Exemption Clauses in Adhesion and Consumer Contracts in Iran: The Boundaries of Public Order and Equity Inspired by the Achievements of European Law

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Abstract

In contemporary legal systems, the expansion of adhesion and consumer contracts has posed serious challenges to the traditional principle of freedom of contract. Exemption clauses in such contracts, which are often drafted by the stronger party, may become instruments for depriving the weaker party of fundamental rights and creating a substantial contractual imbalance. The purpose of this study is to analyze the legal status of exemption clauses in adhesion and consumer contracts in Iran and to explain the boundaries of public order and equity in dealing with such clauses, inspired by the achievements of European law. This research was conducted using a descriptive-analytical method with a comparative approach in order to identify the shortcomings of Iranian law and examine modern legal mechanisms employed in advanced legal systems. The findings indicate that the traditional instruments of Iranian law, such as the general interpretation of public order, are insufficient for the effective control of these clauses. By contrast, European law, by adopting significant imbalance and the principle of good faith as criteria, has provided more precise and objective frameworks for invalidating or modifying unfair terms. It is concluded that the Iranian legal system requires legislative reforms, such as the formulation of lists of prohibited or grey terms, as well as the development of judicial practice based on the concepts of economic public order and equity, in order to ensure contractual balance in consumer contracts and prevent the abuse of superior contractual bargaining power.

Keywords: adhesion contracts, consumer law, exemption clause, public order, equity, European law.

Submit Date: 03 March 2026
Revise Date: 12 July 2026
Accept Date: 19 July 2026
Initial Publish: 05 September 2026
Final Publish: 01 November 2026

Citation: Tavassoli, Z. (2026). Exemption Clauses in Adhesion and Consumer Contracts in Iran: The Boundaries of Public Order and Equity Inspired by the Achievements of European Law. *Legal Studies in Digital Age,* 5(6), 1-11.

1. Introduction

In classical contract law, the principle of freedom of will and the equality of the parties were regarded as the cornerstone of legal relations. However, with the emergence of new economic phenomena and the expansion of adhesion contracts, this paradigm has undergone a fundamental transformation. In consumer contracts, which today constitute a major part of commercial interactions, the consumer practically has no role in determining the terms of the contract and is confronted with a pre-drafted text that reduces their bargaining power to a minimum. This situation has made the reconsideration of traditional concepts of contract and the shift toward protecting the weaker party unavoidable in advanced legal systems (Bakos et al., 2014). The main problem addressed in this study is the pathology of exemption clauses, which are used as an instrument by the stronger party to exclude its legal and contractual liabilities. By creating a substantial imbalance in the rights and obligations of the parties, these clauses undermine the nature of the principal obligations of the contract and challenge the principle of good faith. In the Iranian legal system, although the concepts of public order and good morals have been provided in the Civil Code as mechanisms for controlling contracts, the existing instruments are often insufficient when dealing with exemption clauses in adhesion contracts and require new equity-based interpretations in order to prevent abuse of superior contractual bargaining power. In this regard, the achievements of European law, particularly the Unfair Contract Terms Directive (UCTD), provide an effective model for controlling such clauses. By adopting the criterion of significant imbalance against the consumer, the European approach has transformed the concept of fairness from a moral principle into an enforceable legal instrument for controlling the content of contracts. This experience demonstrates how procedural and substantive standards can be combined, without completely negating freedom of contract, to draw legitimate boundaries for liability-limiting clauses and prevent contracts from becoming instruments for depriving consumers of their fundamental rights (Reich & Micklitz, 2014). Ultimately, the need to explain and develop judicial controls over exemption clauses in Iranian law is vital not only for consumer protection but also for preserving health, integrity, and trust in the economic market. Inspired by comparative experiences, the present study argues that rereading the concept of economic public order and strengthening the position of equity in the interpretation of adhesion contracts can offer an effective solution for filling existing gaps. The aim is to establish a legal system based on contractual justice and accountability in modern commercial relations by creating a balance between the economic interests of suppliers and the fundamental rights of consumers.

2. Research Background

Nikolaev (Nikolaev, 2026), in the article "Exceptional Reservations in Agreements between Digital Platform Operators and Consumers," sought to resolve the contradiction between freedom of contract and consumer protection on digital platforms. The findings indicate the existence of a dual system of limitations, both specific and general, for exemption clauses, and the study concludes that unified standards for digital platforms are necessary to eliminate legal uncertainty. Mihaela (Mihaela, 2025), in the article "Consumer Protection Against Unfair Contract Terms: A Comparative Analysis Between Moldovan Law, Armenian Law and European Law," aimed to examine the conformity of national laws with European Union standards. The findings show considerable convergence with European law, but gaps remain in relation to black and grey lists of terms and judicial control. The study concludes that explicit codification of lists of unfair terms is necessary to increase legal certainty. Valdebenito (Valdebenito, 2025), in the article "Abusive Clauses and the Delimitation of Liability Regimes in Consumer Matters," analyzed a Supreme Court judgment concerning an exemption clause in an adhesion educational contract. The purpose of the study was to examine the relationship between limitations on risk allocation and the legal foundations of contractual liability. It concludes that a more precise approach to such clauses should be adopted on the basis of the foundations of strict liability regimes. Moy (Moy, 2025), in the article "Unfair Contract Terms: Protecting Consumers and Ensuring Fairness in Commercial Agreements," examined legal mechanisms for creating balance in contracts. The findings emphasize the necessity of judicial control over the content of terms and conclude that fairness should operate as an instrument for preventing abuse in adhesion contracts. Davies (Davies, 2018), in the chapter on exclusion clauses and unfair terms, examined legal developments in the control of exemption clauses. The findings show that new legislation, such as the United Kingdom Consumer Rights Act 2015, enables courts to control unfair terms, and the study concludes that the criterion of significant imbalance has replaced traditional approaches. Naidoo (Naidoo, 2021), in the chapter on exemption clauses and unfair terms, evaluated the practical role of exemption clauses in contractual disputes. The findings show that courts distinguish between commercial and consumer contracts, and the study concludes that, for consumers, special protective rules provide broader instruments for invalidating unfair terms.

