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# Unfair Terms in Standard Contracts: A Comparative Legal Analysis of Algerian, French, and Arab legislations

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**Abstract**

This article examines the legal mechanisms governing unfair terms within the Algerian, French, and selected Arab legal systems. Such terms typically emerge from the arbitrariness and imbalance exercised by professionals when contracting with consumers. Their impact is evident in the distortion of contractual equilibrium to the advantage of the professional, thereby infringing upon the consumer's rights and legitimate interests. Although most frequently encountered in standard (adhesion) contracts, unfair terms may also appear in other contractual arrangements.

The analysis underscores their prevalence in consumer contracts and the significant threat they pose to consumer protection and market fairness.

**Keywords:** consumer protection; unfair terms; standard contracts.

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## Introduction

Global economic openness has led to a remarkable increase in the number of contracts concluded for the supply of various goods and services. This evolution has intensified consumers' appetite for consumption-both globally and within Algeria-while simultaneously heightening the profit-driven behavior of professionals. Consequently, the latter have increasingly relied on standard (adhesion) contracts as a dominant instrument in their commercial dealings.

Although classical legal principles such as *freedom of contract* and *autonomy of will* theoretically place contracting parties on an equal footing, ensuring justice and balance in their respective rights and obligations, the reality of modern consumer relations reveals a stark contrast. The exponential rise in the number of consumer contracts, typically governed by pre-drafted terms unilaterally imposed by professionals, has exposed a deep structural imbalance between the parties. The contractual equality promised by traditional legal doctrines thus remains largely theoretical detached from the practical realities of economic power dynamics.

Standard (adhesion) contracts often contain unfair terms drafted in advance by the professional, without any room for negotiation by the consumer. These terms not only infringe upon the consumer's legitimate rights and interests but also disturb the contractual equilibrium, systematically favoring the professional at the expense of the weaker party. As a result, classical contract principles have progressively evolved under the influence of socio-economic transformations and the scholarly calls for a more equitable contractual framework.

The significance of this study lies in addressing the widespread presence and inherent risks of unfair terms in consumer contracts. These clauses threaten the core of consumer protection by perpetuating inequality between the contracting parties. The issue concerns not a specific class of ndividuals but all consumers, for anyone may fall victim to such contractual abuses. Hence, the regulation of unfair terms constitutes an essential step toward restoring fairness and protecting contractual justice.[1]

Accordingly, legislative intervention became indispensable to confront the problem of unfair terms. This raises a fundamental question: *What is the nature of these terms, and how has the legislator addressed them?*

To answer this question, the study adopts both **comparative** and **analytical** approaches, examining the relevant legal and regulatory texts governing unfair terms within Algerian, French, and selected Arab legal systems.

## Chapter I: The Concept of Unfair Terms

Unfair terms are predominantly encountered in **standard form contracts** (also known as **contracts of adhesion**),[2] where one party unilaterally drafts the contractual clauses, leaving the other with little or no opportunity to negotiate their content. Nevertheless, such terms may also arise in other contractual settings beyond adhesion contracts.
To establish a precise conceptual framework for this study, it is essential to examine separately the **definition of unfair terms** and the **notion of standard form (adhesion) contracts**, before analyzing their intersection and practical implications.

### I. Definition of Unfair Terms

Under **French law**, an *unfair term* was initially defined as :*"any contractual clause imposed upon a consumer or a non-professional by a professional as a result of an abuse of the latter's economic power, with the objective of securing an undue advantage."* [3]
In the same conceptual vein, an unfair term has also been described as *"a provision that stems from arbitrary conduct and enables such abuse."*
These clauses are most commonly found in **standard form (adhesion) contracts**, which are typically drafted in advance by the professional party possessing both **economic dominance** and **technical expertise**. While such terms may appear formally valid under the general principles of contract law and may seem not to vitiate the consent of the weaker party in substance, they operate **abusively**, imposing disproportionate obligations and upsetting the contractual balance to the detriment of the adhering party.[4]

According to some doctrinal analysis [5]; the characterization of a clause as *abusive* or *unfair* depends on the presence of two interrelated elements, each serving as both the cause and the consequence of the other:

#### *A. Abuse of authority or economic power*

A contractual term is deemed abusive when the undue advantage conferred upon the professional arises from an **abuse of economic power**.

However, this criterion has faced significant criticism for two principal reasons. First, it is inherently **vague and indeterminate**, lacking a clear threshold for assessing economic dominance. Second, the existence of

economic power is not always a prerequisite for coercive contractual behavior; in practice, even a **minor trader or ordinary seller** may impose oppressive terms through mechanisms other than pure economic superiority, such as **information asymmetry**, **market dependence**, or **technical complexity**.

***B. The Existence of an Undue Advantage***

The notion of *undue advantage* represents the material manifestation of abuse in contractual relations. It arises when a professional exploits their economic or structural position to impose contractual conditions that generate a **disproportionate benefit** in their favor. This undue advantage translates into a **violation of contractual justice**, expressed through a **substantial imbalance** between the rights and obligations of the contracting parties. Such imbalance deprives the consumer of the genuine freedom to negotiate or amend the terms of the agreement, given that the contract is typically **pre-drafted** by the professional and **unilaterally imposed** upon the weaker party.

