

Research Article

## The Weaker Party in the Contractual Relationship

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Submitted: 19 January 2024 | Revised: 17 April 2024 | Accepted: 01 May 2024 | Published: 02 July 2024

**Abstract:** Contracts have been the subject of significant scholarly attention within legal studies, surpassing many other areas of law in terms of scrutiny, primarily due to their crucial role in human interactions. They not only represent an expression of individual autonomy but also serve as a cornerstone of economic transactions and cooperation, as demonstrated by the legal obligations that arise from fulfilling contractual agreements. Given both the theoretical and practical importance of contracts, any research focusing on contract theory—particularly in relation to the formation and execution of contractual relationships—is of substantial relevance. Accordingly, this study seeks to evaluate the necessity of safeguarding weaker parties within contractual arrangements, whether at the stage of formation or execution, under Jordanian civil law. To achieve this objective, a legal methodology was employed, utilising data sourced from both primary and secondary materials. The findings were then analysed through content analysis. The results indicated that the concept of contractual vulnerability is a distinctive component of contract theory, appearing in various legislative systems, albeit in a somewhat fragmented manner. This study further examines the notion of contractual vulnerability, identifying its key dimensions, protective mechanisms, and specific applications concerning the weaker party in contractual engagements. While contracts are generally regarded as binding agreements that impose reciprocal obligations upon the contracting parties, thereby necessitating adherence to their terms, judicial or legislative intervention is typically restricted from favouring one party over another. However, certain circumstances may warrant deviation from strict legal equality, as formal parity between the contracting parties does not always reflect substantive fairness. In such cases, intervention restores the contractual equilibrium and safeguard the interests of the weaker parties. Finally, this work recommends incorporating provisions into the Jordanian Civil Code explicitly addressing mechanisms to rebalance contractual relationships.

**Keywords:** Contractual Party, Protection, Justice, Contractual Weakness

### 1. Introduction

A contractual relationship is commonly defined as a "legally binding agreement" between two or more parties, where one is obligated to fulfil specific commitments. The main aim of such an agreement is ensuring the realization of the anticipated benefits [1]. A contractual relationship may be established through an offer and can be formalised either orally

or in writing. The fundamental purpose of such agreements is to protect the rights of the involved parties. Consequently, any breach of contractual obligations invokes legal safeguards, as agreements that create an imbalance between the parties are generally prohibited. This protection is often extended to the weaker party, not only during the formation and execution of the contract but also in addressing breaches, with an emphasis on re-

establishing equilibrium between the parties. In Jordan, contracts are legally recognised upon mutual agreement between the parties, provided that all stipulated terms and conditions are observed. Unless specific legal formalities are mandated, agreements may be concluded either orally or in writing. Forming contracts incorporates traditional and electronic methods [2]. The contractual commitment principle remains central to contractual relationships which ensures that each party retains the right of modification or termination of an agreement strictly within the parameters set by legal provisions. Subject to these legal constraints, the parties can amend their agreements independently. When one contract is formally signed, it is binding and irrevocable unless both mutually consent to rescission [3; 4]. It may also be annulled by a judicial intervention or when specific legal provisions permit its termination. In regulating it, legislators examine the power balance between consumers and sellers or service providers. Contractual law grants service providers and sellers the ability of establishing contracts, while simultaneously it affords consumers the right to withdraw. This withdrawal right is a mechanism for the protection of the weaker party in contractual engagements [5].

