

The Role of Fundamental Principles of Consumer Law on Contract Law

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Abstract

One of the consequences of the dynamism of law is that, over time, new legal rules and regimes emerge. These new institutions leave various impacts on different parts of the existing legal system. Consumer law, as one of the influential legal regimes aimed at protecting consumers' rights against suppliers, has introduced extensive principles and rules across diverse topics and dimensions. Consequently, it has had significant effects on the existing legal system in related areas. Given that a substantial portion of social relations is conducted through contracts, one of the most affected fields by consumer law is contract law. This study, using a descriptive-analytical method, examines the impacts that the fundamental principles of consumer law can have on the contract law system. The present research distinguishes between principles and rules, clarifies the functions of principles in the mechanism of influence, and identifies the instances of these rights, analyzing the ways in which these principles affect the contract law system. The study concludes that the fundamental principles of consumer law can play roles—at varying degrees—in all four modes of influence: adjustment and transformation of contract law, allocation of contract law, supplementation, and interpretation of contract law.

Keywords: Consumer Law, Legal Principles, Fundamental Principles of Consumer Law, Contract Law

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1. Introduction

Transformation, development, and evolution are phenomena inherently intertwined with the life of legal systems. This is due to the primary function of law, namely, organizing social life and regulating interpersonal relations. Over time, with the discovery of new challenges and legal gaps, humanity engages in formulating new rules and regulations, sometimes stemming from new perspectives on previous issues or the need for new rules addressing new matters. The newborn legal institution must coexist within a society of existing legal rules where conflict and interaction with other legal rules and regimes are inevitable.

Changes within the legal system thus occur through the interaction and coexistence of new regulations with the pre-existing legal framework. It is evident that the more structurally and substantively developed and thematically significant the new regulations are, the greater their impact on the existing legal system. Consumer law can be regarded as a highly influential legal regime. This regime is associated with a wide range of social groups because the vast majority of individuals—except for a few legal entities—act as consumers at some stage of their lives. Consumer law covers various types of goods and services and is therefore related to a wide range of contracts. At the same time, considering its purpose, namely the protection of consumers against producers and suppliers—who generally occupy a superior position—it is not limited solely to contractual matters but also extends to pre-contractual obligations, civil and criminal liabilities, and many other legal domains. Consumer law, as a developed regime, encompasses objectives, principles, and rules that facilitate the achievement of its purposes. Therefore, it is evident that such diversity and comprehensiveness have significant impacts across all these dimensions of the existing law. Given that contracts constitute one of the most crucial instruments of interpersonal relations, contract law is among the areas most expected to be significantly affected by consumer law. This article aims to examine how the fundamental principles of consumer law can influence contract law. For this purpose, it explores the nature of legal principles in terms of their modes of influence, the instances of fundamental principles of consumer law, and the mechanisms through which these principles affect contract law.

2. The Concept of Legal Principles

Considering that the manner of influence of legal principles and legal rules differs due to their distinct nature and functions, the first issue to address is the understanding of legal principles. Legal scholars have proposed various descriptions and characteristics to distinguish principles from rules, which are crucial for understanding how principles influence other legal norms, whether rules or other principles. Precision, discretion, generality, and reference to objectives and values are among the criteria proposed for distinguishing principles from rules. In the legal literature, legal principles are regarded as legal norms, general legal norms, legal values, and similar concepts. They are legal norms with a general function that overlook specific legal facts. They can be considered foundational norms that reflect a general consensus regarding the fundamental understandings of society. Some scholars also describe legal principles as general, permanent, and obligatory rules that underlie positive law and are recognized by independent reason as necessary for guaranteeing fundamental rights and human welfare, playing a guiding role in legislation and adjudication. Another definition, focusing more on the function than on the nature of legal principles, considers them as guidelines for lawmakers in legislation, judges in adjudication, and interpreters in interpretation (Afzali et al., 2019; Aloumi Yazdi & Babazadeh, 2010).