The **French Court of Cassation** has explicitly recognized this principle, ruling that a clause is deemed *unfair* when it infringes upon the consumer's right to compensation, particularly when it **excludes or restricts liability** for the professional's own non-performance of contractual obligations.[6]

In the same spirit, **Article L.132-1 of the French Consumer**[7] **Code** defines unfair terms as: "Clauses that, in contracts concluded between professionals and non-professionals or consumers, have the object or effect of creating a manifest imbalance between the rights and obligations of the parties."[8]

A comparative reading of this provision and earlier legislative definitions reveals that the **criterion of economic power** originally central to the definition of unfair terms has been deliberately **omitted** by the French legislature. This legislative evolution reflects a shift in focus: rather than requiring proof of economic dominance, the law now centers on the **existence of contractual imbalance** as the decisive element in characterizing unfairness, thereby strengthening consumer protection.

Modern French jurisprudence confirms this evolution. Article L.132-1 of the **1993 Consumer Code** effectively **abrogated the requirement of abuse of economic power** previously enshrined in **Law No. 78-10 of January 1978**. The rationale is pragmatic: professionals may impose unfair terms not only through economic might but also through

**technical expertise**, **technological sophistication**, or **information asymmetry**.

Professionals, by virtue of their experience and habitual engagement in contractual practices, possess a clear understanding of the obligations that can be fulfilled and the conditions that may be imposed. Consequently, the traditional reliance on *economic power*
as the sole source of abusive advantage has become obsolete; modern sources of dominance, such as technical knowledge, organizational experience, or superior information can yield the same result.[9]

In sum, an **unfair term** typically exhibits three essential characteristics:
**1**- It creates **an imbalance** between the parties' rights and duties arising from the contractual relationship /**2**-It is **unilaterally imposed** by the professional and deprived the consumer of any real possibility of negotiation/**3**-It is prepared **in advance**, most often in **written form**.[10]

French law, in its modern evolution, has provided a concise yet comprehensive definition of the unfair term, describing it as *"a clause drafted in advance by the stronger party, conferring on that party an unjustified advantage over the other contracting party."* [11]

In parallel, **Article 3(1)** of the **European Directive on Unfair Terms in Consumer Contracts**[12]**,** defines such a clause as : *" a term*
*in a contract that causes a significant imbalance in the parties' rights and obligations, contrary to the requirement of good faith and to the detriment of the consumer."* [13]

The comparison between these two definitions reveals that, while both share a common conceptual foundation, French law omits the explicit reference to "good faith" as a requirement for the drafter of the clause. This omission stems from the French legislature's intention to harmonize its domestic legislation with the **European Union directives**, in pursuit of a unified framework across EU member states.

Similarly, **the Algerian legislature** defines an unfair term as:
*"any clause or condition, taken alone or in combination with one*
*or more other clauses or conditions, likely to significantly disturb*
*the balance between the rights and obligations of the parties to the contract."* [14]

From this formulation, it is evident that **the evolution of French law**, notably the abandonment of the economic power criterion and the simplification of the unfairness test has clearly influenced **Algerian law**.[15] The latter,

following the modern legislative approach, no longer requires the dual presence of both the economic criterion (abuse
of economic dominance) and the legal criterion (undue advantage). Instead, it confines the analysis to a **single determinant factor**: the existence of a manifest imbalance between the rights and obligations of the contracting parties.[16]

From the foregoing analysis, an **unfair term** may be defined as : *"a contractual condition that disturbs the contractual balance to the detriment of the consumer's interests, resulting from their lack*
*of experience or from technical, legal, or economic inequality*
*in comparison with the professional, whether the term concerns the price or the method of payment, the subject matter of the contract, delivery, performance conditions, liability, warranty, or any other contractual element."* [17]

In light of this definition, the essential characteristics of an unfair term can be summarized as follows:

**1-Absence of negotiation** : the consumer does not participate
in drafting or modifying the term, which is imposed unilaterally by the stronger party /2-**Predetermination** : the clause is prepared in advance, leaving the consumer no real possibility of amendment
or withdrawal /3**Manifest imbalance** : the term generates
a disproportion between the rights and obligations of the parties, undermining the principle of contractual fairness[18].

In practice, **unfair terms** may relate to various aspects of the contractual relationship, such as:
– defining the nature, quality, or characteristics of the goods
or services /– determining the price, its method of payment,
or possible variations /– establishing the conditions of delivery
and performance of the contract/– modifying or limiting warranty rights/– regulating renewal or termination procedures; or / altering
the scope of liability, either by exemption, limitation, or aggravation.

All these terms share a common feature: they are drafted to favor
the professional at the expense of the consumer, thereby **undermining contractual justice and the principle of equality between contracting parties**[19]**.**

## II. Definition of Standard (Adhesion) Contracts

Mr. Al-Sanhouri defines a **standard contract**[20] as :*"a contract in which the accepting party adheres to terms unilaterally established by the obligor, without the possibility of negotiation, concerning an essential public good or service that is subject to a legal or de facto monopoly, or where negotiation is practically restricted."* [21]

Similarly, a standard (adhesion) contract may be described as:

*"an agreement in which one party independently determines the contractual terms, thereby preventing the other party from discussing or modifying them. It typically relates to a necessary good or service under a legal or factual monopoly. The offer is made public in writing, and most of its provisions are designed to favor the offeror—either by limiting their own contractual liabilities or by aggravating those of the other contracting party."* [22]

From the two foregoing definitions, a contract may be characterized as a **contract of adhesion** only if the following conditions are satisfied:

1. The existence of a **legal (de jure) or factual (de facto) monopoly** over the good or service.
2. The good or service must be **essential to the consumer's daily life**, such as electricity, gas, water, or telecommunications.
3. The contractual terms are **imposed unilaterally** upon the consumer, without any real opportunity for negotiation or modification, and are predominantly drafted in favor of the professional[23].