The interplay between justice and contract law has evolved over centuries, remaining complex. The social contract theory constitutes a fundamental component of justice-related discourses, where fairness in contracts is considered integral to the legitimacy of economic and social structures. However, scholarly examinations of contract law and theory frequently overlook justice principles. While judges may reference justice in their rulings, and legislators incorporate justice-related reasoning in legal discourse, such arguments in contract theory often lack a robust foundation [9]. The concept of contractual weakness arises from the inherent inequality between contracting parties, typically stemming from disparities in economic or social status [6]. A contract, as a legally significant instrument, may only be restricted on grounds of public policy, morality, or legal constraints. Its primary function is to regulate contractual freedom, particularly when one party exercises a dominant will over the other, who may be in a weaker position due to external or personal factors. These factors contribute to contractual weakness, often arising without the full awareness or consent of the affected party. Legal scholarship distinguishes between different forms of contractual weakness, including personal, relative, and cognitive weakness, all of which may serve as grounds for contract invalidation.

The fundamental tenet of contractual relationships is the autonomy of the parties in determining the terms of their agreement, provided that these terms are mutually accepted [20]. In consumer contracts, contractual exploitation is generally limited to clauses that were not negotiated between the merchant and the consumer. Such clauses frequently appear in adhesion contracts, where consumers have little to no bargaining power and are left with the choice of either accepting or rejecting the contract in its entirety. Similar conditions may also be found in standard contracts, which consist of pre-drafted agreements issued by merchants offering goods or services [7]. Despite the standard contracts not necessarily constituting adhesion contracts, they usually lack competitive alternatives in the marketplace. Legal and technical experts devise these contracts formulating them in a manner benefiting businesses, thereby creating a power imbalance between merchants and consumers [8]. Besides statutory provisions, Jordanian legal practice frequently adopts Sharia law for addressing legislative gaps extending to electronic transactions and consumer protection, the resolution of ambiguous legal issues. This study tests contractual vulnerability in mutual agreements which assesses the lack of explicit regulatory provisions in Jordanian Civil Law. With no legislative frameworks, jurisprudence and judicial interpretation uphold restoring fairness between contracting parties. The work has shown and analysed several contractual deficiencies- personal, cognitive, and relative weakness, from a Jordanian legal point of view. The findings show urgency for establishing stronger legal protections in Jordan to safeguard susceptible contracting parties.

## 2. Literature Review

Society is central in shaping contractual arrangements which govern financial transactions and other forms of agreements, studying specifically examines. The approach by the government ensures that various stakeholders—legal professionals, private, public officials, and service providers—collaborate for the regulation of contractual activities within broader societal setting [9]. The way contracts are formed and executed significantly impacts economic stability and legal certainty. Such agreements are fundamental to attracting international investment and ensuring national economic integration. Historically, contracts have occupied a pivotal position within legal frameworks, and the study of contract law should be rooted in practical realities rather than abstract theoretical models. The geographic and personal dimensions of

transactions have undergone profound changes due to global economic interconnectivity. Despite these transformations, all transactions continue to be based on personal engagements, following established contractual regulations [10; 21].

The legal framework strives to distinguish between unethical speculative practices, pure gambling activities, and legitimate contractual risk management. Within contract law, the concept of wagering remains contentious, as it is subject to contrasting interpretations. Under common law principles, any agreement based on wagering is deemed unenforceable, as such contracts are viewed as contravening public interest. A historical review of early twentieth-century case law may obscure the fundamental differences between gambling and contractual obligations [11]. The primary functions of contract law are to facilitate agreements between parties, define their obligations, and ensure legal enforcement of contractual commitments. Across different legal traditions, contract law serves as a foundational component of legal systems. Given the distinct historical, cultural, and judicial backgrounds of common law and civil law jurisdictions, their respective approaches to contract law have evolved along divergent paths [12]. The enforcement of contracts has remained a dominant legal mechanism in contemporary societies. During the COVID-19 pandemic, corporate lawyers worked extensively to ensure that their clients' contracts were upheld in accordance with legal standards. A notification from a law firm highlighted the courts' tendency to interpret force majeure clauses in a restrictive manner. This narrow interpretation shows that contracting parties cannot typically evade contractual obligations [13].

