

# An Analysis of Consumer Protection in the Financial Service in Iraq: Consumer Loan Contract

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## Abstract

Recently, the contract law is the basis of any economic system worldwide. As such, to which degree the Iraq laws are perfect for protected consumers from unfair terms between formal and informal institutions. In this regard, all relevant legal agreements inadequate due to weakness of the legislative and institutional role in enacting and amend the consumer protection laws. Therefore, consumers who are hunted by the unfair terms in loan contracts are calling the Iraqi lawmakers to act positively in order to parallel the developments of other countries in dealing with unfair terms in consumer loan contracts. It is time for Iraq to offer a complete regime of law for consumer protection due to the weaker party must be protected from deception and fraud that harm their interests. This paper examined the adequacy of relevant legal materials by critical review and analysis the problems underlying consumer protection institution and the statutory provisions in Iraq that governing the consumer protection from unfair terms in a standard form loan contract. By adopting pure legal research methodology, the present paper emphasized that the Iraqi consumer protection organization (Civil law 1951, Consumer Protection Law 2010 and consumer institutions) lacks ingredients of the business to consumer (B2C) transactions. Also, unfair terms in the consumer loan contracts are essential issues that must be considered by the government.

**Keywords:** Consumer protection, unfair terms; Standard form, Iraqi law, Loan Contract.

## 1. Introduction

Consumer protection has entered the new millennium with a more powerful role in ensuring a fair marketplace and an equitable society. Despite the increased demand for protection, most of the market transactions have failed to distinguish between the different categories of market. Hence, the lawmakers are challenged to balance the needs of market providers and that of consumers. To ensure a fair trading environment, consumer protection in trades has met with an important development, and consumer contracts are now a predominant feature. These contracts thus require a vehicle through which exchanges can be made effectively<sup>1</sup>.

Apparently, contract law is the basis of any economic system. It governs the contract of any sale of goods or services and the transfer of property<sup>2</sup>. The contract law is traditionally linked to the agreements in written form which are personally signed by the contracting parties. However, the law was enacted before the new challenges were brought by the use of hardware and software assets in a contracting process<sup>3</sup>. In this area, the legality of a continuous development in standard business complexity is visible. Contracting becomes more complex because of the many deceptive ways a strong party has developed to exploit the weaker party's lack of consumer knowledge<sup>4</sup>, especially in the financial service sector.

According to Abdullah, Yusoff, and Zakuan, the concept of freedom of contract which posited that consumers should take care of themselves or 'let the buyer beware' was no longer a relevant concept in consumers' contracts of this era. This was violated by unscrupulous traders who use it as an effective tool to exclude their liability by utilizing manipulative method of drafting contract<sup>5</sup>.

<sup>1</sup> Azimon Abdul Aziz and Sakina Shaik Ahmad Yusoff, "Regulating Standard Form of Consumer Contracts: The Legal Treatment of Selected Asian Jurisdictions," *Asian Journal of Accounting and Governance* (2010): 105-24, accessed April 16, 2015, <http://www.ukm.my/ajag/vol1ch5.pdf>.

<sup>2</sup> Sothi Rachagan, "Protection Against Unfair Trade Practices in Malaysia — Law, Enforcement, and Redress in a Developing Country," *Journal of Consumer Policy* 15, no. 3 (1992): 255-47, accessed May 10, 2015, <http://link.springer.com/article/10.1007%2FBF01017576?LI=true>

<sup>3</sup> Linda Mulcahy, *Contract Law in Perspective*, 5th ed., ed. y Routledge Cavendish (USA and Canada: Taylor & Francis e-Library, 2008, 2008), 1, <https://www.google.com/search?tbo=p&tbn=bks&q=isbn:1134066759>

<sup>4</sup> Veljko Trivun, Vedad Silajdži ć, and Fatima Mahmut ć ehaji ć Mahmut ć ehaji ć, "Exclusion and Limitation of Liability Clauses in Electronic Contracts," accessed April 13, 2015, [https://www.academia.edu/6270488/Exclusion\\_and\\_limitation\\_of\\_liability\\_clauses\\_in\\_electronic\\_contracts](https://www.academia.edu/6270488/Exclusion_and_limitation_of_liability_clauses_in_electronic_contracts).