Despite the richness of studies in European law and common law systems concerning judicial control of unfair terms, there is a research gap in Iranian law, particularly in the precise adaptation of the concepts of public order and equity to modern European standards, such as black lists of terms. Inspired by the achievements of European law, this study seeks to propose an indigenous framework for interpreting public order in support of consumers in Iranian adhesion contracts, going beyond traditional interpretations based merely on statutory provisions. Therefore, the research questions are as follows: What are the precise boundaries of public order in dealing with exemption clauses in Iranian adhesion contracts? How can the concept of equity be institutionalized as a controlling criterion in Iranian contract law?

3. Analysis of the Concept of the Exemption Clause in Adhesion Contracts

Adhesion contracts, as one of the fundamental developments in modern contract law, are the product of economic needs for efficiency and speed in large-scale commercial transactions. In this type of contract, unlike the classical model of contract, which is based on free negotiation between the parties, one party, usually the supplier of goods or services, unilaterally and in advance drafts the contractual terms, while the other party, the consumer, has only the right to accept or reject the contract as a whole. This structure, often described as "take it or leave it," has posed serious challenges to the nature of freedom of will in private law because of the absence of any genuine possibility of bargaining (Roustaskeh Ravani et al., 2019). The exemption clause, as an instrument in the hands of the drafter of the adhesion contract, is inserted with the aim of limiting or completely excluding the drafter's legal or contractual liabilities in the event of damage or breach of obligation. From a functional perspective, these clauses may contribute to risk allocation and the reduction of transaction costs. In practice, however, especially in consumer contracts, they have become a means of unilaterally transferring the risks arising from commercial activities to the weaker party. These clauses directly conflict with the principle of civil liability and the obligations arising from the contract and disrupt the effectiveness of the legal system in compensating damage suffered by the consumer (Yasmin, 2016). The main root of legal challenges in adhesion contracts lies in the evident imbalance in bargaining power between the parties. While the drafter of the contract benefits from legal and economic expertise and formulates the terms in its own favor, the consumer, due to lack of sufficient information or the necessity of access to goods and services, is compelled to accept imposed terms. This imbalance creates the ground for the inclusion of unfair terms, including broad exemption clauses, which, in the absence of supervisory mechanisms, result in the violation of consumer rights and the breach of contractual justice (Raei & Molaeian, 2014). Legal analysis of these clauses in legal systems requires the examination of the conflict between two fundamental principles: the principle of freedom of contract and the principle of protection of the weaker party. While freedom of contract allows the parties to determine the limits of their liability, the principle of consumer protection requires that this freedom be restricted in the face of terms that deprive the consumer of basic rights. In Iranian law as well, given the governing principles of civil liability and the general rules of contracts, it is necessary to redefine the boundaries of this freedom by relying on the concepts of public order and equity. The concepts of public order and equity, as key theoretical foundations, play a decisive role in limiting exemption clauses. Public order, as a mandatory rule, prevents contracts from becoming instruments for violating fundamental rights or disregarding safety and ethical standards. Equity, on the other hand, gives the judge the authority to evaluate the circumstances of the contract and refrain from enforcing terms that unfairly disturb contractual balance and exclude liability in an unusual manner. This approach constitutes the basis for the invalidation or modification of unfair terms in modern judicial practice (Valdebenito, 2025). Inspiration from the achievements of European law, especially in the field of controlling unfair terms in consumer contracts, can provide an appropriate model for developing the theoretical foundations of Iranian law. European legal systems, by moving beyond traditional approaches, have established dual systems for controlling exemption clauses: specific controls based on consumer protection laws and general controls based on principles of civil law. These experiences show how a legal filter can be created against illegitimate exclusions of liability, thereby achieving a balance between economic efficiency and consumer protection. Analysis of the concept of the exemption clause in Iranian adhesion contracts requires a transition from a merely formal approach to a substantive and justice-based approach. This requires the precise interpretation of the general rules of contracts in light of consumer protection principles and the identification of examples of unfair terms. Only by relying on strong theoretical foundations that recognize public order and equity as inherent limitations on freedom of contract in adhesion contracts can consumers be protected against the possible abuses of contract drafters (Pratiwi, 2020).