In contractual relationships, exploiting manifests by the unequal rights and obligations, usually places a party at a significant drawback. These disparities show contractual exploitation from personal vulnerabilities rather than material factors. Exploitation happens if a party's weakened position is leveraged to coerce into an agreement not reflecting their genuine contractual intents and disrupts the equitable exchange of values [14]. The weaker party, can be manipulative tactics, exhibits recklessness, cognitive impairment, or lack of awareness leading to agreements made under undue influence. The flexible contractual exploitation helps its occurrence whenever a party's vulnerability is clear. A weaker contractual party is linked to contractual balance and contractual justice shaping contract theory due to evolving beyond its classical individualist

foundations. The traditional legal policies help in the contractual autonomy by free will for the legitimacy of agreements [15]. Historically, social and economic policies enhanced prominence, individualistic contract decreased, with protective legal mechanisms to safeguard the disadvantaged. The contractual autonomy formulates agreements based on their own legal volition rendering such agreements inherently just. Although legal commitments at times are inequitable, voluntary participation ensures contractual obligations inherently just [16].

To promote stability in commercial transactions, contract law is based on contractual autonomy and the binding force of contractual obligations. Both parties enter into agreements voluntarily, with the freedom of negotiating contractual terms [17] encapsulated in consent. According to the traditional contract theory, all parties possess equal bargaining power, advocating for their interests and rejecting terms perceived as unfavourable. Yet, strict adherence to contractual autonomy requires maintaining equilibrium in contractual relationships, as in the Jordanian Civil Law and its Amendments No. 43 of 1976 [18]. Contracts uphold justice by ensuring a balance of rights and obligations. Yet, the contractual justice theoretical notion reflects formal equality rather than substantive fairness. The rigorous the binding force of contracts means that contractual obligations come solely from the mutual agreement of the parties negating power imbalances [19]. Traditional contract theory is based on the "freedom of contract," asserting agreements formation with no external intervention. Yet, this theoretical framework has made legal provisions facilitating the development of adhesion contracts which exacerbates disparities between contracting parties [20].

These shifts have made intervention, with new legal safeguards across mantcontractual arrangements-employment contracts and consumer. The modern state now is active in the protection of vulnerable parties in contractual relationships, showing regulatory functions [22]. The transition towards a consumer-driven economy witnessed a rise in complex contractual transactions which amplifies disparities between stronger and weaker parties, w in economic or cognitive terms [23]. In response, contemporary contract introduced regulations to protect the disadvantaged [24] such as restrictions on absolute contractual freedom, legislative and judicial bodies intervening to ban exploitative contractual arrangements [25]. Consequently, contracts are no longer solely a matter of private negotiation but have

become a subject of legal oversight, ensuring doctrinal balance between the parties [26].

### 3. Method

An interpretivist research philosophy was used to fulfil the aims of study. It incorporates an inductive approach for aligning with the subjective nature of the investigation. In addition, a legal analytical framework examines contractual vulnerability within contractual relationships, according to the lack of explicit regulatory provisions which addresses this matter in Jordanian civil law. The study relied on secondary qualitative data, from both primary and secondary sources. The primary are relevant legislative texts and statutory provisions, while the secondary is academic literature, book chapters, journal articles, and other pertinent materials. For a comprehensive review, we collected data from online databases, including LexisNexis, Westlaw, JSTOR, and other scholarly repositories. Once the data collection process was completed, content analysis was undertaken to systematically assess and interpret the findings.

### 4. Results and Discussion

The first section of the results is identifying the manifestations of contractual vulnerability and an analysis of the factors and conditions unbalancing in contractual relationships. The second is the protective measures available for the disadvantaged- the legal frameworks and mechanisms to safeguard their rights and promote greater contractual fairness.