Dworkin viewed principles as norms within a legal system that serve different functions than rules. Unlike rules, even when applicable to a case, principles do not necessarily dictate specific decisions. He considered both principles and rules as collections of standards that operate differently in addressing obligations in particular situations. Rules apply in an all-or-nothing fashion: if the facts a rule prescribes are present, then either the rule is valid and must be applied, or it is not and plays no role in decision-making (Dworkin, 1977). Therefore, valid rules dictate outcomes. On the other hand, principles do not dictate specific outcomes. They present a reason that favors a particular course of action but do not necessarily mandate a specific decision.

There are also differences between rules and principles in legal reasoning theories. Conflicts between rules are resolved through meta-rules such as hierarchy, chronological priority, specificity, and exceptions, and the conflict between rules results in the invalidation of one rule. However, this is not the case with principles. Even if a principle is overridden by another principle, it retains its validity. Moreover, the priority among principles can change, modifying the application of a previously overridden principle. Principles also tend to possess a degree of vagueness and are relatively general legal norms. Due to this generality, they can create, explain, or justify rules. Most legal principles require interpretation to determine their application to specific issues.

Umberto Avila, in a comprehensive definition, states that principles are immediately goal-oriented and predominantly future-looking norms that aim to complement and partially regulate behaviors, requiring an evaluation of the coherence between the situation to be promoted and the behavioral impacts necessary to achieve it. The immediate goal-orientation of principles contrasts with the descriptive and indirectly goal-oriented nature of rules, which indicate behaviors that must be performed to

achieve a goal. Principles represent what "ought to be," whereas rules represent what "ought to be done." Principles, unlike rules which are retrospective, are prospective in nature (Avila, 2018).

Principles do not directly determine how to behave to achieve a goal—that task falls to rules. The alignment of rules and their effectiveness in achieving objectives—the situation to be promoted—is measured by principles. In other words, legal principles are guidelines under which rules must operate to fulfill their aims. Consequently, they both illuminate the path for rules and coexist with them.

With this description, it can be stated concerning the principles governing consumer law: these principles are norms aimed at achieving the goal of consumer protection, positioned alongside behavioral rules formulated to realize this goal. They are correlated with these rules and play a complementary and partial role in interpreting regulations and aligning a situation with a legal rule (Katouzian, 2008). They can either be inferred beyond the text of each consumer law provision or be explicitly reflected in the text itself. It must also be noted that a provision can simultaneously serve as the origin of both a rule and one or more principles, due to the multidimensional nature of normative statements. Thus, a legal provision can simultaneously contain both a rule and a principle or multiple principles.

With this understanding, the next step is to examine the instances of the fundamental principles of consumer law.

3. Instances of the Fundamental Principles of Consumer Law

The objective of consumer law is to protect the consumer as the weaker class of society, a responsibility borne by the state. The undeniable need of consumers, due to the fact that the initiative is left in the hands of the producers, has turned the vast number of consumers into a vulnerable group in society compared to the relatively limited number of producers. One of the main reasons for this is the advancement of technology and the complexity of many goods and services, which, despite the consumer's need for them, makes it difficult for consumers to accurately assess their production processes, effects, and characteristics (Alishahi Ghal'eh Joughi & Haghani Khah, 2020).

Consumer law consists of three pillars: consumer rights, principles of consumer law, and rules of consumer law. However, there is no consensus regarding the distinction between principles and rights; some issues have been referred to as consumer rights, while others have been labeled as fundamental principles of consumer law. For example, the right to know, health, information, choice, provision, compensation, education regarding new goods and materials offered to the market, the fulfillment of basic needs, and the right to safeguard one's environment, to discern and determine the best interests of oneself and those under one's care, are among the items some classify as consumer rights. In contrast, others introduce access, choice, information, education, safety and quality, protection of economic interests, justice and fairness, sustainability, and privacy as principles of consumer law (Safari, 2021).