4. The Position of Exemption Clauses in Iranian Law

In the Iranian legal system, the position of exemption clauses has always stood at the intersection of two fundamental principles: freedom of contract and public order. The principle of freedom of contract, reflected in Article 10 of the Civil Code, allows the parties to arrange their agreements under any terms that are not expressly contrary to law. However, this freedom is not absolute and faces serious limitations when confronted with terms that exclude liability either wholly or partially. In adhesion and consumer contracts, because of the imbalance of bargaining power between the parties, these clauses often become an instrument for imposing the will of the stronger party, which intensifies the need for legislative and judicial intervention to guarantee contractual justice (Ghiasvand, 2018). The main limitation on exemption clauses is the concept of public order, which is expressly mentioned in Article 975 of the Civil Code. Under this principle, no contract may be contrary to good morals or public order. In interpreting this concept, jurists argue that the exclusion of liability in cases involving harm to physical integrity, human life, or fundamental rights is automatically in conflict with public order. Therefore, even if the parties agree to exclude liability arising from gross negligence or intentional misconduct, such a clause is deemed void and ineffective because of its inconsistency with the foundations of public order and mandatory rules (Khodadady et al., 2025). With regard to adhesion contracts and standard-form contracts, the main challenge arises from the nature of these contracts, in which the consumer or weaker party plays no role in determining the contractual terms and can only accept or reject the contract. In such a structure, the use of exemption clauses that unilaterally limit or exclude the rights of the weaker party is substantively unfair. This imbalance of power creates the ground for abuse by the stronger party and undermines the principle of informed consent, which is the foundation of valid contracts. Therefore, these clauses must be assessed more strictly in adhesion contracts in order to prevent the exploitation of the weaker party (Yasmin, 2016). In the field of consumer law, the Iranian legislature, inspired by global and European legal developments, has taken effective steps to confront unfair terms. The Consumer Rights Protection Act has provided a framework under which terms that unfairly limit the consumer's legal rights are invalid. This preventive approach, especially in electronic transactions and contracts for the sale of goods and services, assures the consumer that they cannot be deprived of their fundamental rights by inserting exemption clauses in printed forms or general contractual terms (Pratiwi, 2020). Ultimately, the role of the judge in interpreting and applying these clauses is highly vital. While the law may not be explicit in all cases, the judge, relying on the principles of equity and contractual justice, must examine whether the exemption clause has disturbed contractual balance in an unfair manner. In European law, the concepts of good faith and fairness are powerful tools in the hands of judges for modifying or invalidating unfair terms. In Iranian law as well, despite legal gaps in some areas, using these principles can help judicial practice prevent the imposition of unfair results when dealing with exemption clauses and achieve substantive justice.

5. Adhesion and Consumer Contracts in Iranian Judicial Practice

In the Iranian legal system, the increasing expansion of adhesion and consumer contracts has created serious challenges to the principle of freedom of contract. In many of these contracts, the exemption clause is used as an instrument to impose the will of the stronger party, the supplier, on the weaker party, the consumer. Iranian judicial practice in dealing with these clauses struggles with the tension between adherence to the apparent text of the contract and the need to protect the consumer. This tension is one of the fundamental issues in contemporary Iranian private law (Raei & Molaeian, 2014). One of the fundamental challenges in judicial practice is the absence of a precise statutory definition of the adhesion contract. When dealing with disputes, judges often face uncertainty in identifying whether a contract has an adhesion nature and, consequently, whether they should apply the general rules of contracts or special protective rules. This ambiguity has led courts to issue contradictory judgments in similar cases, endangering the legal security of consumers and preventing the formation of a coherent judicial practice in dealing with unfair terms. Another challenge concerns the narrow or broad interpretation of the concept of "public order" for invalidating exemption clauses. Although Article 975 of the Civil Code emphasizes the invalidity of contracts contrary to public order, Iranian judges do not adopt a unified approach in determining the instances of public order in consumer contracts. Some consider exemption clauses contrary to public order, while others regard them merely as private agreements and rely on the principle that "contracts follow intention." This divergence of judgments practically reduces the effectiveness of protective instruments (Grousi & Pirhadi, 2019). The concept of "equity" also has an unstable position in Iranian judicial practice. While in European law, the control of unfair terms has been recognized as an instrument for realizing fairness in contracts, in Iranian law, judges do not have an explicit statutory instrument for intervening in the content of a contract under the name of "equity." As a result, unfair terms, even when they are clearly contrary to commutative justice, may be regarded as binding because of the dominance of the principle of contractual binding force, leaving the judge with limited authority to modify the contract. Procedural challenges and evidentiary rules make the situation of consumers even more difficult. In disputes concerning exemption clauses, the burden of proving the unfair or imposed nature of the term often rests on the consumer, who is in a weaker informational and financial position. The absence of a unified practice in accepting judicial presumptions for proving the supplier's abuse of contractual power has caused many consumer claims against exemption clauses to fail to achieve the desired result, allowing such clauses to remain easily in contracts (Bakos et al., 2014).