It is apparent that these definitions embody the **classical conception** of adhesion contracts one that many scholars now regard as somewhat imprecise. As some have observed :*"the inequality of economic power, or more broadly, the inequality stemming from the urgency and intensity of needs, necessarily calls for the existence of such contracts."* [24]

However, **modern legal doctrine** has evolved beyond this traditional framework by **relaxing the strict conditions** required for a contract to qualify as an adhesion contract. The aim of this evolution is to **broaden the scope of consumer protection** and to extend the legal safeguards ensuring fairness and contractual balance. Contemporary jurisprudence, for instance, no longer views the existence of a monopoly as a decisive criterion. What truly matters is whether the obligor occupies a **dominant position** that enables them to predetermine the essential terms of the contract, thereby depriving the consumer of genuine contractual autonomy[25].

Although competition is, in theory, free and unrestricted, **its practical reality often tells a different story**. The **insurance contract** provides a compelling example. While there exists neither a legal nor a de facto monopoly in the insurance sector, competition remains limited, confined to a relatively small number of specialized companies. The insurance provider, therefore, does not exercise an exclusive monopoly over the service, yet the nature of the industry restricts the number of participants capable of engaging in it. Despite this apparent plurality of actors, there is a broad consensus within legal doctrine that **the insurance contract constitutes a contract of adhesion**, as the insured typically has no real opportunity to negotiate its terms[26].

Moreover, with respect to the **requirement of necessity** for a good or service, modern legal thought advocates a **flexible and contextual interpretation**—one that varies according to time, place, and the personal circumstances of individuals[27]. What may represent a vital necessity for one person could be of negligible importance to another. For instance, a book may be indispensable to a student yet serve a trivial function for someone else. Hence, the assessment of whether a good or service is "necessary" should properly be left to the discretion of the **judge**, as it constitutes a **question of fact**.

Accordingly, it is **no longer essential** that the good or service be subject to a legal or factual monopoly, nor that it possess an objectively vital character such as water, electricity, or gas. In a modern and constantly evolving society, needs are dynamic, shifting from one period to another.

In light of these developments, **contemporary legal doctrine has redefined the notion of the standard (adhesion) contract**[28]. It is no longer confined to those contracts that satisfy the traditional conditions of monopoly or necessity. Instead, it extends to **any contractual situation in which the essential terms are pre-formulated by one party** and offered uniformly to any person wishing to contract with them. What defines such contracts today is not monopoly, but **the structural imbalance of bargaining power** that deprives one party typically the consumer of genuine freedom of negotiation.

As a result, **modern legal doctrine** has simplified the criteria for identifying a contract of adhesion, reducing them to a **single essential condition**: the stronger contracting party **unilaterally drafts the contractual terms in advance**, defining the respective rights

and obligations of both parties. The weaker party, having no real bargaining power, is left with only two options to **accept the contract as a whole** or to **refuse it entirely**, without any opportunity
for negotiation or amendment.

Accordingly, the **contemporary judicial definition** of a contract
of adhesion aligns with this modern theoretical understanding. It has been succinctly defined as:

"A contract in which one party, the offeror, unilaterally determines
the contractual terms, which are not open to discussion by the other party." [29]

In conformity with these principles, the **Algerian legislature** has adopted a similar approach. Article 70 of the **Algerian Civil Code** provides that:

"Acceptance in a contract of adhesion results from mere submission
to the conditions established by the offeror, without allowing for discussion." [30]

Although this provision does not offer an explicit definition,
it effectively captures the **essence** of the adhesion contract namely,
a contract concluded **without prior negotiation or dialogue**. In practice, one party formulates the offer and determines its terms in advance, while the other party is bound either to **accept the contract as presented** or to **decline it altogether**. The adhering party is not permitted to modify, delete, or supplement any of its provisions [31].

Moreover, the Algerian legislature has not confined its treatment
of adhesion contracts to these general civil provisions. It has addressed them more specifically in **special legislation**. Article 3, paragraph 4, of **Law No. 04-02 of 23 June 2004**, governing commercial practices, defines an adhesion contract as follows:

"Any agreement or contract for the sale of goods or the provision
of services, prepared in advance and unilaterally by one of the parties, in such a way that the other party merely adheres to it without being able to modify or make any substantial change to it."

Similarly, **Article 1, paragraph 2, of Executive Decree No. 06-306** which sets out the fundamental elements of contracts concluded between economic agents and consumers, as well as clauses deemed abusive[32] provides that: "A contract, within the meaning of this decree and in accordance with Article 3(4) of the aforementioned Law No. 04-02 of 23 June 2004, refers to any agreement or contract for the sale of goods or the provision of services, prepared in advance by one

of the parties and accepted by the other party, without the possibility of making any real modification to it."

These legislative provisions confirm that Algerian law, like modern comparative legal systems, **embraces a flexible and consumer-oriented understanding** of the adhesion contract one that focuses not on monopoly or necessity, but on the **absence of genuine consent and the structural imbalance between the contracting parties.**

The **Algerian legislator** has acted judiciously in adopting these provisions, as they offer a **clear and coherent definition** of the adhesion contract in accordance with **modern legal theory**. These texts accurately emphasize the essential characteristics of such contracts namely, that they are **unilaterally formulated by the stronger party**, who autonomously and in advance determines
the contractual terms, incorporating **clauses or conditions that are neither open to negotiation nor subject to modification** by the adhering party[33].

