contractual freedom is limited. Are those that limit unconditional actions? The laws of subject matter and public order and good morals are among the rules restricting the freedom of contractual will, which have a special and considerable place in all legal systems. These rules, which are mentioned in legal writings about contracts under the title of the "illegitimacy of the contract", are studied, in the law of Iran and the United Kingdom in terms of effects and characteristics are not exactly the same. In both legal systems under study, the guarantee of the implementation of contracts contrary to public order and good morals is declared absolutely invalid. Moreover, the illegitimate condition is invalid in Iranian law, but it does not invalidate the contract. Another type of contractual conditions, the unfair condition, is against ethics and public interest. It has resulted in unignorable inequalities in contractual relations and issued rules and regulations by the European countries, though, these countries have problems in protecting its legal sanction. The current study investigates respective rules and regulations carefully and discusses about major reasons of differences in their interpretation and execution.

**Keywords:** Illegal Condition; Unfair Condition; Ethics; Public Order.

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### Bibliography

- Abdali, Mehrzad. "The public order theory and good ethics in civil law with a comparative study of law system in France, England & Iran." PhD Diss., Tarbiat Modarres University, Tehran, 2001. [In Persian]
- Adel, Morteza & Shams-ul-Allahi, Mohsen. "Unfair condition in consumer's contracts." *Quarterly of personal Law researches* 7, No. 25 (2018): 206-233. [In Persian]
- Afrasiabi, Mahdi. "The unfair conditions of contracts in Iranian Law." M.A. thesis, Imam Hossein University, 2015. [In Persian]
- Ahmadzadeh Bazzaz, Seyyed Abdolmotaleb; Majid Rezaei Davani, and Seyyed Mohammad Sadegh Ghabouli Dorafshan. "The meaning and position of unfair conditions in Europe law and Iranian positive law with a look at fairness and justice in Imamiyah Jurisprudence." *Journal of Comparative Researches in Islam and West Laws*, 17(2018):3-34. [In Persian]
- Alavi, Seyyed Mohammad Taghi & Babazadeh, Babak. "Contract definition in common law." *Allameh Scientific Quarterly* 10 (2010):4-13. [In Persian]
- Amini, Mansour, Mirhossein Abedini, and Sakineh Karami. "The Law Systems' way of coping with unfair contractual conditions and silence of consumer rights act in Iran." Tehran: *Law Researches*, 150 (2012): 186-202. [In Persian]
- Amiri Ghaem Maghami, Abdolmajid. *Obligation Rights*. Tehran: Mizan Publication, 2007. [In Persian]
- Amirteimouri, Saeideh. "The consumption rights and imposed conditions." M.A. Thesis, Law Faculty, Shahid Beheshti University, Tehran, 2013. [In Persian]
- Ansary, Sheikh Mortaza. *Al-Makaseb*. Qom: Institute of Bagheri, 1990. [In Arabic]
- Aziz Karim Javad, Hooria, Azam Ansari, and Seyyed Mohammad Mahdi Ghabooli Dorafshan. "Comparative study of confronting unfair conditions in Iranian and Iraqi law system." *Parliament & Strategy Quarterly* 103 (2020):219-246. [In Persian]
- Bahri, Edris. "The study of control mechanisms for unfair conditions in consumers' contracts." *3<sup>rd</sup> international & national conference on management, accounting and law*, (2020):14-18. [In Persian]
- Bojnourdi, Seyyed Hassan Ibn Aqa Bozorg Mousavi. *Al Qavaaid-ul-Fiqhiay*. Edited by: Mahdi Mehrizi & Mohammad Hassan Derayati, 1<sup>st</sup> edition, Qom: Nashr-e-Alhadi, 1998. [In Arabic]