6. The Role of Public Order and Equity in the Invalidity of Terms

In modern legal systems, the principle of freedom of contract is no longer regarded as an absolute and inviolable principle, particularly where adhesion and consumer contracts are involved. In this type of contract, because the weaker party lacks genuine bargaining power, exemption clauses may become an instrument for depriving that party of fundamental rights. Therefore, public order and equity, as two powerful judicial arms, are responsible for drawing legitimate boundaries, preventing abuse by the stronger party, and restoring contractual balance (Kanamugire, 2013). In Iranian law, the concept of public order, which is provided in Article 975 of the Civil Code as one of the factors limiting freedom of will, has broad capacities for controlling unfair terms. However, the traditional interpretation of public order, which was mainly focused on political and moral dimensions, appears insufficient in dealing with the complexities of modern consumer contracts. To be effective in this field, public order must move toward economic public order, a concept in which protecting the market structure, consumer trust, and preventing the imposition of unfair obligations are considered inseparable components of public order. Alongside public order, the concept of equity, as a complementary yet independent instrument, plays a key role in assessing the validity of exemption clauses (Al-Nasiri et al., 2025). Equity here means returning to a real balance in the rights and obligations of the parties. Accordingly, terms that disproportionately impose heavy liabilities on the consumer or completely exclude the essential liabilities of the supplier are contrary to the criterion of equity. Inspired by the achievements of European law, this approach allows judges to go beyond the apparent text of the contract and examine the nature and actual effects of terms. If a substantial imbalance is established, such terms may be invalidated or modified (Kanamugire & Chimuka, 2014). The experience of European law, especially within the framework of directives concerning unfair terms, shows how objective criteria can be formulated for assessing fairness. In these systems, the mere inclusion of a term in the contract is not sufficient; rather, it must be examined whether the term is compatible with the principle of good faith. In Iranian law as well, by drawing on this experience, equity can be used as a criterion for interpreting contracts and controlling adhesion terms in order to prevent the contract from becoming an instrument for depriving consumers of rights that the legislature has provided for their protection (Hellner, 1981). The interaction between public order and equity provides a solid legal framework for confronting unfair exemption clauses. While public order prevents the effect of terms that conflict with the fundamental legal and moral foundations of society, equity, as a more flexible criterion, enables the judge to restore contractual balance in more specific but harmful cases. This dual approach is not only compatible with the spirit of the Iranian Civil Code but can also serve as a method for updating judicial instruments in response to new challenges in consumer and adhesion contracts.

7. The European Union Approach: Control of Unfair Terms in Contracts

To confront inequality of bargaining power in consumer contracts, the European Union has adopted a systematic and actively interventionist approach, the cornerstone of which is Directive 93/13/EEC on unfair terms in consumer contracts. This directive, with the aim of creating a balance between freedom of contract and consumer protection, provides a mechanism for assessing the unfairness of terms that have not been individually negotiated. The European approach is based on the assumption that the consumer, due to lack of information and bargaining power, is in a vulnerable position and requires legal protections that cannot be guaranteed solely by relying on the will of the parties (Lashkarnejad et al., 2026). The concept of unfairness in European Union law is broadly defined in order to cover a wide range of imposed terms. According to this approach, a term is regarded as unfair if, contrary to the requirement of good faith, it causes a significant imbalance in the rights and obligations of the parties to the detriment of the consumer. This criterion goes beyond formal examinations and assesses the substantive content of the contract in order to ensure that the drafter of the contract does not abuse its superior position to impose unfair risks on the consumer (Nebbia, 2007). The Court of Justice of the European Union (CJEU) has played a central and dynamic role in interpreting and implementing this directive, transforming it from a static legal text into an active instrument for consumer protection. Through broad interpretive approaches, particularly in cases concerning financial services and digital contracts, the Court has expanded the scope of the directive and has emphasized the need for substantive examination even where terms appear transparent. This case law shows that contractual justice in the European Union is not an abstract concept but an operational standard that obliges the judge to intervene in the contract in order to remove unfair imbalances (Reich & Micklitz, 2014). One of the distinctive features of the European approach is the distinction between the main terms of the contract and ancillary terms, although this distinction has always been accompanied by interpretive challenges. Under the directive, terms that determine the main subject matter of the contract or the adequacy of price and services are exempt from substantive review of unfairness, provided that they are drafted in a plain and intelligible manner (Ghanavati et al., 2024). However, the Court of Justice of the European Union, by limiting this exception, has emphasized that formal transparency is not sufficient; the consumer must be able to properly understand the economic consequences of the term. Otherwise, that term may also be assessed and invalidated (Schillig, 2011). Ultimately, the sanction for unfair terms in European Union law is that they are not binding on the consumer, without necessarily invalidating the entire contract. This approach is designed to preserve the survival of the contract, where possible, while eliminating the harmful effects of unfair terms. Where the removal of an unfair term renders the contract ineffective, the Court of Justice of the European Union has allowed the contract to be supplemented through default rules of national law in order to fully protect consumer rights and prevent legal gaps that may operate to the consumer's detriment (Farina, 2021).

8. Limitations of Liability in European Law

In the legal system of the European Union, consumer protection against unfair terms, especially terms that limit or exclude the liability of suppliers of goods or services, is built upon a coherent and dynamic legal framework. The cornerstone of this system is Council Directive 93/13/EEC on unfair terms in consumer contracts, which was adopted to harmonize the laws of Member States and ensure a high level of protection for consumers throughout the European single market. This directive targets adhesion and standard-form contracts in which the consumer has little bargaining power and provides a basis for assessing fairness in contractual relations. To determine whether a contractual term is unfair, the directive provides specific criteria. Under these rules, a term that has not been individually negotiated is considered unfair if, contrary to the requirement of good faith, it causes a significant imbalance in the rights and obligations of the parties to the detriment of the consumer. This dual criterion, namely good faith and imbalance, allows courts to go beyond the formal appearance of the contract, penetrate the actual nature of the contractual relationship, and identify and limit any attempt to impose unilateral and unfair conditions. With regard to exemption clauses, European law has adopted a highly strict approach. Directive 93/13/EEC includes an annex that provides a list of terms that may be regarded as unfair. At the top of this list are terms whose object or effect is to exclude or limit the legal liability of the supplier in the event of physical injury or death of the consumer resulting from an act or omission of the supplier. From the perspective of European law, such terms are inherently unfair and, because of their clear conflict with the fundamental rights of the consumer, are in most cases devoid of legal validity (Nebbia, 2007). The role of the Court of Justice of the European Union (CJEU) in interpreting and applying this directive has been pivotal and transformative. Through numerous judgments, the Court has significantly expanded the scope of consumer protection and has emphasized the necessity of active intervention by national courts in reviewing contractual terms, even without an explicit request from the consumer. This case law has transformed Directive 93/13 from a static legal text into a living and effective instrument that has had a profound impact not only on the content of contracts but also on procedural practices in Member States, preventing standard-form contracts from becoming instruments for consumer exploitation (Reich & Micklitz, 2014). Ultimately, the sanction of these rules is the invalidation of the unfair term. Under Article 6 of the directive, terms found to be unfair are not binding on the consumer. However, in order to preserve the stability of the contract, the principle is that the contract should, where possible, continue to exist without the unfair term. Where the unfair term forms a principal part of the contractual obligations and the contract cannot continue without it, courts may resort to supplementing the contract through national legal rules in order to prevent unfair consequences for the consumer and establish contractual justice (Farina, 2021). This European approach reflects a paradigm shift from absolute freedom of contract toward contractual justice. Three decades after the adoption of Directive 93/13/EEC, the European experience shows that effective consumer protection is not an obstacle to commerce; rather, by creating trust in the market, it contributes to improving service quality and healthy competition. These legal lessons provide a valuable model for developing legal systems, including Iran, to redefine the boundaries of public order against unfair terms by drawing on the criteria of good faith and contractual balance (Fornasier, 2023).