<sup>5</sup> Farhah, Sakina Shaik Ahmad Yusoff, and Zeti Zuryani Mohd Zakuan, "Exclusion Clauses in Consumer Contracts: Malaysia as the Model

Besides, consumers (Borrowers) lack sufficient information to determine which terms in consumer loan contracts are fair and balance. International efforts have been made to regulate the unfair terms in a contract with or without the scope of contract law<sup>1</sup>. Certain developed and developing law countries will be discussed in next paragraph as instances of that effort.

The term “consumer rights” was started to be used in political context since more than 50 years ago. In March 1962, President J.F. Kennedy in his special message to the United States Congress defined four consumer rights: the right to safety, the right to be informed, the right to choose and the right to be heard. These are the basis of UN Guidelines. Based on these guidelines, Consumers International (CI) developed a set of eight fundamental consumer rights. The consumers’ rights are: (1) the right to the satisfaction of basic needs; (2) the right to safety; (3) the right to be informed; (4) the right to choose; (5) the right to be heard; (6) the right to redress; (7) the right to consumer education; (8) the right to a healthy environment. In spite of the UN Guidelines Iraqi law makers do not give specific consumers protection against unfair contract terms<sup>2</sup>.

However, in Iraq, the latest consumer protection law falls short in addressing the problem of unfair contract terms. This has caused consumers to suffer from infringed rights and adhesion contracts with banks. In addition, the Iraqi law doesn't provide the consumers protection against unfair terms that included in the standard form loan contracts. As such these areas require a legal control of the conduct of traders and corporations in their dealings with consumers<sup>3</sup>. Therefore, The aim of this study is to analyse and examine the nature and adequacy of law in Iraq that deters traders, companies, and banks from stipulating unfair terms in the contracting process with consumer, or there is necessity for a new law, or to ascertain whether an officious use of law can offer some kind of solution or answer to the problem or question, or whether law can be used as an instrument of control, change, and reform.

## 2. Research Methodology

The researcher opted pure legal research approach or doctrinal research to provide full understanding of the pure legal issues in the search area. It is interested with critical review of legislations and of decision making process and their subordinate policy. Doctrinal research (also referred to as the orca, pure legal, academic, traditional, armchair research) is essentially a library-based study, which means that the materials needed by the researcher may be available in libraries, archives and other databases<sup>4</sup>. The basic aim of such research is to discover, explain, examine, analyses the working of certain laws or legal institutions—and present in a systematic form, facts, principles, provisions, concepts, theories. It is applied to obtain data and information that relevant to the consumer protection from unfair terms in Iraq. Further, the researcher analysed articles of the Iraqi Consumer protection law 2010 and Iraqi Civil Code 1951 statutes.

The researcher adopted an analytical approach involves a careful examination and evaluation of legal rules, published articles, established laws and doctrines in order to understand or explain it or draw inferences and conclusions from it<sup>5</sup>. The analysis is on the relevant legal rules in Iraqi law in an effort to eliminate the unfairness in a loan agreement. The present paper is concerned with the law reform in Iraq because the existing law is found inadequate or inappropriate to deal with such problems.

## 3. Traditional Theory of Contract Law

Contract law is the foundation of any economic structure. It is traditionally related to the agreements in written form and personally signed by parties<sup>6</sup>. Internationally, there is an absence of a formal and comprehensive definition of a contract. However, authors of textbooks often begin their write-ups with a definition of the law of contract which is not part of the law itself. Definitions as such, are illustrative or indicative. According to Anson’s Law of Contract, it states that: “The law of contract may be provisionally described as that branch of the law which determines the circumstances in which a promise shall be legally binding on the person making it”<sup>7</sup>.

