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Imposed or unfair requirements in Iran law

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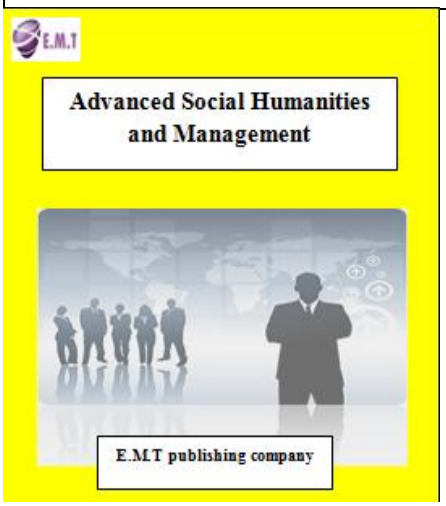

Abstract:

Despite the long history of unfair contract theory, this theory isn't as much as should be conceptually clear.
In America law system, by presenting unfair contract general theory, judgment has been given much authority so that he can cancel or adjust each contract having the properties in contrast with justice. Because of excess development of judgment authority and fear from misuse, this theory hasn't been much welcomed. For this reason, in European laws, it has been tried to reduce the scope of intervention in contracts and authority of judges and explicitly specify the requirements of government intervention in order to support the weak party.
In Iran law system, there are many ambiguities about enforcing unfair contract theory and its consequences. In the one hand, as considered in America law, this theory isn't acceptable because of giving excess authority to the trials and in the other hand, there isn't any comprehensive system like European countries' law, or like fraud option, it is so insufficient and non-inclusive that don't cover most unfair contracts.
Based on this, Iran legislator present it explicitly to the judges by determining the exact concept of non-fair contract.

Keywords:
Contract, unfair, Iran law, unfair contract

1. History of unfair contact theory

Unfair theory was first considered by England courts in seventeenth century. Even some believe that it dated back to fifteenth century (Teeven, 1990: 314). In fact, starting legal procedure is movement for fighting with contract and unfair contract terms and legist lators have tried to fill the legal voids and determine the limits of courts intervention.
James v Morgan case is the first related case identified in 1663.
Although in this cas unfair rule isn't explicitly documented, but the base of its appearance isn't clear.
One party of this case was and old man whose boy was the customer of bank. In 1966, the old man guaranteed the debt of his boy as 1500 ponds and mortgaged his field. After increasing the boy's debt and bank request for payback, a contract to guarantee additional 1500 ponds was.
In the same yea, bank announced that he should guarantee further 4500 ponds. For granting more facilities. He signed the guarantee contract without independent consulting and merely with trusting the bank (Beatson, 2010:375).
In this case, plaintiff buys a horse from defendant and against it he is committed to pay some grain of oat per each nail of horse shoe. Base of the calculation was so that per first nail of horse shoe one grain of oat, per second one two grain of oat, etc.
Horse shoe had 32 nails which according to judge\s calculation equals 500 quarter which in turn equals 12.7 kg and in sum 6250 kg grain of oat.
Governing board of court without explicitly documenting unfair criterion, accepts const adjustment of the contract which is one of its result and votes pay real price of the horse, which equals 8 pounds.
Also judge Hard which in a cade presented an interpretation of fraud which included unfair. In his view, fraud is condition where considering the nature and subject of transaction it becomes clear that no wise person accepts it and no honest person imposes it on the other.
In legal procedure of England, one of the cases which has explicitly dealt with unfair is Llyods bank LTO vs. Bundy case while complete considering unfair, lord Derning has studied its causes.