9. Position and Function in European Contract Law

In European contract law, the principle of fairness is recognized as one of the fundamental elements in the transition from classical approaches based on absolute freedom of contract toward protective and social approaches. This principle, beyond an abstract moral concept, has become a legal instrument for adjusting contractual relations in which the parties do not have equal bargaining power. In fact, fairness in this legal system functions as a balance scale to prevent the stronger party from abusing its superior position and to ensure that the resulting agreements are not inconsistent with fundamental standards of justice and good faith (Lurger, 2011). The main function of the principle of fairness in European law, particularly in the field of consumer contracts, is manifested through the Unfair Contract Terms Directive (UCTD). This directive uses fairness as a criterion for assessing terms that have not been individually negotiated. According to this approach, any term that, contrary to the principle of good faith, causes a significant imbalance in the rights and obligations of the parties to the detriment of the consumer is deemed unfair and lacks legal effect. Thus, fairness operates as an objective standard that allows judges to supervise the content of contracts beyond the apparent will of the parties. Moreover, fairness in European law has a limiting function that is exercised through the concept of good faith and the prohibition of abuse of rights. In European legal systems, even if a contractual term is formally compatible with the rules governing contracts, if its implementation leads to a result that conflicts with the legislature's objectives or the legitimate expectations of the weaker party, the principle of fairness prevents its enforcement. This limiting function, especially where the stronger party relies on the express text of the contract to impose unfair results, operates as a corrective instrument to prevent the violation of the fundamental rights of the weaker party (Lenaerts, 2010). In recent years, the debate on private standards of fairness has also become one of the important themes in European law. Under this approach, standards of fairness are not determined only by the legislature or the judge; rather, standards developed by professional bodies, consumer associations, and co-regulatory processes are used as objective criteria for interpreting the concept of fairness. This practice has removed fairness from abstraction and aligned it with commercial realities and professional usages, although it remains subject to the ultimate supervision of courts to ensure that consumer rights are not violated (Pavillon, 2014). Ultimately, with the emergence of the digital economy and transformations caused by online platforms, the concept of fairness in European law is being redefined so that it can confront new inequalities between businesses and consumers. New challenges, such as data mining, algorithmic pricing, and smart contracts, require the principle of fairness to extend beyond mere economic balance to the protection of consumers' non-financial rights, such as privacy and freedom of expression. This development shows that fairness in European law is a dynamic and evolving concept that continuously adapts itself to structural changes in contractual relations in order to ensure the realization of justice in the new economic environment (Mak, 2024).

10. Convergences and Divergences between Iran and Europe

In a comparative analysis between the Iranian legal system and European legal systems regarding exemption clauses in adhesion and consumer contracts, the first important point is the divergence in theoretical foundations and legislative practices. While European legal systems have moved beyond the classical doctrine of absolute freedom of contract toward an approach in which contractual justice and protection of the weaker party, namely the consumer, take precedence over pure voluntarism, exemption clauses in adhesion contracts are subject to strict supervision and even statutory prohibitions because they create a substantial imbalance in the rights and obligations of the parties, thereby preventing abuse by the stronger party (Mayorova, 2022). In contrast, although the Iranian legal system is familiar in its general principles with concepts such as public order and good morals for limiting abnormal terms, it lacks a comprehensive, explicit, and preventive legal framework similar to European directives for confronting unfair terms in consumer contracts. In Iranian law, judges and jurists mainly rely on the general principles of civil law and judicial interpretation to deal with exemption clauses. This leads to a kind of legal uncertainty and excessive reliance on judicial practice in identifying instances of illegitimate terms or terms contrary to public order (Amra et al., 2024). Nevertheless, significant convergences also exist between the two systems in recognizing the nature of adhesion contracts. Both systems have understood that in adhesion contracts, the will of the weaker party, the consumer, is formal because of the absence of bargaining power, and exemption clauses in these contracts often function as instruments for depriving the weaker party of fundamental rights and unfairly transferring risks to that party. This common understanding provides the basis for accepting the principle that freedom of contract cannot serve as a justification for violating the essence of contractual obligations or excluding liability for intentional and serious breaches (Pratiwi, 2020). The main divergence appears in enforcement and preventive mechanisms. European systems, by using legislative techniques such as black and grey lists, have preemptively enumerated instances of unfair terms, which increases predictability and reduces litigation costs. By contrast, in Iranian law, the absence of such specific statutory lists has caused the confrontation with these terms to be mainly repressive, meaning that the term is evaluated only after a dispute has arisen and after the court has entered the case. This approach does not provide effective preventive protection for the consumer (Yasmin, 2016). It can be concluded that the Iranian legal system can move, inspired by the achievements of European law, toward the enactment of rules that not only rely on general principles but also promote legal security in consumer and adhesion contracts by determining more precise criteria and providing statutory lists of unfair terms. This transition from a merely interpretive approach to an explicit legislative approach is not only compatible with the foundations of public order in Iranian law but can also significantly contribute to balancing contractual relations in the age of the modern economy.