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for Asean? 1, accessed April 17, 2015, <http://versys.uitm.edu.my/prisma/view/viewPdf.php?pid=15507>. And Azimon Abdul Aziz et al., “Towards Harmonisation of the Asean Contract Law: The Legal Treatment of Unfair Consumer Contract Terms among Selected Asean Member States,” *Asian Journal of Accounting and Governance* (2011): 61-65, accessed April 18, 2015, <http://core.ac.uk/download/pdf/11494318.pdf>.

<sup>1</sup> Ibid

<sup>2</sup> Bălan, Carmen. "Consumer Right to Information before Purchase: Research on the Romanian Online Stores for Technical Consumer Goods." (2014).

<sup>3</sup> Zkry Mohammed Hussein and Nasir Sabbar, “Civil Protection of the Familiar Conditions in Commercial Contracts,” *AL- Mouhakiq Al-Hilly Journal for legal and political science* 1, no. 1 (2009): 45-88, accessed April 16, 2015, <http://www.iasj.net/iasj?func=fulltext&aId=37004>.

<sup>4</sup> Anwarul Yaqin, *Legal Research and Writing* (Malaysia: LexisNexis, 2007).

<sup>5</sup> Khushal Vibhute and Filipos Aynalem, *Legal Research Methods Teaching Material* ( the Justice and Legal System Research Institute, 2009), accessed March 28, 2015, <https://chilot.files.wordpress.com/2011/06/legal-research-methods.pdf>

<sup>6</sup> Veljko Trivun, Vedad Silajdzic, and Fatima Mahmutcehagic, “Exclusion and Limitation of Liability Clauses in Electronic Contracts,” *University of Sarajevo*: 1, accessed April 29, 2015, [https://emnet.univie.ac.at/uploads/media/Trivun\\_Silajdzic\\_Mahmutcehagic\\_01.pdf](https://emnet.univie.ac.at/uploads/media/Trivun_Silajdzic_Mahmutcehagic_01.pdf).

<sup>7</sup> Sir Jack Beatson, Andrew Burrows, and John Cartwright, *Anson's Law of Contract*, 29th ed. (New York: Oxford University Press, 2010),

In the context of regulating of contracting process, Iraq administers with a civilian law which wholly depended on the state's customs and legislative power to regulate the civil obligations of the parties in a contract<sup>1</sup>. Iraqi Civil Code no 40 of year 1951 (hereinafter ICC 1951) which regulates the civil matters between parties in a contractual relationship. Currently, it is based on the freedom of contract principle and considered that the contract is the superior relationship. According to Hadi, the general principle of the theory of contract decides that the contracting parties are free to conclude the contract they want, and to fix its conditions, except those against public policy and morality<sup>2</sup>. Article 146 states that; (1) where a contract has been concluded it is legally binding and neither party may revoke or amend it except pursuant to a provision in the law or by mutual consent<sup>3</sup>. This Article is since 1951, however, it is a long and sufficient period to ring the bell for renewing and reform the laws that concerning contract law and develop it to protect consumers generally and consumers of financial service especially.

#### 4. Transformation of Contract Law

##### 4.1 Standard form Contracts

Modern contract law arose as courts recognized that inequalities existed between contracting parties. This happens when one party is forced to enter into a contract due to economic and/or social pressures<sup>4</sup>. Mabahj reported that standard form contracts, also referred to as contracts of adhesion, are non-negotiable contracts which are created and presented by one party to the other, typically on a 'take-it-or-leave-it' basis. The aim of using this type of contract is to implement the same contract on numerous or multiple transactions within a range of parties<sup>5</sup>. In the modern economic condition, there is a typical imbalance in the supplier-consumer relationship which is in favour of the supplier. The supplier is more knowledgeable about the service/product. The more intricate the subject matter, the lesser the chances of the consumer being able to make any informed judgment or decision about the quality or safety of goods/services. Even, possession of relevant information may not be of help to the consumers in exercising experts' assessments of the associated risks<sup>6</sup>.