#### 4.1 Manifestations of Contractual Weakness

##### 4.1.1 Personal Weakness

Jurisprudence and the judiciary have affirmed the legitimacy of restoring equilibrium in contractual relationships between parties. In the Jordanian legal framework, the protection of the weaker party in contractual agreements is primarily shaped by judicial precedents, which have evolved through a series of incremental decisions by the courts. The concept of contractual vulnerability is rooted in the inherent inequality between contracting parties, which is often attributable to their respective positions and circumstances. As one of the most significant legal instruments, a contract's autonomy may only be restricted for reasons linked to public policy, general morality, or legal imperatives. Contracts limit freedom when a single party has a position of dominance and the other has less severe influences (usually economic or social). Factors

causing contractual vulnerability include situations outside the control of the individual or their awareness. Jurisprudence splits personal weakness into cognitive weakness and relative weakness as grounds for contract invalidation. In cases of defects in consent, the disadvantaged could pursue annulment in case legal capacity is lacking or defective. So, a guardianship over property is established that reflects the state vulnerability.

Limitations, diminishment affects Legal proceedings on contractual capacity or total lack of capability because of incapacity or impediments like insanity, mental illness, carelessness or negligence. Such people are legally incapacitated, and recklessness or negligence requires a judicial ruling for restrictions. Incapacity and flaws in consent are legal interpretations, with the legal system concentrating on the protection of contractual intent. Contract is void where defects in consent include error, fraud, exploitation or coercion. There's a distinction between wills which aren't legally required and those which are totally inexistent. The full control of the cognitive faculties issues declarations of intent to annul contract annulment. For instance, expressions of intent under intoxication and due to immature understanding of contractual obligations are on the surface but legally void. The legal framework is the protections of weaker parties against economic imbalances restricting free will and safeguarding persons in subordinate positions against stronger contracting dominance.

##### 4.1.2 Exploitation and Its Relationship to the Weak Party

The psychological exploitation in contractual relationships where one exploits the vulnerability of another to imbalance agreements with big profits for the exploiting party is talked about. Even if the exploitation is accidental, it generates significant contractual imbalances by exploiting subjective weaknesses in the other party to impose contractual conditions that conflict with the actual duties owed. Exploitation consists of the material pillar and the moral (psychological) pillar. The former manifests when there is a significant imbalance in contractual obligations causing substantial disparities in material value. For example, a person is compelled to sell a personal item at an inflated price because of the financial distress, recklessness, or unexperienced. The disparity between the parties' valuation is important in the identification of material exploitation. Yet, the latter sees exploitation as a psychological issue, and injustice material. While both concepts share similarities, injustice is assessed



by comparing the objective value of an item to its agreed price, whereas exploitation involves an imbalance that incorporates the psychological vulnerability of the weaker party.

Recklessness, a pathological condition, impairs an individual's ability to foresee the consequences of their actions without negating their will. It may be temporary, arising in specific circumstances. The obligation to inform before contracting serves as a safeguard, ensuring that consumers or obliges fully comprehend contractual terms before entering an agreement. Economic and technological advancements have widened the cognitive gap between contracting parties, dividing them into two categories: those with the expertise to make informed decisions (such as professionals and experts) and those without such knowledge (typically consumers or obliges). The legislator, under the Consumer Protection Law, has thus mandated the obligation to inform before contracting, strengthening the cognitive capacity of weaker parties and ensuring that they engage in contracts with greater awareness.

To establish psychological exploitation in court, two criteria must be met:

1. The exploited party must have exhibited recklessness at the time of contracting, and this recklessness must have been apparent to the other party. Judges hold the authority to assess whether recklessness was present.
2. The exploiting party must have been aware of this vulnerability and deliberately taken advantage of it. For instance, an individual seeking immediate financial gain may be pressured into selling an item at an unfairly low price. Additionally, unbridled passion—an intense emotional attachment to a person or object—can cloud judgment and be exploited. An example is a woman seeking to divorce her husband, who demands a large financial settlement in exchange for the divorce.