The European Parliament's guidelines also state regulations to be observed for the protection of consumers without distinguishing between principles and instruments. However, Directive No. 2018/1724 regarding the establishment of a single digital gateway highlights comprehensibility, understandability, and robustness as principles for ensuring access to websites (European Parliament, 2018). In addition, Part I of Directive No. 178/2002, concerning general principles and requirements of food law, identifies precaution, protection of consumer interests, public consultation, and public information as principles (European Parliament, 2002).

This diversity of views causes ambiguity in distinguishing between principles of consumer law and consumer rights. It appears that the answer to these ambiguities must be found in the characteristics previously attributed to legal principles. In line with Umberto Avila's view, it can be stated that a legal provision may simultaneously express both a rule and a principle, and whether a principle or a rule is derived from a provision depends on the interpreter's perspective (Avila, 2018).

This very issue can cause divergent interpretations regarding the nature of consumer law provisions. In reality, some consumer law provisions reflect principles that are recognized as rights for consumers and describe the required conduct to achieve them.

Accordingly, the principles of consumer law can be classified into several categories. The principle of justice and fairness, the principle of contractual balance, and the principle of interpretation in favor of the consumer can be introduced as the superior or fundamental principles of consumer law. The principles of awareness, accessibility, education, freedom of choice, safety, and health constitute the branches of these principles within their vertical hierarchy.

These principles manifest themselves under the title of consumer rights, are reflected across various subjects, and are each accompanied by specific rules within this legal regime. Consequently, the influence of consumer law principles on contract law occurs through the impact of these principles—which themselves form a hierarchical pyramid within the consumer law regime—on the principles and rules of contract law.

4. Modes of Influence of Consumer Law Principles on Contract Law

In the previous section, it was clarified what functions legal principles serve and how they influence other principles and rules. Furthermore, the principles of consumer law were categorized into two classes.

The next issue to address is the modes of influence these principles have on contract law.

In general, consumer law, including both its rules and principles, can influence contract law in four ways. This influence includes the adjustment or transformation of contract law, the allocation of contract law, the interpretation of contract law, and the supplementation of contract law.

4.1. *Adjustment or Transformation in Contract Law*

Contract law, corresponding to the transformations within society, where legal rules are tasked with organizing and protecting the prevailing order within their assigned scope and function, is a fluid and evolving entity. This reality stems from the dominance of the principle of economic efficiency, which has also cast its shadow over law and necessitates that legal foundations, principles, and rules be transformed, adjusted, and redefined in response to needs. In the adjustment of contract law, one can also refer to the adjustment of contracts, meaning the adoption of a new solution along the course of the contract due to changes in circumstances and external conditions, aimed at preserving economic balance. However, here the transformation occurs not within a single contract but within an entire legal system, prompted and realized by external changes with the objective of preserving or enhancing its efficiency. The adjusting or transformative role of consumer law on contract law occurs in two forms: one is the adjustment or transformation arising from changes in the foundations of contract law, and the other is adjustment resulting from the interaction between the principles of consumer law and the principles and rules of contract law (Badini & Mehrdad, 2019; Bariklu, 2023). From the first perspective, consumer law, through the intellectual foundations and objectives it pursues, initiates transformations in the fundamental bases of contract law. As the foundations and objectives of contract law evolve, the content of this legal regime undergoes changes in its rules or redefinitions of its principles. It is evident that consumer law's role should not be exaggerated. It must be considered that in the overlapping domain with contract law, consumer law is treated as a special regime; hence, its influence should be weighted accordingly. Although the widespread nature of consumer contracts—given the diversity of subjects—and the fact that every individual in society is at some point a consumer, suggests a significant influence of consumer law on contract law, nonetheless, consumer law alone cannot cause a complete and fundamental adjustment or transformation of contract law. However, this influence remains significant and noteworthy. Rather, consumer law, alongside other legal regimes that pursue similar foundations and objectives, represents an intellectual movement that can, by influencing contract law, redefine new intellectual foundations and objectives, leading to the adjustment and transformation of the fundamentals and principles of contract law, thereby also altering the content of its rules over time. Thus, this mode of influence is comprehensive and occurs gradually. The transformation of law from this perspective is justified based on the socialization approach to law, considering that the socialization of law is recognized at the level of the contractual objective.