11. Using European Experiences in Iranian Law

Analyzing the feasibility of transferring European legal experiences to the Iranian legal system in the field of exemption clauses requires a deep understanding of structural differences as well as functional commonalities between the two systems. The legal system of the European Union, relying on protective directives, has created precise preventive and remedial mechanisms for confronting unfair terms in adhesion contracts, which can be evaluated as a comparative model. In Iran, although general principles of contract law and mandatory rules are limiting to some extent, the existing gaps in the judicial control of unfair terms and the absence of explicit lists of prohibited terms make the use of these experiences increasingly necessary for enhancing legal certainty and effective consumer protection (Kasassbeh, 2017). One of the most important achievements of European law that can be adapted to the Iranian legal system is the concept of significant imbalance contrary to the principle of good faith. In European law, this criterion allows courts to control unfair terms without needing to prove specific fault or bad faith, solely on the basis of the nature of the term and its effect on the balance of the parties' rights and obligations. In Iranian law, by relying on general rules such as the no-harm rule and the concept of public order, this European criterion can be localized as an interpretive instrument for courts in assessing exemption clauses in adhesion contracts, thereby preventing the unilateral imposition of contractual risks on consumers. In addition to qualitative criteria, the use of black and grey lists of unfair terms in European law is a highly effective practical solution for increasing predictability in contracts. These lists, which expressly identify terms deemed inherently unfair, such as exclusion of liability for personal injury, can serve as an appropriate model for the Iranian legislature or judicial practice. By drafting such lists in the executive regulations of the Electronic Commerce Law or consumer protection laws, the burden of proving the unfairness of a term can be removed from the consumer, and courts can be assisted in the rapid identification of void terms. Nevertheless, in transferring these experiences, special attention must be paid to the fundamental differences between the Iranian legal system, which is based on jurisprudential principles and classical civil law, and European systems, which are grounded in liberal foundations and modern regulation. Any borrowing must be compatible with the filter of public order and good morals in Iranian law so that it does not conflict with established legal principles. Comparative studies show that many European rules in the field of consumer protection overlap with general jurisprudential rules concerning the absence of gharar and injustice, and this convergence can be strengthened through dynamic interpretation (Fayyad, 2012). From a procedural perspective, one of Europe's vital experiences is granting courts the authority to review unfair terms ex officio, that is, without a request from the parties. In the Iranian legal system, courts usually act within the framework of the parties' claims. However, in adhesion contracts, where the consumer is in an absolutely weak position in terms of information and bargaining power, this passive approach is insufficient. Therefore, the feasibility of this transfer requires judicial training and reform of procedural practices so that courts, as guardians of economic public order, can actively intervene in identifying and invalidating unfair terms (Naude, 2009). Ultimately, it is concluded that using European experiences does not mean blind imitation; rather, it means using standards as reference points for the development of domestic law. By creating a hybrid model that preserves the fundamental principles of Iranian private law while using European control instruments and standards for assessing fairness in contracts, a stable balance can be achieved between freedom of contract and protection of the weaker party. This approach can reduce litigation costs, increase public trust in consumer markets, and ultimately promote contractual justice in the Iranian legal system (Mak, 2013).