Exploitation is more than direct transactions through proxies. If a proxy uses the contractor recklessness or passion, even if the person is not aware, the contract is still subject to challenge. Article 129/2 of the Jordanian Civil Law states: "His actions before the prohibition are considered valid unless they result from exploitation or collusion." This provision explicitly aims to protect individuals who may act recklessly or negligently, particularly in cases where agricultural land or valuable property is sold due to a

temporary state of weakness. The law prevents social and economic discrimination among Jordanians through fairness in contractual relationships. To enforce this protection, the Jordanian legislator permits challenging contracts stated that prior to prohibiting if the weaker was exploited because of recklessness, unexperienced, or urgent need. The Jordanian Court of Cassation confirmed this, ruling that Article 129 applies to the legally incompetent (minors and reckless individuals) in similarly applying it to actions prohibited for the foolish. Any contracts before the prohibition are valid unless proven to be exploitation or collusion.

The consent validity is important in incapacity. While incapacity does not inherently refute consent, it invalidates it. People entirely having no capacity—undiscerning minors, the insane, and the mentally disabled—have no legal will, making their contractual actions void. Yet, flaws of consent, mistake, fraud, duress, and exploitation, automatically makes not void to a contract but allow contractual balance by protecting the defective consent party. This supports transactional stability, which ensures that agreements are fairly disrupted addressing the legitimate interests. Eventually, the contractual fairness demand parties' engagement in agreements with full awareness and with no coercion or manipulation. The legal framework in Jordan upholds these by the provision of recourse for those in the contracts under exploitation, influence, or cognitive imbalance which reinforce the significance of informed and equitable agreements in contractual law.

#### 4.1.3 Relative Weakness

This phenomenon is known as economic weakness or a modern coercion, in which the weaker party is accept or reject an offer under unfavourable conditions because of force. Economic weakness can be:

1. Economic power as weakness  
Economic weakness arises when holding significant economic dominance dictating contract terms by monopoly or by restricting competition. The stronger party's control over the market creates an imbalance, forcing the weaker party to comply.
2. Economic need as weakness  
Economic need weakens on party, such as when requiring employment, exploited by the stronger party. Usually, economic dominance and need coexist which intensifies the weaker

party's susceptibility to exploitation by the economically dominant party.

To overcome imbalances, establishing fairness between the contracting parties is important. Economic disparities lead to one party monopolizes the contract terms which rejects any negotiation. An imbalance causes "submission contracts," where one imposes its terms, on a party in need of goods or services. Relative weakness can have many forms and protects the vulnerable, workers. Legal protections restore balance in contractual relationships, for those dependent on their employers. Labour laws protect the vulnerable workers, women, youth, and people with disabilities. Jordan immigrant workers are protected by bilateral treaties with other countries. For instance, a contract with the UAE Jordanian professionals' rights, while another with Germany the rights and education for Jordanian workers there. A submission contract is characterized by the consumer or acceptor agreeing to non-negotiable terms set by the other party. These contracts often are on essential goods or services and influenced by monopolistic control. Different from negotiated agreements, such contracts lack discussions on terms because of the stronger economy of one party imposing its will on the weaker party. Submission contracts are employment, insurance policies, airline contracts, and utility subscriptions (water, electricity, and telephone services).

There is a debate on nature of submission. Some argue that consumers still engage in consensual agreements, a true contract—according to mutual agreement—is damaged. Yet, implementing effective measures are required to protect the weaker party from economic exploitation provided by collective consumer action against providers of monopolistic service by legislative intervention introducing necessary legal provisions for such contracts. Legal jurisprudence makes submission contracts scrutinized because they have mandated guidelines than true consensual agreements. Article 204 of the Jordanian Civil Law grants the legislator the power to cancel contractual provisions which are not reasonable. Many legislative instruments, the Jordanian Civil Law (1976), the Electronic Transactions Law (2015), and the Consumer Protection Law (2017), protected electronic commerce and contracts. The Jordanian legislator has dealt with submission contracts by the nullification of arbitrary conditions by monopolistic companies for protecting the weaker party and restore balance. Article 204 shows that if a submission contract has

arbitrary conditions, the court adjusts or exempts the consenting party from them according to justice. Any contrary agreement is void which ensures consumer protection from monopoly. Judges are exclusively authorized to amend or cancel conditions not restricted by any agreement.