Mohammed emphasized on the importance of studying the adhesion and standard form contracts. He justified that those contracts are wide spread among the traders and companies as well as formal and non-formal institutions. Additionally, the insufficiency of rule of law has also contributed to this problem<sup>7</sup>. Thus, consumers that were hunted by the unfair terms involved in these contracts are calling the Iraqi lawmakers to act positively in line with the developments of other countries, as experienced in dealing with the unfair terms in the consumer contracts.

As stated above, there is remarkable transformation in the theory of contract law, because of the developing using by different institutions and fields. Thus, worthwhile it should be given more space in the Iraqi studies to be in line with the developed researches in this area to develop the Iraqi laws. Hence this study will try to fill in this gap and contribute to the body of knowledge.

##### 4.2 Loan Contract

Most of the authors asserted that the loan contract is an adhesion and standard form contracts with excellence. It has been shown that an adhesion contract is a non-negotiable, hence non-negotiated, contract. The entire contract is devised exclusively by one of the parties, and the other does not have the power to discuss or change it. The only possibility is to accept the contract as a whole, adhering to all its clauses, or to refuse to contract.

The existence of unfair terms in the standard form contract is particularly found in the banking sector. Considering the loan contract which demands the community lawmaker's intervention in the area of contracts entered into by consumers. The purpose of the said intervention was to protect the consumer or an individual

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under "1,"

<sup>1</sup> Ali Mohammed Khalaf Al-Eliwi, "Legal Framework for Protecting Computer Programs in the Ambit of Intellectual Property: A Comparative Study between Iraqi Law (Civil Law) and English Law (Common Law)" (PhD diss., Newcastle Law School, 2012), 1, accessed March 3, 2015, <https://theses.ncl.ac.uk/dspace/handle/10443/1912>.

<sup>2</sup> Haider Hassan Hadi, "Restriction of Freedom of Contract Actions Contained Within the Scope of the Intellectual Property Rights in the Light of Modern Legislative Developments-Comparative Study," in "16,17," special issue, *Al-Hiqouq Journal* 4, no. 16 (2012): 339-58, accessed April 26, 2015, <http://www.iasj.net/iasj?func=fulltext&aId=38617>.

<sup>3</sup> Iraqi Civil Code no 40 of 1951

<sup>4</sup> Atiyah, *An Introduction to the Law of Contract*, 4th ed. (New York: Oxford University Press, 1989), under "495," accessed May 21, 2015, <http://trove.nla.gov.au/work/7285842?q&sort=holdings+desc&=1445416793077&versionId=46347767>.

<sup>5</sup> Mabahj Habib Youssef, "The Acceptance in the Adhesion Contract" (PhD diss., University of Khartoum (UOFK), 2015), 369, accessed June 14, 2015, <http://khartoumspace.uofk.edu/handle/123456789/11025>.

<sup>6</sup> Alaa Yacoub Youssef, "The Legal Protection of the Consumer in E-Commerce Contracts," *Journal of the Faculty of Law* (2003): 1, accessed May 10, 2015, <http://www.iasj.net/iasj?func=search&query=au:%22%D8%A7%D9%84%D8%A7%D8%A1%20%D9%8A%D8%B9%D9%82%D9%88%D8%A8%20%D9%8A%D9%88%D8%B3%D9%81%22&uiLanguage=en>.

<sup>7</sup> Radhi khaolah Kadhim Mohammed, "Acceptance in Adhesion Contracts," *Al Hilli Detective Journal for legal and political science* 6, no. 1 (2014): 388-92, accessed April 17, 2015, <http://iasj.net/iasj?func=search&page=3&query=kw%3A%22as%22&earliestYear=1650&tYear=2015&filter=year%3A%222014%22>

regarded as a “weak”, vulnerable contractor, in his/her legal relations with professionals. The state’s intervention is expected to take all forms of prohibited clauses concerning contracts entered into with consumers into consideration. These clauses are often justified by the pressing need to prevent a significant imbalance of the contract and are based on the good faith obligation in contracts<sup>1</sup>.