Idiomatic meaning:

In law science, the act & the term of "unjust" & "unjustly" is the same. In England's law & in the Earl of chesterfield v. Janssen (1750), the term "unjust" is defined: "a kind of contract in which a wise man in a normal condition never accept & a honest man never admit, too". In 1931, stinaf court of Indiana pnovince, in the quarrel stiefler v. Mc cullough, has defined the "unjust" contract: Aaunjust contract always carry suchan obvious & huge in justice that if a righteous listen to it, immediately expressing it's unquotability & injustice of the minimum evidence & at last use them in making void of the contract."
In 1915, revision court of New York province in the case of Mandel V. layman, pronounce judgment in this way: "unjust & imprudent contract, is a kind of contract in which with due attention to the governors common law, is too unjust & injustice, that can execute the it's substance."
In 1965, in the case of Williams V. Walkek Thomas Furniture Co., the unjust & injustice contract is defined in this way: "Generally, the "unjustly" means lack of meaningful choice for one of the two parties in contract is illogical benefit able for one of the parties.
In Iran's law one author with choice of "imposed conditions", notify that: "Imposed conditions, are kind of conditions in which one of two parties with abusing of economic & social situations exact to another part of the contract."
In mentioned definitions, mostly some kind of characteristics such as outrageous, burdensome, abusing, Are emphasized & are compared with the sensible & common behavior in the society.
However these criteria, help to clear point of progress toward the jus dge & organizing law system is supporting tge weaj oart of the contract & help the jury to recognize & realize the fact, but it ought to fear of the misunderstand of some judges may result to exhiit some unjust & in justice yardstick & at last these yard stick in fluence on the final sentence. In fact, the law system's need cannot satisfy by theses mentioned definitions. So we can say the one of the parties in the centrac who has superior position can abuse the Judge's misunderstanding & benefit of this situation.

3. Species of being unjust:

The unjust contract is formed in the phase of pre contract discussions & the result of the discussion & is known as Justice fortify or unjust process. We'll describe both of these criteria at below:
1.3. Procedural unconscionability: In this part, at first we define the unjust format & then represent some discussed indexes.
1.1.3. Concept of the procedural unconscionability:
Being unjust formity, is a position which accrued in the phase of forming a contract, & there is a kind of inequality in the two parties, positons, & finally overcharge the one part's right in the contract & this part sustain & incur a loss. In this kind of unjustic process pay a lot of attention to the special manner of doing & arranging the contract, the bargaining power of two parties in that time, but no attention is paid for purport & substance of the contract.
Being unjust formity or inequality play a sign ficantrole in the contract process specially in financial securing contracts.
Since, in the course of selecting the reserve firm & the manner of benefit distribution between the reserver & reserve firms & other contract conditions, the reserver firm because of corresponding part's needs to capital, place in the superior position & try to arrange the contract so that benefit from it.

3.1.2:

The elements of procedural unconcern ability:
In the cases that the inequality in the bargaining power is just because of this in honesty of the other part of the contract, do not make a serious problem, since in honesty, make altered the veracity of the contract. About the elements of this kind of procedural unconscionability, we can consider some factors that decrease the bargaining power in the contract process. However these factors are effective in some senses, but their effects isn't certain in the bargaining power.

3.1.2.1.

The structure size of one part opposite of another: perhaps, It's said that if one part of the contract is more powerful & superior on account of structure size, so he has a more bargaining power, because comprehensive structure, bring more power & capacity of managements & operations.
Although, in some of claims that are recognized unjust by the court, we can propound such a mentioned factor, but it's not assume that be a determinable factor, because the positions are not always true in this way that the firm which has a more power in the structure size, surely has a more bargaining power. In most of cases, the big firm need customer & for procuring the customer & persuasion them to purchase, they may cannot benefit from most of their abilities in bargaining power.

3.1.2.2. Necessity & emergency:

One the backgrounds that create weak, is the measure of needs to contract's topic. The more the measure that a part needs, the more in the bargaining power of the part, & as result, decrease, the power of need part.
In spite of this fact that in many unjust cases one part of the contract need the contract's topic & necessarily have to prepare it, in a manner that sometimes his life is dependent to it. Necessarily, emergency & distress don't cause to one pant place in a weaker position: for example. I person (a), really needs a goods, if there is a competitive marketing between the good seller, the needy person will not have power & ability in imposition of unjust conditions.
3.1.2.3. The more resources one brings to bargaining situations: Perhaps, we imagine that to have greater & more resources, create the superior bargaining power. In the other hand, if we enter al to resources in to the contract, our ability in bargaining power in crease. Although, this criterion is true in some cases, but it's not true all the time in all cases.
For example: (A) hope that benefit twice as much his investment in a hazardous trans action, but only had in his hand 4/5 of needed investment, A capitalist is ready to invest 1/5 of remainder.
Do we can say that in this investment, (A) that (B) who invest 1/5 of remainder? If (B) offer that divide 60% to 40% the provided benefit, It means for (B) it must return 300% percent of his investments, whereas (A) in compare with the allocation of investment, just benefit 150% Even though this division is not justly at all, but if (B) threat (A) that just in this condition, it means if division be 60% to 40%, I am ready to invest 1/5 of remainder, so it's obvious that (A) has a less bargaining power than (B), therefore (A) has to accept this condition & because of this (A) in spite of the fact that has more resources, but is called the weak part of the contract.