- Duxbury, Robert. *Review of English Contract Law*. Translated by: Seyyed Hossein Mir Mohammad Sadeghi, 1<sup>st</sup> edition, Tehran: Hoghooghdan, 1998. [In Persian]
- Elahian, Mojtaba. "Unfair conditions of security contracts and its effects from a juridical viewpoint." *Juridical Researches*, 8 (2013):6-14. [In Persian]
- Emami, Seyyed Hassan. *Civil Law*. Tehran: Islamic Bookstore, 2006. [In Persian]
- Garoosi, Aliakbar and Mohammadreza Pirhadi. "Guarantees of unfair conditions in annexed (supplement) contracts with a look at Iranian and English law system." *Journal of Jurisprudence and foundations of Islamic law* 4 (2019):135-149. [In Persian]
- Ghasemi, Mohammad Ali. "Investigate of jurisprudential principles negation of distress and constriction." *Journal of theology and law* 24 (2009):46-57. [In Persian]
- Habibi Dargaah, Behnam. *Basics of European contract law*. 1<sup>st</sup> edition, Tehran: Majd Scientific & Cultural Council, 2010. [In Persian]
- Helli Mohaqeq, Najm-ud-din. *Al Mokhtasar-ul-Naafee fi Fiqh-ul-Imamiyah*. 6<sup>th</sup> edition, Qom: Moassessat-ul-Matbuaat-ul-Diniyah, 1997. [In Arabic]
- Helli, Hassan- Ibn- Yousef. *Qavaed-ul-Ahkam fi Marifat-ul- Hallal- val- Haraam*. Corrected by: group of researchers, 1<sup>st</sup> edition, Qom: Office for Islamic Publications (supervised by Qom seminary scholar's community), 1992. [In Arabic]
- Jafari Langroodi & Mohammad Jafar. *Law schools in Islamic Law*. Tehran: Ganj-e-Danesh, 1991. [In Persian]
- John N. Adams & Rogers Brownsword. *An analysis and criticism on England's contracts law*. Translated by: Seyyed Mahdi Moosavi, 1<sup>st</sup> edition, Tehran: Mizan, 2007. [In Persian]
- Katoozian, Naser. *Civil law: legal practices*. 11<sup>th</sup> edition, Tehran: Sherkat-e-Sahami-e-Enteshar, 2006. [In Persian]
- Katoozian, Naser. *General rules of contracts*. Vol. 3, 5th edition, Tehran: Sherkat-e-Sahami-e-Enteshar, 2008. [In Persian]
- Katoozian, Naser. *Introduction to civil law: contract, unilateral obligation*. 1<sup>st</sup> edition, Tehran: Sherkat-e-Sahami-e-Enteshar, 1981. [In Persian]
- Khoeini, Ghafoor. *Commitments Law (Juridical-legal analysis)*. Tehran: Zohd Publications, 2000. [In Persian]
- Khomeini-ul-Mousavi, Roohollah. *Tahrir-ul-Vasilah*. Tehran: Institute for publishing Imam Khomeini's works, 1988. [In Arabic]
- Khooyi Mousavi, Seyyed Mohammad Taghi. *Al Shorrot- av- Iltizamat-ul-Tabaeiah- fil- Oghood*. 1<sup>st</sup> edition, Beirut: Dar-ul-Movarekh-ul-Arabi, 1993. [In Arabic]

- Maraghi, Mir Abdulfattah. *Al Anavin-ul- Fiqhiyah*. 1<sup>st</sup> & 2<sup>nd</sup> Volumes, Qom: Office for Islamic publications, 1417. [In Arabic]
- Mohaqqeq Damad, Seyyed Mostafa. *Juridical rules: civil rules*. 31<sup>th</sup> edition, Tehran: Center for Publishing Islamic Sciences, 2011. [In Persian]
- Nabizadeh Kebria, Ghasem. "Unfair conditions and comparative study of Iranian and English law system." PhD Diss., in Personal Law, Islamic Azad University, Sciences & Researches Branch, Tehran, 2014. [In Persian]
- Naraghi, Ahmad Ibn Mohammad. *Avaed-ul-Ayyam fi Bayan-e- Qavaed-ul-Ahkam va Mohimaat Masaal al-Halal val- Haram*, 1<sup>st</sup> edition, Qom: Center for Islamic promotions, Qom Seminary, 1996. [In Arabic]
- Saboochi, Mahdi. "Unfair contracts in Iranian Positive Law & Common Law." M.A. thesis, Islamic Azad University, Damghan, 2015. [In Persian]
- Safaei, Seyyed Hossein and Negar Shomali. "Comparative study of unfairness guarantee of contractual conditions in Iran, United States & European Union." *Legal sciences quarterly* 86 (2019): 45-51. [In Persian]
- Safaei, Seyyed Hossein. *An introduction on civil law, Basics of contracts*. 2<sup>nd</sup> Vol., 1<sup>st</sup> edition, Mizan, 2003. [In Persian]
- Sardoyi Nasab, Mohammad. "Unfairness elements of a contract." *Majaleh-e-Hoghooghi Dadgostary* 75 (2011): 45-49. [In Persian]
- Shahidi, Mahdi. *Civil Law-Commitments*. Tehran: Majd Scientific & Cultural Council, 2013. [In Persian]
- Shahidi, Mahdi. *Contracts & Commitments*. Tehran: Hoghooghdan, 1998. [In Persian]
- Sharif, Ahmad. *Condition of a juridical and legal viewpoint*. 1<sup>st</sup> edition Thran: Kamal-ul-Milk, 2008. [In Persian]
- Shiravi, Abdolhossein. "Unfairness of contract conditions in common law with an emphasis on English, American and Australian law." *Qom Higher Education Institute* 14, No.4 (2012):20-27. [In Persian]
- Torabi, Ahmad. *Comprehensive translation and explaining of contracts in England law*. 1<sup>st</sup> edition, Tehran: Donya-e-Sabz, 2012. [In Persian]