A loan agreement is the document in which a lender (usually a financial institution such as banks) lay out the conditions and terms under which it is prepared to issue a loan to a borrower. Loan agreements are sometimes referred to as "facilities agreements". This is a more technical name because a loan can be said to be a banking "facility" offered by the lender to the borrower or consumer<sup>2</sup>.

Majority of loan negotiations commence with the preparation of a document by the lender. This document is known as a term sheet, engagement letter, or mandate letter. It outlines the essential terms of the loan, which includes the key financial terms such as the repayment period and the interest rate. A term sheet can be referred to as the genetic code which governs the contents of the final loan agreement. It explicitly states that it is not intended to be a binding obligation for either party, hence, none of the parties can proclaim that it is an enforceable negotiating perspective of the borrower, or that one party is responsible to the other for action taken or costs incurred based on the term sheet<sup>3</sup>.

Borrowers are commonly required to specify agreement to the terms and conditions laid out in the term sheet by countersigning it. For this reason, the best time for a borrower to clarify or negotiate on financial terms, is at the term sheet stage or process. This is because a lender will contend that the proposed lending conditions are based on the term sheet. It will be erroneous for a borrower to think that the terms will remain open for negotiation after the preparation of the draft loan agreement. Lenders often obtain endorsement from their credit committees (or other internal bodies) based on the term sheet.

However, the nature of the loan agreement allows the existence of disparity between the parties, thus, existence of unfair terms become a definite matter. Many countries include an extensive restrictions and control of law upon the standard form contracts in general, and loan agreement in particular. These countries also regulate the inclusion of unfair terms in order to protect the weak and vulnerable party in a contract that already set by one party<sup>4</sup>. Angelo and Ellinger have asserted the above discussion by stating: "Undoubtedly, certain types of contracts, such as lending and tenancy agreements, have always contained some element of inequality"<sup>5</sup>. The Iraqi Civil Code regulates the lending process in chapter 4 section (i) Article (684). It states the definition of loan as "a designated definite fund which is given to another person by a person. It is consumed by enjoyment with the hope that the receiver return (restitute) the loan. It is a general definition because it does not differentiate the money lending from the other lending process. Article (686) (1) states that the borrower will own the thing borrowed by taking delivery thereof, and his liability on a comparable thing is established.

Furthermore, in Article (688), if the loan is dispossessed, the provision governing sale shall apply. But if the loan was interest free, the provisions governing loans for use will apply. Article 692 (1) states that interest will not be obligatory on the loan unless it has been stipulated in the contract, (2) If the borrower has paid interest in excess of the legally permissible rate, he may recover the excess irrespective of whether he had paid it, knowing it to be excessive or by mistake. And, the maximum legal interest is ranging between (4 to 7%), as mentioned in Article 171 and 172 of the code. It can be concluded that the ICC does not regulate the potential existence of unfair terms in loan contract. It means it is subject to the general role, i.e. Adhesion contract.

### 4.3 Consumer Protection Era

Being the consumer, there is always the need for protection against the other party who is a professional trader because he or she has the expertise and economic ability over the consumer.

The effect of the imbalance negotiating power makes it necessary to protect the weak party which is the consumer<sup>6</sup>. There is a need to find out the appropriate legal framework for consumer protection, according to these new instances. Iraqi legislation framework is limited to what is known as contract adhesion. It is agreed by thoughts opinion that the contract is not considered adhesion contracts unless it is attached to a commodity or facility which is necessary to be the subject of a legal monopoly or physical. Dependence on the theory of

<sup>1</sup> Eugenia Voicheci, "Freedom of Contract and Its Limitations in the Romanian Civil Code," *Challenges of the Knowledge Society* 4 (2013): 416-27.

<sup>2</sup> "What Is Loan Agreement?," The Law Dictionary, accessed September 4, 2015, <http://thelawdictionary.org/loan-agreement/>.