3.1.2.4. Threat Advantages:

There is a probability that one part of contract threat that if another part don't accept his offers, so he don't accept to arrange the contract too. This advantage may be in this situation that one part even if don't arrange the contract, so will not miss & lose nothing or at least lose less than another part of the contract. But this factor cannot alone, create conventional weak in the competitive market.

3.1.2.5. The conversion without condition:

Discussion of two parties about every conditions, is the sign of information about any condition & determine its substance & agree about it. Because of this the court inter faience about this kind of conditions, except in necessary cases, is contrary with the substance & determination of two parties.
Article 4-11- of European contracts doctrines about necessity of two parties, discussions about every conditions specially prescribe: "If a special condition do not be discussed & too against the equitably & damage the rights of one part in the contract, the injured person is able to annul the contract.
Article 3 of Europe union council prescription, besides.

Proclaim: If one condition do not discussed in particular, it means a kind of condition that is prepared by the seller or dealer of the product & present to the consumer & consumer is unable to change it.
In the Henningsen V. Bloom field motors case, Mr. Henningsen bought a play moss car, product of Kreisler Co, 10 day later, Mr. Hennigsen's wife in time of driving with this car, was damaged. Insurance agent announced the defect of the steering –wheel as a reason of accident' in his report. Hennigsen's family complained from the mentioned company because of carelessness & perjury obvious & implicit guarantees. The primary court, didn't accept the carelessness, but about the damages of implicit condition, to pronounce a judgment to the plaintiff.
The defendant in revision court, was reasoning that in the guaranty in the sub- title was containing a uniform guaranty of car produces, in which any responsibility about damages is taken away from the seller. Because of this, the seller company, is not responsible. The court didn't accept this reasoning, because when a contract is true & legal that two parties of the contract discuss about the condition & parties be in a same economic situation & then arrange the contract. Since, the condition of non-guarantee was insert as a sub-title & was pre-writing, & by reason of unequal bargaining power, isn't legal.

3.1.2.6. Undue Influence:

Undue influence, that is a suggestion about justice & equity, is one of the inequitably of the Cori tract that is a main cause for annul the contract.
In the part A of article 4-109 of Europe contract doctrine, one of the factors that uncommon the contract, is existence of relation or confidence & trust between two parties.
In the famous case of all card V. skinner, the court determined & consider the relation between two parties of the contract the relation's effect on seller, counteract the contract.

3.1.2.7. Lack of Independent Advice:

Receiving the independent consulting, express the injurious of the contract or express the disadvantages of the condition for one part of the contract. Also, this kind of consulting can informed the weak part of the contract from the probable abuse of the another part of the contract. As are salt, based on the action doctrine that is a rational & intellectual basis, the weak person cannot assert the rescission of the contract.
For the biter understanding about receiving the independent consulting, again remind you the Loudening's idea in Loads bank V. Bandi case that one of the reasons to lack of performance of the contract, was lack of receiving the independent consulting behalf of the defendant.

3.1.2.8. Lack of choice:

Lack of competitive marketing, in achieving the goods & services, can decrease the bargaining power of the people in arranging contracts. When a person want to purchase a goods that is monopoly, must choose whether by or dispense of buy. Now if the mentioned good is one of his life's necessities, the second choice isn't consider for him & just the only choice is to buy it & so this fact, cause that the buyer have no power to bargaining & another part of the contract that has a superior situation be able to impose to the weak part of the contract anything that wants.

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