The socialization of contract law and the transcendence of its prevailing individualism introduce new foundations to contract law, potentially leading to adjustments and transformations of this legal structure as a whole, to maintain its efficiency. However, this method is not the only way in which consumer law principles adjust and transform contract law. Influence may also arise from the interaction of consumer law principles with the principles and rules of contract law. In fact, the coexistence of these principles leads to the adjustment of contract law principles. This approach is evident in Article 53 of the 1969 Vienna Convention on the Law of Treaties, which states that if a treaty, at the time of its conclusion, conflicts with a peremptory norm of general international law (*jus cogens*), it is void (Bigdeli, 2010). From the perspective of the Convention, a peremptory norm of international law is recognized and accepted by the international community of states as a norm from which no derogation is permitted and which can only be modified by a subsequent norm of the same character (United Nations, 1969).

Although this provision is stated within international law, it must be understood as expressing a fundamental principle in the interaction of basic principles with other principles and rules in general: first, that conflicting rules can be invalidated regardless of the regime to which they belong, and second, that interaction between principles can result in mutual adjustment. These are the types of impacts that fundamental principles of consumer law can have on the principles and rules of contract law.

This mode of influence stems from the nature and mode of existence of legal principles themselves. Principles are initially complementary and only partially prescriptive since they cover only aspects of decision-making and thus do not seek to offer specific solutions but rather to play a role alongside other reasons in the decision-making process. For instance, the principle of consumer protection does not mean providing for every single need related to consumer protection but rather addresses only those needs that can be reconciled with other necessary actions to promote other goals, such as property and free initiative. This highlights the broader mutual dependency among principles (Aloumi Yazdi & Babazadeh, 2010). Hence, the co-institutionalization and interweaving of principles are emphasized. This occurs because principles provide value-guiding standards that must be followed. The two features of complementary and partial function, and the necessity of interweaving principles, form the basis for their coexistence and interaction with each other and with legal rules, creating opportunities for mutual influence and for adjustment and transformation of other principles. Using this model of existence, consumer law principles can, first, integrate with similar principles found within contract law—if such principles exist—and offer a redefinition; second, influence the content of related principles to maximize their coexistence; and finally, play a role in the description and interpretation of related legal rules that form the structure of contract law, thus laying the foundation for internal transformations within contract law. This approach simultaneously operates at the level of problem-solving or matching facts to rules through interpretation and at the earlier stage of the formation and life of contract law rules and principles. In particular, reference can be made to the principles of attention and fairness. Consumer protection represents an instance where a slight conflict with other core principles of contract law—namely, the principle of freedom of contract—occurs. Both principles have roots in the fundamental rights of most countries. Thus, the question arises: how should these principles be limited in cases of conflict? The answers to these questions significantly impact market performance and, more broadly, the shaping of our society. The boundaries of the principle of attention and fairness can be better defined by distinguishing between personal and situational elements of protective regulations. These elements operate within a flexible system and link their protective function to the risks they are meant to prevent. Thus, while principles complement each other because they each address only part of the decision-making aspects, in their coexistence, they can also influence each other.

Accordingly, those principles governing contracts that have the most connection to the fundamental principles of consumer law—especially the principle of freedom of contract—may undergo adjustments and transformations through their coexistence with these consumer principles. In considering the adjustment and transformation of contract law from this perspective, it should be noted that both aforementioned methods of influence operate simultaneously. One possible example of such transformation can be observed in the nature of "options" (khiyār) under Islamic law, where jurists often consider options as rights rather than mandatory rulings. It appears that Articles 2 and 18 of the Law on Protection of Consumer Rights (2009) are based on the belief that the option for defect (khiyār al-‘ayb) constitutes a mandatory ruling, aimed at guaranteeing consumer protection by creating safeguards to maintain contractual balance. When viewed from the perspective of the option for defect being a mandatory ruling, it leads to the establishment of a principle that wherever consumer protection requires guarantees against contractual imbalance to the detriment of the consumer, a transformation must occur in contract law whereby a right appears as a ruling to prevent the imposition of unfair or coercive terms on consumers (Katouzian, 2005, 2008). This means that the nature of some options may, under the influence of the principles and objectives of consumer law, be subject to adjustment and transformation. Alongside other protective legal regimes, it is possible to envision a future where the absolute rights-based nature of all options is no longer a given.