<sup>3</sup> <https://www.cgap.org/sites/default/files/CGAP-Technical-Guide-Commercial-Loan-Agreements-Oct-2006.pdf>

<sup>4</sup> Carolyn Edwards, "Freedom of Contract and Fundamental Fairness for Individual Parties: The Tug of War Continues," *UMKC L. Rev* 77, no. 3 (2009): under "648," accessed August 7, 2015, <http://scholarship.law.marquette.edu/cgi/viewcontent.cgi?article=1281&context=facpub>.

<sup>5</sup> Angelo and Ellinger, "Unconscionable Contracts: A Comparative Study of the Approaches in England, France, Germany, and the United States," *Loyola of Los Angeles International and Comparative Law Review* 3, no. 14 (1992): under "457," accessed August 7, 2015, <http://digitalcommons.lmu.edu/cgi/viewcontent.cgi?article=1245&context=ilr>.

<sup>6</sup> Alaa Yacoub Yousef, "The Legal Protection of the Consumer in E-Commerce Contracts," *Journal of the Faculty of Law* (2003): 1, accessed May 10, 2015, <http://www.iasj.net/iasj?func=search&query=au:%22%D8%A7%D9%84%D8%A7%D8%A1%20%D9%8A%D8%B9%D9%82%D9%88%D8%A8%20%D9%8A%D9%88%D8%B3%D9%81%22&uiLanguage=en>.

adhesion contracts does not allow consumers' protection from abusive terms, because adhesion's conditions are not applicable in most cases.

Therefore, the majority of recent legislations granted the priority to consumers' protection through separate legal rules which includes collection of legal regulations. This aimed to protect consumer in different fields<sup>1</sup>.

For instance, in 31 December 1994 a new policy of consumer protection from unfair terms is adopted<sup>2</sup>. It is categorized as "a milestone in consumer policy." The (EU) Directive 1993/13/EC on Unfair Contract Terms (UCTD) contains "a unique combination of substantive rules on fairness and procedural rules for eliminating unfair terms from the market." The main notion of unfairness, or when a contract term is unfair, is set out by test of fairness is laid down in Art. 3(1) UCTD that reads:

"A contractual term which have not been individually negotiated shall be regarded as unfair if, contrary to the requirement of good faith, it causes significant imbalance in the parties' rights and obligations arising under the contract, to the detriment of the consumer" .

Notably, in Iraq, there are no special rules to protect consumers from the exploitation of traders by warning consumers of unfair terms in contract. It is now important for the legislature to protect the consumers by empowering judiciary over the imbalanced obligations in the consumer contract, or use the black list of terms that are considered unfair to pursue this development.

## 5. Iraqi Institutional role in protecting consumer from unfair terms

Iraqi institutions should pay more attention to update the current laws and rules. In addition, it should be more active and realistic to enhance the consumer rights. Consumer institutions should actively participate in providing an environment where consumers are protected. Governments should provide oversight and enforcement to ensure both sides are meeting on a level playing field. Without the effective and operative participation of consumer advocates, regulators tend to hear only from the industry and thus cannot ensure a level playing field between consumer and the service providers<sup>3</sup>.

Particularly in Iraq, the lack of funds to support the institutional arrangements for consumer protection is a common constraint, despite political willingness and interest in the agenda. Besides money, experienced and well-trained staff is also frequently missing, particularly because consumer protection from unfair terms in the standard form contract is a relatively new field that requires a specific legal knowledge. A scaled-up focus on consumer protection from unfair clauses also poses the burden of experimentalism on lawmakers willing to enact consumer protection laws in their respective countries. Another frequently experienced challenge is the lack of a well-articulated and clear mandate for consumer protection regulations and supervision<sup>4</sup>.

Consumer education is needed to balance information between consumers and providers of services<sup>5</sup>. Consumers who enters into a standard form contracts, with less experience using different services, are especially in need of education about their rights and responsibilities. Consumer education may be delivered by government, agencies, consumer associations, or the industry, but most often consumer education programs are provided through public campaigns<sup>6</sup>.

Unfortunately, within the Iraqi Government's rules, prudential means would not provide the solution to our problems. Consumer institutions should actively participate in providing an environment where consumers are protected from unfair standard form contracts. Governments should provide oversight and enforcement to ensure both sides are meeting on a level playing field<sup>7</sup>.