In practice, **adhesion contracts permeate nearly every aspect
of modern economic and social life**. Indeed, they arguably constitute the majority of contracts encountered in everyday transactions. Examples include contracts for **electricity, gas, water, postal
and telecommunication services**; **landline and mobile phone subscriptions**; **internet service agreements**; **software sales and licensing contracts**; **transportation contracts** across various modes of travel; **highway toll or passage agreements**; **insurance policies**; **consumer credit contracts**; **healthcare service contracts** in both public and private clinics and hospitals; and **rental agreements**
in public or private facilities. The list is far from exhaustive,
as adhesion contracts continue to **expand in scope and prevalence**, reflecting the growing complexity and standardization
of contemporary contractual relations[34].

## Chapter II: The treatment of Unfair Terms in Civil Law

Handling unfair terms in civil law includes the cancellation
or modification of unfair terms and the interpretation of ambiguous terms in favor of the contracting party.

### I. Cancellation or modification of unfair terms.

As a general rule, the court cannot, except in cases expressly provided for by law, modify or cancel anything in a contract. Among the cases in which the court is empowered to exempt the weaker party from the application of unfair terms or to modify them, thus eliminating the injustice or oppression

suffered as a result of unfair terms contained in adhesion contracts, is the case.[35]

Numerous comparative laws[36] have conferred this authority to the court. Article 110 of the Algerian Civil Code provides: "When the contract is formed by adhesion, the court may, if the contract contains unfair terms, modify these terms or exempt the adhering party from them in accordance with the rules of equity," Any agreement to the contrary is null and void."

For a court, to amend or nullify the **unfair terms**, certain preliminary conditions must be satisfied:

**First**, the disputed contract must be properly characterized as a **contract of adhesion (standard contract)** rather than a freely negotiated private agreement.

**Second**, the **individual terms** of the contract must be examined carefully. It is crucial to distinguish between a *contract of adhesion* and a *contract containing unfair terms*. While an adhesion contract is typically one in which the terms are imposed unilaterally, it does not necessarily follow that all or any of its provisions are unfair. Consequently, the judge must conduct a **clause-by-clause analysis**, since not every clause contained in a standard contract is inherently abusive or detrimental to the weaker party.

Certain legal systems go further by adding a **third condition**: that the **consumer themselves must invoke** the unfair nature of the term.[37]

This provision makes it clear that, under **Kuwaiti law**, the judge may not, **on their own initiative**, annul or amend unfair clauses without a **request from the consumer**. This approach aligns with the fundamental procedural principle that a civil judge **may not rule *ultra petita*** that is, beyond the scope of the parties' claims.

In general, when a judge determines that a contract constitutes an adhesion (standard) contract containing unfair terms, he is vested with discretionary authority either to amend the clause in question or to annul it entirely, thereby exempting the consumer from its effects. However, once the unfair nature of a term has been established, the judge may not refrain from acting upon it; to do so would amount to a violation or misapplication of the law and would render the decision subject to appeal.[38]

Nevertheless, the power granted to the judge to modify or annul unfair terms represents a delicate and potentially perilous extension of judicial authority. It transcends the traditional limits of judicial function, which are ordinarily confined to the application and interpretation of the law. In essence, such intervention constitutes an **exception** and a **restriction** to the classical

principle of the autonomy of will. Yet, this restriction is not only justified but necessary, as it serves to **restore contractual balance**, **redress harm**, and **uphold the imperatives of substantive justice**.

Through this lens, the judge ceases to be merely the "arbiter of contract" and instead assumes the role of the "arbiter of contractual justice." This evolution reflects a paradigm shift in modern private law—from a liberal conception grounded in individual freedom to a social conception rooted in the protection of weaker parties and the pursuit of fairness within contractual relations.

In any event, this mechanism reflects a commendable and forward-looking legislative policy. By instituting such measures, the legislator has taken a decisive step toward ensuring effective protection for the weaker contracting party, most notably the consumer who remains the primary victim of unfair contractual terms. Indeed, consumer contracts are, by their very nature, predominantly adhesion contracts characterized by a significant imbalance in bargaining power.

To reinforce this protective framework, the Algerian legislator has explicitly provided for the **nullity of any stipulation** that seeks to preclude the annulment or modification of unfair terms. Thus, where a contract contains any clause purporting to exclude the court's power to review or rectify an unfair term, such a clause is deemed **ipso jure null and void**, in accordance with **Article 110 of the Algerian Civil Code**.[39]

This provision effectively **closes the door** on attempts by the stronger party to evade or undermine the normative force of the law. It also safeguards the integrity of the legislative objective—namely, to ensure that contractual justice prevails over formal consent whenever substantive inequality threatens the equilibrium of contractual relations.

## II. Interpretation of doubt in Favor of the Adhering Party in Standard (Adhesion) Contracts

Contracts may often include clauses, phrases, or formulations that are vague, ambiguous, incomplete, polysemous, or even contradictory -rendering their meaning uncertain or open to multiple interpretations. In the specific context of standard (adhesion) contracts, such ambiguity may at times be the result of deliberate drafting by the stronger party. Regardless of intent, however, these uncertainties necessitate judicial interpretation an inherent function of the judge as arbiter of contractual meaning.

In performing this interpretative function, the judge exercises discretionary authority as the judge of fact and substance. Nevertheless, this discretion is

not without limits. It is constrained by two fundamental restrictions. The **first** of which prohibits deviation from the clear and unequivocal meaning of the contractual terms. This principle is enshrined in **Article 111(1) of the Algerian Civil Code.**[40] Accordingly, if a judge interprets a clause whose wording is already explicit, the resulting decision constitutes a misapplication of the law and is consequently subject to annulment. [41]The **second restriction** pertains to the *methodology* of contractual interpretation. It obliges the judge to discern the *common intention* of the contracting parties by examining the factual matrix and surrounding circumstances of the agreement. This interpretative rule is codified in **Article 111(2) of the Algerian Civil Code.**[42]

The principle recognizes that intent is inherently subjective and internal-often concealed within the parties' psychological and contextual understanding. Thus, the judge must infer such intent from the linguistic expressions, formulas, and clauses through which the parties have manifested their will. In doing so, the judge is required to consider the *nature of the contract, prevailing commercial customs,* and the *good faith* and *mutual trust* that ought to characterize contractual relations.