12. Legislative and Procedural Proposals

The Iranian legal system faces serious challenges in dealing with exemption clauses in adhesion contracts because of the inadequacy of the traditional instruments of the Civil Code. Although general principles such as public order and good morals appear to be powerful tools, in practice, the absence of specific and explicit rules for controlling the content of adhesion contracts has confronted judges with interpretive limitations in invalidating or modifying such clauses. Therefore, the first necessary step is to move from a generalist approach toward the enactment of specific legislative rules in the field of consumer law that can explicitly identify unfair terms and determine their legal effects (Yasmin, 2016). In terms of legislative proposals, modeling the achievements of European law, particularly the Unfair Contract Terms Directive, can be helpful. Creating a black list of terms that are absolutely void and unenforceable, such as exclusion of liability for personal injury or intentional fault, and a grey list of terms that are presumed unfair unless the contrary is proven, can provide the necessary legal transparency for contracting parties and judicial authorities. This approach, while preserving freedom of contract in balanced commercial areas, prevents the imposition of unilateral and destructive terms in consumer contracts (Taylor & Taylor, 2023). Furthermore, it is proposed that the scope of consumer protection laws be extended from the final consumer to the weaker party in adhesion contracts. In many cases, small businesses, when dealing with large companies, are practically in a position similar to that of consumers and lack bargaining power. Therefore, legislative reform should define the criteria for controlling unfair terms not only on the basis of consumer status but also on the basis of the adhesion nature of the contract and the substantial imbalance in bargaining power, so that contractual justice can be ensured across a broader range of economic relations (Safaii & Shomali, 2019). In the procedural and judicial sphere, strengthening judges' interpretive instruments is of special importance. In the absence of an explicit statutory text, judges should rely on the principle of good faith and the rule of interpretation against the drafter to interpret ambiguous or unfair terms. This procedural rule, which has an established position in European law, holds the drafter of the contract responsible for its ambiguities and, where doubt exists, interprets the term in favor of the weaker party. Strengthening this judicial practice can prevent the abuse of ambiguous terms to exclude liability without requiring extensive legislative changes (Macdonald & Atkins, 2014). Finally, it is proposed that mechanisms of collective action and supervision by regulatory bodies be strengthened to confront unfair terms. Instead of relying solely on individual consumer claims, which consumers often abandon because of high litigation costs and the disproportion between costs and damages, protective bodies should be permitted to challenge unfair terms preventively or remedially before judicial or quasi-judicial authorities. This approach not only removes the burden of proof from consumers but also creates the necessary deterrence against suppliers of goods and services (Oninku, 2022). Taken together, these legislative and procedural solutions can fill the existing gaps in Iranian law. The ultimate aim is not the complete rejection of exemption clauses, but their management within the framework of equity and economic public order, so that contracts do not become instruments for depriving the weaker party of fundamental rights. This development requires legislative will and dynamic judicial practice aligned with modern standards of consumer protection.

13. Conclusion

The present study was conducted with the aim of examining the challenges arising from exemption clauses in adhesion and consumer contracts in the Iranian legal system, drawing on European legal experiences. The results of this analysis show that reliance on the traditional principles of contract law, especially in the age of digital and mass contracts, is insufficient to guarantee contractual justice. While European law, by adopting active protective approaches and using objective criteria such as significant imbalance, has been able to prevent structural abuses in adhesion contracts to a considerable extent, the Iranian legal system is still in transition from classical approaches toward modern regulation and requires a fundamental transformation in judicial and legislative practice. The synthesis of the discussions shows that the boundaries of public order in Iranian law, despite their inherent flexibility, remain ambiguous in dealing with unfair terms because of the absence of explicit statutory provisions. This ambiguity creates the ground for imposing abnormal risks on consumers. The European experience indicates that fairness should not remain merely an abstract concept; rather, it must enter legislation in the form of operational instruments, including explicit lists of prohibited terms, both black and grey, so that courts can identify and invalidate unfair terms without the need for broad and discretionary interpretations. The future outlook of Iranian contract law requires reconsideration of the manner in which exemption clauses are controlled. Given the symmetrical nature of traditional contracts and the asymmetrical nature of adhesion contracts, it is necessary for the Iranian legislature, inspired by successful European models, to move toward creating mechanisms of ex officio control by courts. This transformation would not only strengthen the position of the consumer against the economic power of suppliers but would also contribute significantly to the stability and health of the market by creating predictability in contractual relations. Finally, it is proposed that future studies focus on drafting legislative proposals that align modern standards of consumer protection with the jurisprudential principles and civil law foundations of Iran. Creating a dynamic supervisory system capable of responding rapidly to developments in consumer markets and digital contracts is the next step in realizing contractual justice. This path requires close cooperation among legal researchers, legislators, and judicial practice so that, by moving beyond passive approaches, an indigenous and effective model can be achieved for controlling unfair terms—one that simultaneously respects freedom of contract and protects the fundamental rights of consumers.

Ethical Considerations

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

Acknowledgments

Authors thank all who helped us through this study.

Conflict of Interest

The authors report no conflict of interest.

Funding/Financial Support

According to the authors, this article has no financial support.

References

Al-Nasiri, S. H. M., Jafarzadeh, & Javadi. (2025). Explaining Contractual Balance as the Principle of Equity, Good Faith, and Good Morals in Contract Law. *Ethics in Science and Technology*, *20*(3), 45-52.

Amra, G., Afsharnia, T., & Fallah, M. (2024). The Issue of Penalty Clauses in Iranian and US Law. *Interdisciplinary Studies in Society, Law, and Politics*, *3*(3), 153-162.

Bakos, Y., Marotta-Wurgler, F., & Trossen, D. R. (2014). Does Anyone Read the Fine Print? Consumer Attention to Standard-Form Contracts. *The Journal of Legal Studies*, *43*(1), 1-35.

Davies, P. S. (2018). *JC Smith's The Law of Contract*. Oxford University Press.

Farina, M. (2021). Unfair Terms and Supplementation of the Contract. *European Review of Private Law*, *29*(3).

Fayyad, M. (2012). A Glance at Unfair Terms in Consumer Transactions in Arab Legal Systems and Islamic Law: What Arab Lawyers Can Learn from the European Experience? *International Journal of Private Law*, *5*(2), 200-227.

Fornasier, M. (2023). A Short Biography of the Unfair Contract Terms Directive on the Occasion of Its 30th Anniversary. *European Review of Private Law*, *31*(6).

Ghanavati, J., Dadgar, Y., & Rezapour Akerdi, M. A. (2024). *A New Look at Standard Terms in Consumer Contracts from the Perspective of Behavioral Law and Economics: With Emphasis on European Union Directives and Iranian Law*.

Ghiasvand, M. S. (2018). *Modulation and Analysis of Penalty Clause in Iran's Law and Jurisprudence*.