## 6. Discussion and Conclusion

Nowadays, all contracts are imperfect and most contracts are not fully negotiated. Parties to contract are often only dimly aware of what they are agreeing to when they enter a contract. In this regard, the standard form

<sup>1</sup> Andrea Fejós, "European, Hungary and Serbian Models of Fairness in Consumer Contracts and their application! to Consumer Credit" (PhD diss., Faculty of Law and Political Sciences Graduate School, 2013), [http://doktori.bibl.u-szeged.hu/2011/1/Andrea\\_Fejos\\_PhD\\_final.pdf](http://doktori.bibl.u-szeged.hu/2011/1/Andrea_Fejos_PhD_final.pdf) (accessed November 22, 2017).

<sup>2</sup> Mattias Garrido, "Unfair Contract Terms in European Contract Law" (MA diss., Department of Law, 2014), <http://www.diva-portal.se/smash/get/diva2:737886/FULLTEXT01.pdf> (accessed November 22, 2017).

<sup>3</sup> Adnan Baqy Latif and Bikhtiar Sidiyq Rahim, "The role of associations under the Iraqi Consumer Protection Law No. (1) for the year (2010) Comparative Study." *Journal of Legal and Political Studies* 1, no. 2 (2013): 154-84, <http://jpls.univsul.edu.iq/issues/vol1n2/jpls-10029> (accessed February 13, 2018).

<sup>4</sup> Sadiq Ali Hassan, "Civil society between existential realism and non-actual participation," *Al-Bayan Center for Planning and Studies*, August 20, 2016, <http://www.bayancenter.org/2016/08/2370/> (accessed November 22, 2017).

<sup>5</sup> Jalil Ibrahim Mahmood, "Dimensions and Areas of Consumer Protection in Iraq - An Economical and Analytical Study of a Sample of Students in the Faculties of Administration, Economics, Law and Politics in Kirkuk University" (PhD diss., Faculty of economics, 2015), 1-290, <http://stclements.edu/grad/gradmahmood.pdf> (accessed February 13, 2018).

<sup>6</sup> Maureen Nyambura, "Towards Increased Consumer Protection: A Study of Lending By Banks in Kenya" (MA diss., University of Nairobi, 2012), 115, <http://erepository.uonbi.ac.ke/bitstream/handle/11295/8389/Warui-Towards%20increased%20consumer%20protection.pdf?sequence=1> (accessed November 23, 2017).

<sup>7</sup> Website Management, "The role of civil society organizations in raising consumer awareness and the rationalization of expense behavior," *Baghdad University*, April 22, 2014, <http://www.mracpc.uobaghdad.edu.iq/ArticleShow.aspx?ID=340> (accessed November 22, 2017).

contract as claimed by many Iraqi scholars, are widely used among traders and companies as well as among formal and informal institutions. This conformity is attributed to the new market way of reducing the costs and of stipulating the terms and conditions in contracts in order to serve a business's benefit.

Adding to that, the standard form loan contract and the new contract forms, which are the result of technologies and economic development, are different from adhesion contracts which are already regulated by the Iraqi legislature in the ICC 1951. There are two provisions available in the said law: article 166 and article 167. Article 166 states that "doubt will be construed to the benefit of the debtor", and Article 167 deals with the adhesion contract and mentions that if there is any unfair terms in this contract then the court will choose an action against this terms according to the justice role. Consequently, these two articles need to be amended to provide a comprehensive protection to the consumer.

Moreover, as mentioned previously, the Articles (684, 686, 688 and 692) are not clear and inadequate to meet the Iraqi loan consumer's demand for protection. Loan consumers are without a specific consumer protection regulation for financial services. Whereas the banks and financial institutions are subject to secrecy and privacy provisions under the banking law<sup>1</sup>.