#### 4.1.4 Cognitive Impairment

The contractor is required to provide the other party with essential information regarding the contract to enable informed decision-making. Consumer ignorance can result in an imbalance in contractual obligations. There is a distinction between pre-contractual notification and the obligation to inform, which ensures that the contractor understands the subject of the contract. Failure to meet this obligation may lead to contractual liability, although some legal scholars view it as non-contractual liability. Others see it as part of the contractual relationship between professionals and consumers, occurring during the contract's execution. Article 288 of the Jordanian Civil Code addresses the legal role of third parties in contractual relationships. In contracts, obligations arise from two matching wills, requiring a specific offer and an acceptance that aligns with it, where the acceptor is fully aware of what they are agreeing to. This raises the question of how binding and valid an obligation is when tied to the consumer's acceptance. A consumer's ability to contract may be hindered not by financial incapacity but by procedural barriers, such as succumbing to arbitrary conditions arising from an imbalance of power between the contracting parties. This is only in submission contracts while consumers accept terms with no full understanding them often caused by legal and economic cognitive impairments. Thus, consent is free of flaws- no mistake, coercion, fraud, or exploitation.

Cognitive impairment shows inequality between the parties, undermining legal equality. This imbalance happens when one is not able to access crucial information about the contract This lack is usually deliberate, as one withholds information from the other, if legally justified (e.g., in sales or lease agreements) or because of the other having no expertise. A contractor's contract subject ignorance may stem from inexperience or insufficient knowledge, if the contract has specialized expertise. This shows how important is accurate and transparent information. It makes consumer fully aware of the risks of the product or service. This is to disclose these risks with the producer or professional, as they are often the stronger, with greater experience and the power to impose the consumer. More analysis of the

contract weak party is required as it expands protections for parties in contractual frameworks. This is attracting attention in legislative, judicial, and scholarly circles forming the foundation for fair and equitable contract negotiations.

#### 4.2 Means of Protecting the Weak Party in the Contract

The legal safeguards protecting weaker parties in contracts: natural protection, preventive protection, and remedial protection. Prior to contract agreement, parties must fully comprehend the data and eligibility requirements of the contract, and the provisions are effective after the contract. Remedial measures can be correcting the contract partially or fully, termination or formal cancellation. The weaker can benefit from contract interpretation when unclear. Every step, drafting to claims resolution, should show vulnerability protection. The Jordanian Civil Code show regulations for adhesion contracts and arbitrary conditions in Article 204. This article gives the courts the power of modification or releasing the accepting party from unnecessary contractual terms according to fairness. Based on law, any attempts for the negation of this provision like Articles 118 and 161 are invalid. This It goes to electronic contracts, when arbitrary conditions unfavourable to the consumer are there.

For example, when a consumer contracts with a merchant via the merchant's website, the latter monopolies over the goods or services, the judge classifies the contract as an adhesion. If this classification is made, the judge has the discretion to address arbitrary conditions based on the circumstances of the case. The judge can have extensive authorities of amending or nullifying such conditions when required. This judicial authority is a matter of public order, and any agreement for preventing judicial intervention is invalid. The Jordanian Consumer Protection Law invalidates any arbitrary terms in a contract depriving the consumer of their legal rights or exempting the supplier from their responsibility. The law helps the court invalidate, amend, or exempt the consumer from such things when the affected party or the Consumer Protection Association require, otherwise the contract is void, as outlined in Article 21 and Article 1/22 of the Consumer Protection Law.