4.2. *Allocation of Contract Law*

The second mode of interaction between consumer law and contract law is allocation. Linguistically, allocation means to make something specific, the opposite of generalization, to detail, and to particularize. In legal terminology, it refers to the exclusion of some instances from a general provision and the limitation of the scope of general applicability. Such a situation arises based on general conflict-resolution rules and the principle that specific provisions take precedence over general ones.

According to some scholars, the rule of allocation of the general by the specific is used more to resolve redundancy in law rather than legal conflicts and serves as a tool to prevent the simultaneous application of both general and specific rules (Hayati, 2018). Allocation occurs when the general provision does not intend, by its nature, to undergo any transformation or semantic change, but the incompatibility between the general and specific rules is such that coexistence without conflict is not possible. It should be noted that, unlike adjustment and transformation of contract law, which may target both its components and its entirety, allocation occurs only within contract law and affects its components. Therefore, while the overall identity of contract law remains unchanged, parts of it are subjected to allocation. Although the subject of allocation is often rules, it may also concern principles when certain principles or their corresponding rules conflict so much that full preservation or reflection within the legal system is no longer viable. Although the relationship between consumer law and contract law is generally one of partial overlap (general and particular overlap), in the realm of contracts, their relationship is one of absolute specificity. Consumer law covers specific types of contracts, such as sales, leases, and various service contracts, which are thematically narrower than those under general contract law. Moreover, consumer law focuses only on aspects of contract law essential to achieving its primary objective—consumer protection—while other aspects remain governed by the general principles and rules of contract law. Thus, where the fundamental principles of consumer law cannot generalize or adjust contract law, the allocation of the general framework of contract law is inevitable. For example, reference can be made to the option for defect (*khiyār al-‘ayb*). The option for defect is a right recognized by Islamic law, and subsequently by civil law, whereby a buyer, upon discovering a defect in the good, may choose either to annul the contract or to demand compensation while affirming the contract. Conversely, any act or disposition that, according to societal norms, implies the waiving of the right to rescind and acceptance of the transaction, nullifies the right to rescind. One such act is any alteration of the sold item in a way that changes its essence. Additionally, another significant issue concerning the option for defect is the criteria for identifying defects. However, consumer law adopts a different approach. On one hand, this legal regime does not differentiate between the types of contracts, and on the other, it adopts a distinct approach to the content of this option. Thus, while the consumer law regime may modify the concept of defect under the option for defect discussed in contract law, it simultaneously offers a distinct legal system that can specifically allocate the general regime of the option for defect under contract law. Based on this interaction of allocation between the two legal regimes, the effect of consumer law on contract law appears as a narrowing of the scope of contract law. That is, with the emergence of each new legal regime that defines rules differently from similar general rules, the applicability of the general rules becomes more limited. Thus, the appearance of conflicting rules within consumer law regarding matters similar to contract law results in the contraction of the scope of contract law.

4.3. *Supplementation of Contract Law*

The specialization of topics unique to either contract law or consumer law requires that the content of each be formulated based on its domain-specific objectives, avoiding matters unnecessary for its purposes. Accordingly, in each of these legal fields, there are issues that are either not addressed or elaborated upon depending on their importance for each regime. Thus, consumer law and contract law can complement each other in their shared domain—contracts—covering each other's gaps and ambiguities. In consumer contract law, certain aspects have been emphasized that may have been treated summarily or lacked specific rules in contract law, thereby allowing consumer law to supplement these aspects of contract law. At this point, the fundamental principles of consumer law can also play a role. The principle of consumer awareness and access to information requires that consumer law not be limited to contract formation and execution but also cover the pre-contractual phase, imposing obligations on producers and suppliers, thus influencing the supplementation of contract law (Bariklu, 2023). However, it seems that in this mode of influence, the fundamental principles of consumer law do not act directly; rather, their influence mainly operates through the rules that express the expected behavior based on these principles.