Furthermore, the previous studies claimed that the Iraqi legislation framework is limited to what is known as contract adhesion. As mentioned by Khaula,<sup>2</sup> and Suleiman<sup>3</sup>, They asserted that the old regulations not in line with the recent development of contract law theories that witnessed provide more protection for weaker party (consumer). In addition, the legal and institutional framework has not strengthened enough to develop financial service to protect loan consumers.

Hence, any standard form loan contract must match the requirements of an adhesion contract. To the jurisprudential opinion, a contract is not considered an adhesion contract unless attached to a commodity or facility necessary to be the subject of a legal or physical monopoly. The theory of adhesion contracts does not allow for consumers to be protected from abusive terms because recently the conditions of adhesion do not apply in many cases. Moreover, this article gives a wide discretionary power to the judge in eliminating unfair terms in adhesion contract. The present researcher argues that this power can be interpreted differently from a judge to another. Hence, there is a call for a blacklist legal system which improves the dealings in developing countries, especially those that deal with unfair terms. For these reasons, these two articles need to be amended to provide a comprehensive protection to the consumer.

In Iraq, the new Iraqi parliament passed the Consumer Protection Law 2010 (CPL 2010). The Act provides principles that prohibit trade fraud and deception in dealing with goods or services. However, the act has yet to be fully enforced due to administrative procedures and lack of implementation. However, the law has not developed in a manner warranted to protect consumers against abuses by traders. In this country, the law of contract is not the champion of consumer rights, particularly in the area of unfair terms included in the consumer contracts by traders, standard form contracts, and rights of third parties. As such these areas require a legal control of the conduct of traders and corporations in their dealings with consumers. Thus, the Iraqi CPL 2010 fails to address other important areas of protection, particularly the protection of consumers in contractual dealings that involve unfair terms with the use of exemption of traders' contractual liabilities.

In addition, consumer protection provided by the civil organizations in Iraq does not meet the real protection requirements which are provided in developing countries. The civil society organizations are unknown before 2003.

But after 2003, many civil society organizations were formed with different names. Some of which are only known by their names, while some are still under control of certain people or party with benefits limited to their founders. However, the truth is that other associations went out of the collar and have become an umbrella to protect the consumers. Moreover, their voices are heard through media activities, seminars and conferences precipitated in state services. So far their means does not affect positively on law makers to present comprehensive regulations to amend the current Iraqi laws of consumer protection from unfair terms in a standard form contract.

In conclusion, this paper emphasized that Iraqi consumer protection organization (Civil law 1951 and Consumer Protection Law 2010) lack ingredients of the business to consumer (B2C) transactions. Also, unfair terms in the consumer loan contracts are essential issues that must be considered by the government. There are numerous efforts made by developed and developing countries to ensure the protection of consumers against the unfair terms included in their contracts. Therefore, Iraq must also take a positive action to remedy the

<sup>1</sup> Teymour Abdel Aziz and Peter McConaghy, "Promoting Financial Inclusion for Growth and Development in Iraq," *World bank (MENA knowledge and learning)* (2014): 1, accessed April 16, 2015, <https://openknowledge.worldbank.org/bitstream/handle/10986/18154/875490BRI0QN110VC000knowledge0notes.pdf?sequence=>

<sup>2</sup> Radhi khaolah Kadhim Mohammed, "Acceptance in Adhesion Contracts," *Al Hilli Detective Journal for legal and political science* 6, no. 1 (2014): 388-92, accessed April 17, 2015, <http://iasj.net/iasj?func=search&page=3&query=kw%3A%22as%22&earliestYear=1650&tYear=2015&filter=year%3A%222014%22>

<sup>3</sup> Sulaiman Barak Dayih, "Legislative Dissolve of Contract in the Consumer Contracts," *Faculty of Law of the University of Mesopotamia* (2004)

weaknesses in the law. In this globalization era, consumers are considered as the weaker party. The unfair commercial practice by traders, institutions and companies are glaring. Therefore, the weaker party must be protected from deception and fraud that harm their interests. This unbalanced situation calls for studies and researches to present working framework to the government and non- government organization in view of solving this dangerous phenomenon.

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