Nevertheless, when ambiguity persists despite these interpretative efforts-when the true intent behind certain terms remains uncertain,the law resolves such doubt in favor of the weaker or adhering party. **Article 112(1) of the Algerian Civil Code**[43] explicitly enshrines this interpretative safeguard, stipulating that :*"Doubt shall be interpreted in favor of the debtor."* This rule reflects a broader commitment to equity and consumer protection, mitigating the imbalance inherent in adhesion contracts where one party unilaterally drafts the terms.

In this context, the term **"debtor"** does not refer to the debtor under the contract in its entirety, but rather to the **debtor of the specific clause** subject to interpretation. For instance, in a consumer credit agreement, while the consumer-borrower is indeed the contractual debtor, they may simultaneously be the **creditor** of the clause under judicial scrutiny.

Nevertheless, the **Algerian legislature** has chosen to deviate from this general interpretative rule according to which any ambiguity must be construed in favor of the debtor and has instead established a **special rule** applicable to **standard (adhesion) contracts**. Under **Article 112 of the Algerian Civil Code**[44], the provision reads:*"Doubt shall be interpreted in favor of the debtor. However, the interpretation of ambiguous clauses in adhesion contracts shall not prejudice the interests of the adherent."*

This legislative choice introduces a significant corrective mechanism: in adhesion contracts, ambiguity must be interpreted **in favor of the adhering party**, regardless of whether that party is a creditor or a debtor in the clause under consideration. Thus, if a contractual provision admits two possible meanings, the judge must adopt the interpretation that is **most advantageous to the adherent**, even if that party happens to be the **creditor** in the given instance[45].

The rationale behind this rule lies in **correcting the structural imbalance** inherent in adhesion contracts. The adhering party, typically the weaker party, accepts the contract out of necessity and without meaningful opportunity to negotiate its terms. In contrast, the **drafter** usually the professional or economically dominant party, possesses the expertise, resources, and time to prepare the contract meticulously and to eliminate any ambiguity. Accordingly, it is both **just and consistent with public policy** to construe any uncertainty against the drafter and in favor of the adherent. This interpretative safeguard reinforces contractual fairness and consolidates judicial protection for weaker parties in the modern contractual landscape[46].

## III. The Treatment of Unfair Terms in Special Legislations

Special legislative instruments have developed several approaches to addressing **unfair terms** within contractual relationships. Among these, one of the most significant and pragmatic methods is the **enumeration technique**, which seeks to identify and classify such terms explicitly.This approach operates through the establishment of **lists of unfair terms**, typically divided into two distinct categories ;The Legislative List and the Non-Legislative list or The Advisory list.

### 1. The Legislative List

The **Algerian legislator** has unequivocally embraced the legislative approach as a means of ensuring **effective protection for the weaker contracting party**, namely the consumer, and of **safeguarding their fundamental rights** within the contractual relationship. It **is** a binding enumerations in which the **legislator expressly identifies certain contractual terms as unfair** and declares them **null and void** by virtue of mandatory statutory provisions. This type of list carries **legal force**, as it codifies the legislator's assessment of which clauses inherently disturb the contractual balance or violate public policy.

This approach is codified in the **Law establishing the rules applicable to commercial practices**, specifically in **Chapter Five**, entitled :*"Unfair Contractual Practices."*

**Article 29** of this law introduces a **legislative list** comprising **eight (8) clauses** that are expressly deemed *unfair*. For instance, in contracts concluded between a **consumer** and a **professional seller**, the following clauses are considered abusive:

- Clauses through which the seller reserves rights or advantages **without providing equivalent benefits** to the consumer /- Clauses imposing **immediate and definitive obligations** on the consumer while allowing the seller to perform his own obligations at his **sole discretion** /-Clauses requiring the consumer to fulfil their obligations **even when the seller is in default**/-Clauses enabling the seller to **unilaterally alter** the delivery date of a product or the performance deadline of a service/-Clauses threatening the consumer with **termination of the contractual relationship** solely because of their refusal to accept **new or unfair commercial conditions**.

Moreover, **Article 30** of the same law reinforces this protective mechanism by stipulating that:*"In order to protect the interests and rights of the consumer, the essential elements of contracts may be established by regulation. Such regulation may also prohibit the use, in various types of contracts, of certain clauses deemed unfair."*

Pursuant to this legislative mandate, **Article 5 of Executive Decree No. 06-306** which defines the **essential elements of contracts concluded between economic operators and consumers**, as well as the **clauses considered unfair,** enumerates **twelve (12)** additional examples of prohibited or suspect clauses. Among these, a clause is deemed unfair if the **economic operator**:

Continuing this approach, **Article 5 of Executive Decree No. 06-306** further enumerates specific examples of **clauses considered unfair** in contracts concluded between economic operators and consumers. Among these are clauses through which the economic operator:

- Restricts or alters the **essential elements** of the contracts referred to in **Articles 2 and 3** of the same decree/-Reserves the right to **unilaterally modify or terminate** the contract **without granting any compensation** to the consumer/-Allows the consumer, in cases of **force majeure**, to terminate the contract **only upon payment of compensation/-**Unilaterally **exempts themselves from liability**, without compensation, in cases of **total or partial non-performance** or **defective performance** of their contractual obligations/-Provides that, in the event of a dispute with the consumer, the latter **waives any right of recourse** against the professional/-Imposes **unjustified additional obligations** on the consumer/-Releases themselves from **obligations arising from the exercise of their professional activities**.