4.4. *Interpretation of Contract Law*

Finally, the fourth mode of influence of consumer law on contract law is the interpretation of its provisions. Just as judges must interpret contracts to determine their content and resolve disputes during the performance of contractual obligations, the interpretation of the rules governing contracts also becomes necessary at times. Various tools can be employed for

interpretation. For example, custom has an important and undeniable effect on laws, particularly in civil law and contract law (Ali Nejad, 2021). The same function can be ascribed to statutory law. Where a legal provision is vague and refers to custom or another statute for clarification, these can serve as interpretative tools. For instance, under Article 279 of the Civil Code, if the subject of an obligation is not individually specified but is generic, the obligor is not required to deliver the best item but may not deliver one considered defective according to common practice. The determination of what is considered defective under consumer law is based on the health, conformity of the good with the contract, and its quality—and perhaps even conformity with the purpose of supply or consumption—which can thus serve a role in interpreting the notion of defect through the lens of consumer law principles. Similarly, Article 340 of the Civil Code requires that in the offer and acceptance, words and phrases must clearly express the meaning of sale, and Article 342 requires that the quantity and description of the goods be determined. Consumer law specifies characteristics for introducing goods that can be used to interpret the "description of goods" required under Article 342 of the Civil Code. Thus, consumer law rules and regulations can serve as interpretive resources to clarify ambiguities in the rules governing contract law. However, it seems that this interpretive role of consumer law is primarily exercised through its rules rather than through its fundamental principles.

5. Conclusion

Consumer law must rightfully be regarded as one of the most expansive legal regimes in terms of its application in social life, the diversity of topics and contracts it covers, and the range of legal domains it affects.

This breadth results in its objectives and principles having a significant influence on other related areas of law.

One of the most important of these areas is contract law.

This influence extends both to the general view of contract law and to its specific principles and rules.

The manifestations of contract law being influenced by consumer law are highly diverse.

However, the modes of influence can be systematically categorized.

While the influence of consumer law rules on contract law rules occurs through conflict resolution, supplementation, refinement, and interpretation, the influence of the fundamental principles of consumer law on contract law is different.

These principles, under the banner of the objectives of consumer law, can collectively lead to the adjustment and transformation of contract law as a whole, opening new horizons for it based on perspectives favoring the socialization of contract law, thereby altering its structure and foundations.

These principles can also, through coexistence with contract law principles, create adjustments and transformations.

Moreover, considering the role of principles in relation to rules (both within and outside consumer law, including contract law rules), the fundamental principles of consumer law can lead to the complete or partial invalidation of rules inconsistent with them or with the adjusted principles of contract law.

They can also serve as supplementary sources for interpreting contract law rules, alongside the interpretive role played by consumer law rules themselves.

In other words, when consumer law rules alone do not provide a complete interpretive resource, the fundamental principles of consumer law may also be utilized to guide the interpretation.

Finally, it is important to note that the influence of the fundamental principles of consumer law on contract law is not limited to a single form of interaction.

Rather, all four forms of connection and influence may simultaneously be observed.

This is due to the fact that the relationship between consumer law and contract law is not one of absolute conflict.

However, the degree of influence of the fundamental principles of consumer law across these four modes is not uniform.

Among them, the most significant impact can be attributed, in order, to the transformation and adjustment of contract law, allocation of contract law, interpretation, and finally supplementation.

Authors' Contributions

Authors contributed equally to this article.

Declaration

In order to correct and improve the academic writing of our paper, we have used the language model ChatGPT.

Ethical Considerations

All procedures performed in this study were under the ethical standards.

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Conflict of Interest

The authors report no conflict of interest.

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