Grousi, & Pirhadi. (2019). Guarantees Against Unfair Terms in Adhesion Contracts: A Study in the Legal Systems of Iran and England. *Jurisprudence and Principles of Islamic Law*, *42*(12), 135-149.

Hellner, J. (1981). Consequential Loss and Exemption Clauses. *Oxford Journal of Legal Studies*, *1*(1), 13-49.

Kanamugire, J. (2013). The Future of Standard Form Contracts in South Africa with Particular Reference to Recent Developments in the Law. *Mediterranean Journal of Social Sciences*.

Kanamugire, J. C., & Chimuka, T. V. (2014). The Current Status of Exemption Clauses in the South African Law of Contract. *Mediterranean Journal of Social Sciences*, *5*(9), 164-176.

Kasassbeh, F. (2017). *Consumer Protection against Unfair Contract Terms*. LAP LAMBERT Academic Publishing.

Khodadady, H., Haghtalab, Z., & Toopkanlou, N. B. (2025). Feasibility of Adjusting Contractual Penalty Clauses, Particularly in Construction Partnership Contracts. *Legal Studies in Digital Age*, *4*(1), 1-8.

Lashkarnejad, M., Nikdoosti, M., & Jafari Fesharaki, M. (2026). Analysis of the Main Approach of the Legal Systems of Iran, the European Union, and the United States to Unfair Contract Terms. *Comparative Research in Jurisprudence, Law, and Politics*, *8*(1), 1-17.

Lenaerts, A. (2010). The General Principle of the Prohibition of Abuse of Rights: A Critical Position on Its Role in a Codified European Contract Law. *European Review of Private Law*, *18*(6).

Lurger, B. (2011). The Social Side of Contract Law and the New Principle of Regard and Fairness. In *Towards a European Civil Code* (Vol. 3).

Macdonald, E., & Atkins, R. (2014). *Koffman & Macdonald's Law of Contract*. Oxford University Press.

Mak, V. (2013). *Standards in European Private Law: A Model for European Private Law Pluralism*.

Mak, V. (2024). Redefining Equality in European Contract Law: Protecting Consumer Interests in a Post-Consumer Society. *European Law Open*, *3*(3), 561-586.

Mayorova, L. A. (2022). Liability Clauses in Civil Law. *Siberian Law Herald*. https://doi.org/10.26516/2071-8136.2022.2.75

Mihaela, P. (2025). *Consumer Protection Against Unfair Contract Terms: A Comparative Analysis Between Moldovan Law, Armenian Law and European Law*.

Moy, J. Y. (2025). Unfair Contract Terms: Protecting Consumers and Ensuring Fairness in Commercial Agreements.

Naidoo, A. (2021). *Complete Contract Law: Text, Cases, and Materials*. Oxford University Press.

Naude, T. (2009). The Consumer's Right to Fair, Reasonable and Just Terms under the New Consumer Protection Act in Comparative Perspective. *South African Law Journal*, *126*(3), 505-536.

Nebbia, P. (2007). *Unfair Contract Terms in European Law: A Study in Comparative and EC Law*. Bloomsbury Publishing.

Nikolaev, A. A. (2026). Exceptional Reservations in Agreements between Digital Platform Operators and Consumers. *Legal Research*(2), 153-166.

Oninku, E. A. (2022). A Comparative Study of the Control of Exclusion Clauses in Consumer Contracts: Lessons for Ghana. *Ucc Law Journal*, *2*(1), 37-60.

Pavillon, C. (2014). Private Standards of Fairness in European Contract Law. *European Review of Contract Law*, *10*(1), 85.

Pratiwi, H. (2020). Juridical Analysis of Disclaimer Claims by Entrepreneurs on Online Trading (E-Commerce). *Indonesia Private Law Review*, *1*(1), 43-54.

Raei, & Molaeian. (2014). The Approach of Imami Jurisprudence to Commutative Justice and Its Effect on Adhesion Contracts. *Islamic Law*, *11*(40), 135-165.

Reich, N., & Micklitz, H. W. (2014). The Court and Sleeping Beauty: The Revival of the Unfair Contract Terms Directive (UCTD). *Common Market Law Review*, *51*(3).

Roustaskeh Ravani, T., Mahshid, a.-S., Jamali, & Amini. (2019). A Comparative Study of the Status and Effects of Exemption Clauses in Commercial Insurance in the Legal Systems of Iran and England. *Comparative Law Research*, *53*(23), 49-69.

Safaii, S. H., & Shomali, N. (2019). A Comparative Study on the Sanctions of Unfair Terms in Iran, United States of America and European Union. *Legal Research Quarterly*, *22*(86), 43-70.

Schillig, M. (2011). Directive 93/13 and the Price Term Exemption: A Comparative Analysis in the Light of the Market for Lemons Rationale. *International & Comparative Law Quarterly*, *60*(4), 933-963.

Taylor, R. D., & Taylor, D. (2023). *Contract Law Directions*. Oxford University Press.

Valdebenito, J. M. (2025). Clausulas Abusivas y Delimitacion de Regimenes de Responsabilidad en Materia de Consumo: Comentario a la Sentencia de la Corte Suprema de 18 de Julio de 2025. *Revista de Derecho de la Universidad Catolica de la Santisima Concepcion*(47), 128-146.

Yasmin, M. (2016). Legal Liability in Standard Form of Contract. *International Research Journal of Engineering, IT and Scientific Research*, *2*(9), 51-58.