This **legislative technique of enumeration** is also adopted under **French law**, reflecting a shared civil law tradition of protecting consumers through the codification of abusive contractual practices. **Article L. 132-1** to **L. 132-5** of the **French Consumer Code** explicitly provides that: *"Unfair terms are determined by decree of the Council of State and shall be treated as such."* Pursuant to this provision, the **French Council of State** is vested with the authority to determine, by decree, the conditions deemed **unfair or abusive**, which thereby acquire **binding legislative force**. Judges are thus required to apply these determinations *ex officio*, declaring any such clauses **null and void** when encountered, as they contravene **mandatory public order provisions**.

Moreover, the **Decree of March 1**, adopted pursuant to the **Law of January 24, 1978** , was among the earliest legislative instruments to identify and prohibit specific **unfair terms**. It enumerated **three principal categories** of abusive clauses that violated the contractual equilibrium between professionals and consumers : **-A)** Clauses that exempt or limit the liability of the professional seller, except in the context of service contracts /-**B**) Clauses that authorize the professional to alter the components of the ordered product without obtaining the consumer's consent; and /-**C**) Contractual warranty clauses that undermine the legal obligation to guarantee against hidden defects, as provided by Article 1641 of the Civil Code.[47]

When the intended level of protection was not achieved through the issuance of decrees by the Council of State prohibiting or restricting unfair terms in consumer contracts, Article 9 of the 1988 Consumer Code introduced a more effective mechanism: the forfeiture action, designed to eliminate unfair terms from adhesion contracts concluded with consumers. Pursuant to Article L.421-1 of the Consumer Code, consumer protection associations were vested with the authority to bring such actions, with the possibility of imposing penalties where necessary. Although this legal innovation sought to strengthen the protection of consumers against abusive clauses, in practice, these associations remain hesitant to initiate forfeiture proceedings, revealing a gap between legislative ambition and practical enforcement.

French case law has, in certain instances, called for the publication of an exhaustive list of unfair terms, mirroring the approach adopted in other European legislation[48] . In light of this, the legislative method that defines and invalidates unfair terms through binding statutory instruments represents a highly effective mechanism for safeguarding consumers against abusive

contractual provisions. Such an approach enables judges to readily grant requests for the annulment or modification of an unfair term when invoked by a consumer.

**2. The Non-Legislative list or The Advisory list.**

In order to diversify the mechanisms of protection against unfair contractual terms, the Algerian legislature established, under Article 6 of the Executive Decree defining the essential elements of contracts concluded between economic operators and consumers as well as the terms considered unfair, the *Commission on Unfair Terms*.The principal mission of this administrative body is to prepare a **list** of clauses or terms considered unfair. It is composed of judges, government officials, legal experts, representatives of consumer protection associations, and professionals.

The Commission exercises an advisory function: it issues recommendations for the annulment or amendment of terms it deems unfair and submits these recommendations to the Minister of Commerce. It may act upon the request of the Minister, consumer associations, or professionals affected by such clauses, and may also intervene *ex officio*. Where the Commission identifies contractual clauses that disturb the balance between the rights and obligations of the parties—pursuant to the standard set forth in Article 3 of Law No. 04-02—it formulates proposals for their removal or modification.

As for the binding effect of these recommendations, it is evident that the Commission's decisions carry only persuasive, non-binding authority, even if the Commission does not possess binding authority, its recommendations serve as a **guiding reference** for both courts and contracting parties, promoting a uniform understanding of contractual fairness and aiding in the preventive control of abusive practices.

Although certain commentators have minimized the Commission's role in combating unfair terms arguing that, in the absence of binding force, its decisions amount merely to a form of moral pressure on professionals and serve primarily as consultative opinions to guide the judiciary in disputes concerning adhesion contracts, notably Mr. Guestin, maintain that the Commission has played a significant role in assisting the French judiciary in the examination and adjudication of disputes involving the review of unfair contractual terms.[49]

In the French legal framework, Article 36 of the Law of 10 January 1978 similarly established a *Commission des clauses abusives* (Commission on Unfair Terms), composed of judges, government representatives, legal experts, members of consumer protection associations, and professionals.

This body exercises advisory authority and is tasked with issuing recommendations for the annulment or amendment of clauses deemed unfair, which are subsequently submitted to the Council of State. The Commission operates either at the request of the Minister responsible for consumer affairs, consumer associations, or professionals affected by such clauses, or *ex officio* when circumstances so warrant.

With respect to the legal value of its recommendations, the French Commission's role is analogous to that of its Algerian counterpart. Its recommendations may be published either at the request of the Commission itself or by the Minister responsible for consumer affairs. However, in order for such recommendations to acquire legal force and for the clauses in question to be formally recognized as unfair, a decision of the Council of State is required, in accordance with Article 132-1 of the French Consumer Code.Furthermore, Article 132-3 of the same Code provides for an advisory list appended as an annex to the Consumer Code, enumerating clauses that may be regarded as unfair. This list serves as a reference tool for judges in assessing whether a given contractual term is abusive, without, however, being binding upon them.