##### 4.2.1 This Means of Protecting the Weak Party in the Contract Formation Stage

The completion of legal capacity is essential for the validity of most contracts, ensuring that the contracting party remains contractually responsible for fulfilling their obligations. They can only be

relieved of this responsibility by proving irresistible force or an external cause. As a result, the lack of legal capacity serves as a key mechanism to protect the weaker party. In cases where consent is defective, the contract becomes voidable, offering protection to the weaker party who might otherwise be subjected to the stronger party's impositions in the contractual relationship. Another factor contributing to contractual weakness is the absence of experience in one party, which obligates the other party to provide guidance and advice. This responsibility may lie with the weaker party, who is required to provide information and documents related to the insured risk. The formality in certain contracts is not only for its own sake but also serves specific purposes, such as protecting one or both parties, safeguarding third parties, or emphasizing the seriousness of the contract. Such formalities can further protect the weaker party, as requiring written contracts ensures that necessary data and information are included, fulfilling the obligation to inform before contracting.

##### 4.2.2 This Means Protecting the Weak Party Regarding the Content of the Contract

The principle underlying contracts is that they arise from the consensus of two wills, which creates obligations and defines the conditions for their existence. It is insufficient for one party's will to be directed toward a specific matter; both parties' wills must align. Traditionally, the principle of the sovereignty of will guarantees the absolute freedom of parties to determine the content of a contract. However, this principle is reconsidered because of the evolving economic and social conditions misbalancing in contractual relationships. Conflicts of interests between individuals unequally distributes power, making the weaker party susceptible to the stranger's terms. Legislation has therefore intervened for limiting the sovereignty of will, introducing exceptions for the protection of the weaker parties in civil contracts. In such cases, the financially compelled weaker party is forced to accept the terms imposed by the stronger party, leading to an imbalance with no room for negotiation. The obligation to provide information rests on the professional contracting party and extends to the consumer or any other party involved, even if the latter is a professional in a different field. However, if a contracting party lacks knowledge or experience in the specific area of the contract, they may not be able to make an informed decision regarding the contract's essence and nature. Therefore, the principle of cooperation should guide the parties, ensuring they share necessary information for the proper use of the product or service and the safety of



the user. The goal is not to inform the contracting party about the product's internal features but rather its relevant aspects for use.

Effective protection for the weaker party is achieved when the legislator establishes clear rules that define the rights and obligations of both parties, limiting the principle of the sovereignty of will. If these rules conflict with the content of the contract, the contract may be considered void, usually in a relative sense, and only the weaker party can invoke its invalidity. The entire contract can be invalidated if the stronger party would not have entered into the agreement without the invalid condition. The agreement must adhere to the governing rules, and deviations should prioritize the best interests of the weaker party, especially in areas like labour rights. Protecting the weaker party also involves excluding arbitrary conditions and ensuring that only well-defined conditions are included in the contract, which do not disproportionately affect the weaker party. Exploiting the recklessness or capriciousness of the other party is addressed by reducing the obligations of the defaulting party and excluding unfair conditions imposed by the exploiter. Good faith in contract execution is vital to ensure that the contract's content protects the interests of the weaker party. Article 202/1 of the Jordanian Civil Law stipulates, "The contract must be executed as agreed upon and, in a manner, consistent with good faith." This emphasizes the pre-contractual responsibility of the parties involved. By applying this principle, the content of the contract may be modified to protect the weaker party. This modification could involve adding requirements based on law, custom, and justice, or reducing the contract's content by excluding arbitrary conditions. One significant aspect of protecting the weaker party includes imposing restrictions on the extension or termination of insurance contracts, particularly when such decisions are solely at the discretion of the stronger party.