## CONCLUSION

This study has examined the legal mechanisms governing the treatment of unfair terms in Algerian, French, and selected Arab legal systems. Such terms stem from the arbitrariness and inequity exercised by professionals when contracting with consumers. Typically pre-drafted and non-negotiable, they distort the contractual balance to the advantage of the professional party and to the detriment of the consumer's rights and legitimate interests. Although predominantly found in standard (adhesion) contracts, these terms may also appear in other contractual frameworks.

From the foregoing analysis, several key findings and recommendations may be drawn:

- **First**, among Arab jurisdictions, the Algerian legislature has been at the forefront of consumer protection. It has enacted dedicated provisions safeguarding consumers and developed multiple mechanisms to combat unfair terms. These include empowering judges to amend or nullify abusive clauses in adhesion contracts and combining both the *legislative list* and the *advisory list* methods through the establishment of the Unfair Terms Commission, which

represents an approach that reflects both innovation and legislative foresight.

- **Second**, concerning standard (adhesion) contracts, modern legislation no longer requires the classical conditions once deemed essential, such as the existence of a monopoly or the necessity of the good or service. It suffices that one party has unilaterally drafted the contractual terms in advance and imposed them without allowing the other party to negotiate. Algerian law has embraced this modern conception, emphasizing the substantive imbalance of power over the formal elements of contract formation. Likewise, contemporary legal thought has relaxed traditional criteria for identifying unfair terms abandoning both economic dominance and legal advantage tests in favor of a single substantive criterion: the existence of a *significant imbalance* between the parties' rights and obligations.
- **Third**, although the principle of contractual freedom and the binding force of contracts generally precludes judicial modification or annulment, an exception arises in the case of abusive terms in adhesion contracts. Here, the judge may intervene to exempt the weaker party from oppressive clauses or to mitigate their effects. Moreover, any agreement seeking to preclude judicial review or modification of such clauses is deemed *ipso jure* void.
- **Fourth**, while Algerian law ordinarily dictates that ambiguity be interpreted in favor of the debtor, the legislature has expressly departed from this principle in the context of adhesion contracts. It instead requires that ambiguity be construed in favor of the adhering party, whether debtor or creditor, thereby reaffirming the protective character of this contractual regime.
- **Fifth**, the study underscores the necessity of recognizing the procedural right of consumer protection associations to initiate legal actions seeking the removal of unfair terms. Such collective actions would exert preventive pressure on economic operators and serve as a deterrent against the insertion of abusive clauses.
- **Sixth**, it is also recommended that consumers be granted an explicit *right of withdrawal* from standard contracts containing unfair terms, under clearly defined conditions and within specific time limits. This would constitute an additional safeguard complementing existing judicial and administrative remedies.

Finally, while consumer protection and anti-fraud legislation represent significant achievements, they remain insufficient in isolation. Legal safeguards must be accompanied by *consumer education and awareness-raising efforts*, ensuring that individuals understand and assert their contractual rights. Consumer associations and the media play a pivotal role in this endeavor. Ultimately, the most effective protection lies in *preventive rationality*: fostering responsible consumption, prudent contracting, and an informed public capable of resisting the subtle coercion of unfair market practices. As the adage wisely reminds us, **prevention is indeed better than cure**.

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[1] <<…It is time, we gave men, women and children the same protection…>>. These are some of the words of US President John F. Kennedy, which he said on March 15, 1962 when he addressed the US Congress to announce his plans for consumer protection, which will always ring true whenever we address a consumer protection issue.

[2] See lachachi Mohamed, Unfair Terms, Concepts and methods of combating them in Algerian and French law, Journal of Comparative Legal Studies, Issue 3, December 2016, pp. 236 and.239.

[3] Article 35, Chapter 4, French Law No. 78-22 of January 10, 1978 relating to consumer information on goods and services and Consumer protection against Unfair Terms, Amended and Supplemented by the Order No. 2016-301 of March 14, 2016 relating to the Consumer Law.

[4] See Musaed Zaid Abdullah Al-Mutairi, "Civil Protection of Consumers in Egyptian and Kuwaiti Law," PhD thesis in law, Ain Shams University, Faculty of Law, Cairo, 2007, p. 346.

[5] See Dhari Tamran Talaq Al-Shammari, "Consumer Protection in Electronic Contracts - Comparative Study," Master's thesis, Al al-Bayt University, 2009, pp. 30 and 31.

[6] Cass.civ, 1st edition, June 25, 1989, Bull.civ, 1989, p. 28, No. 43.

[7] Consumer Code by Order No. 2016-301 of March 14, 2016. Since then, significant changes have been made, notably with the law of August 16, 2022, which facilitates the online termination of contracts (new Article L. 215-1 of the Consumer Code). Recently, an order of September 3, 2025 transposed a European directive

[8] French Law No. 95-96 of February 1, 1995 concerning unfair terms and the presentation of contracts and governing various economic and commercial activities, amended and supplemented.

[9] See Munir Al-Basri and Ahmed Al-Mansouri, Consumer Protection from Unfair Terms, at: http://droitcivil.Over-blog.com, December 12, 2021, at 1 p.m., pp. 3 and 5.

[10] See Abdullah Theeb, Abdullah Mahmoud, Consumer Protection in Electronic Contracting - A Comparative Study - Master's Thesis, An-Najah National University, Nablus, Palestine, 2009, p. 72.

[11] Ibid.
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[13] See Rutgers, J.W. (2014 ). unfair terms in consumer contracts. In S. Vgenauer, & L.Gullifer (Eds ), England and European perspective on contract and Commercial Law, p283.
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[15] lachachi Mohamed, op. cit, p. 236.
[16] ibid, pp. 237and 238.
[17] Musaed Zaid Abdullah Al-Mutairi, op. cit, p. 347.
[18] See Ola Svensson,.The Unfair Contract Terms Directive: Meaning and further Development .In Nordic Journal of European Law. Volume3.Issue2.2020. (Lund University). pp 27and 34.
[19] Nidal Salim Ismail Barham, the dispositions of Electronic Commerce Contracts, Master's thesis, Arab Open University, Amman, no date of discussion, p. 118.
[20] As is well known, a lively jurisprudential debate has arisen in France and spread to other countries on the question of whether a contract of adhesion (standard ) is a contract subject to the provisions of contracts in general, like other contracts, or whether it is not, that is, whether it constitutes a negation and revocation of its contractual nature. The prevailing case law has established that the view is now established that contracts of adhesion are true contracts like any other contract, because even if the acceptor does not have the freedom to negotiate, he or she at least has the freedom not to contract, since a contract does not generally require equality of negotiation of its terms. This is the approach supported by most case law and still defended by case law. See, for example, Muhammad al-Mursi Zahra, Civil Protection of Electronic Commerce, Dar Al Nahda Al Arabiya, first edition, Cairo, 2007, pp. 141 and 142, and Musaed Zaid Abdullah al-Mutairi, op. cit, pp. 337 and 338.
[21] See Abd al-Razzaq al-Sanhuri, Al-Wasit fi Sharh Ahkam al-Qanun al-Jadid (The Theory of Obligations in General, Sources of Obligations), unpublished, 1952, p. 230.
[22] See for example, Mahmoud Gamal al-Din Zaki, the summary in the general theory of obligations, Sources of Obligations, Cairo University Press, third edition, 1978, paragraph 47, p. 89; Abd al-Mun'im Farag al-Sadda, The Theory of Contract in Islamic and Positive Law, Dar al-Nahda al-Arabiya, 1990, paragraph 176, p. 246; Samir Abd al-Sayyid Tanago, Sources of Obligations, unpublished, 1999, paragraph 34, p. 42, and others.
[23] Rutgers, J.W.op. cit, p. 281.
[24] Nidal Salim Ismail Barham, op. cit, p. 116.
[25] See Muhammad al-Mursi Zahra, op. cit., p. 149 et seq. 20- See: Al-Basri and Ahmad al-Mansouri, op. cit., p. 7.
[26] Ibid.
[27] See Musaed Zaid Abdullah al-Mutairi, op. cit., p. 344, and conversely: same reference, p. 343.
[28] Abdullah Theeb Abdullah Mahmoud, op. cit., p. 70.

[29] Musaed Zaid Abdullah al-Mutairi, op. cit., p. 337.
[30] Article 104 of the Jordanian Civil law. No.46 of 1976 states: "Acceptance in contracts of adhesion is limited to the mere recognition of the conditions established by the debtor, and these clauses are not subject to discussion." See also: Article 100 of the Egyptian Civil law. No. 131 of 1948.
[31] Muhammad al-Mursi Zahra, op. cit., pp. 140 and 141.
[32] Executive Decree No. 06-306 of 17 Sha'ban 1427, corresponding to September 10, 2006, defining the fundamental elements of contracts concluded between economic agents and consumers and the clauses considered arbitrary, as amended by Executive Decree No. 08-44 of 26 Muharram 1429, corresponding to February 3, 2008.
[33] See Ghazi Khaled Abu Arabi, Consumer Consent Protection - A Comparative Study between the UAE Consumer Protection Law, the French Consumer Law, and the Jordanian Consumer Protection Project Law - Unpublished Research, p. 16.
[34] Michel Vivant, E-commerce contracts, Litec, Paris, 1999, no. 8, p. 13.
[35] See Muhammad al-Mursi Zahra, op. cit, p. 153.
[36]Article 204 of the Jordanian Civil Code stipulates: "If a contract concluded by adhesion contains unfair terms, the court may modify them or exempt the adhering party from them, in accordance with the rules of justice. Any agreement to the contrary is null and void." The Egyptian legislature also stipulates in Article 149 of the Civil Code: "If a contract concluded by adhesion contains unfair terms, the court may modify them or exempt the adhering party from them, in accordance with the rules of justice. Any agreement to the contrary is null and void." .
[37] the**Article 81 of the Kuwaiti Civil Code** which provides:
"If a contract concluded by adhesion contains unfair terms, the judge may, at the request of the adherent, amend these clauses to eliminate their unfair nature, or release them from adhesion altogether if it is established that the adherent was aware of them, in accordance with the principles of justice. Any agreement to the contrary shall be null and void". Kuwaiti Civil Law No. 67 of 1980.
[38] See Musaed Zaid Abdullah al-Mutairi, op. cit, p. 370.
[39] Article 204 of the Jordanian Civil law, Article 149 of the Egyptian Civil law, and Article 81 of the Kuwaiti Civil law. See also Article 150/1 of the Egyptian Civil law and Article 193/1 of the Kuwaiti Civil law.
[40] this article provides that :*"When the terms of a contract are clear, one may not depart from their meaning in order to ascertain, through interpretation, the intention of the parties."*
[41] See Musaed Zaid Abdullah al-Mutairi, op. cit, pp. 372 and 373.
[42] which provides that: *"When there is a need to interpret a contract, the common intention of the parties must be sought without confining oneself to the literal meaning of the words, having regard to the nature of the contract, as well as to the loyalty and trust that must exist between the contracting parties, in accordance with accepted commercial practices."* . Article 150 of the Egyptian Civil law, Article 193/2 of the Jordanian Civil law, and Article 193/2 of the Kuwaiti Civil law.

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