### 4.2.3 Means of Protecting the Weak Party in Case of Conflict Arise

When a dispute arises concerning the contract, particularly regarding matters such as contractual penalties, burden of proof, jurisdiction, and applicable law, the weaker party often faces severe penalties that undermine their interests. If the stronger party demands the contract be voided, these conditions may be deemed arbitrary and effectively non-existent. The imposition of conditions by the stronger party often constitutes a nullifying clause, such as excessive punitive conditions or waivers of excuses. The judiciary strives to mitigate these

conditions in alignment with the breach of contract. Proving claims can be challenging for the weaker party, which sometimes results in the establishment of legal or judicial presumptions to shift the burden of proof, particularly in labour disputes. For instance, if the stronger party imposes a condition requiring the competent court to be located at a distant venue or stipulates arbitration with high associated costs, the weaker party's rights could be undermined.

To safeguard the weaker party, the law often restricts or prohibits arbitration in certain situations, designating the competent court as that of the weaker party's domicile. In cases where public protection systems do not intervene through explicit legislative texts, the judge retains a discretionary role in ensuring the protection of vulnerable groups. The judge's role has evolved from a passive one to a more proactive stance under modern legislation. In this capacity, the judge works to protect the weaker party by addressing injustice and exploitation, lifting burdensome obligations when the circumstances of the contract change, contributing to what can be termed a judicial public protection system. When the legislator has not explicitly intervened, the judge is responsible for ensuring fairness and protecting vulnerable parties. This requires the judge to draw inspiration from public interest, prevailing legal systems, morals, and the fundamental principles of the nation's laws, rather than relying solely on personal beliefs and opinions. Therefore, the judge's role is crucial in reinforcing contractual relationships and ensuring public interests are upheld within the framework of financial transactions and contractual agreements.

### 4.2.4 Special Applications for the Concept of the Weak Party

One party to a contractual relationship may be considered weak, and this weakness can manifest in several ways. It might result from a lack of eligibility on the part of the contractor, or it could be relative, emerging from circumstances where the weaker party has no choice but to accept the terms imposed by the stronger party. This vulnerability may also arise from an imbalance in experience or from deficiencies in technical, technological, or legal knowledge. To address this concept of the weak contractor, various theories have been proposed, such as those concerning contracts of submission and consumer contracts. These theories aim to provide protection to the weaker party, ensuring they are not exploited or coerced into accepting unfavourable terms. By recognizing the inherent disparities in bargaining power, these frameworks seek to level the playing



field and prevent unfair contractual obligations from being imposed on the weaker party.

### 4.2.5 The Concept of the Weak Party in Submission Contracts

In submission contracts, the offeree is forced to adopt terms determined by the offeror, with no meaningful possibility for negotiation. These types of contracts typically arise when the offeror holds a legal or functional monopoly over essential products or services. As a result, the offeree has little room to negotiate, and the offer is presented as a standardized set of terms that overwhelmingly favour the offeror. While submission contracts are valid, they inherently create an imbalance between the parties. Economic pressure on the offeree does not negate their consent, meaning the contract remains legally binding. However, to address the imbalance, consumer protection measures are necessary. This can be achieved through collective economic action by consumers or through legislative regulation of such contracts. Although economic constraints affect the offeree's ability to negotiate, these constraints do not invalidate the contract itself. Instead, mechanisms must be put in place to correct the inherent power imbalance between the parties, either through consumer involvement or specific laws governing such agreements.

In Jordan, the judiciary plays a key role in restoring balance in contracts, especially in cases where arbitrary conditions are imposed on the weaker party. According to Article 204 of the Jordanian Civil Code, if a contract includes arbitrary conditions, the court has the authority to amend or exempt the complying party from these conditions based on principles of justice. This legal safeguard is essential for protecting consumers from exploitation by stronger parties, particularly in submission contracts where terms are set by the offeror and are non-negotiable. Article 240 further protects the weaker party by stating that any ambiguity in the interpretation of a submission contract should be in favour of the debtor, without causing harm to the complying party. The nature of submission contracts, particularly in the context of monopolies or limited competition, underscores the economic imbalance between the parties. Legal scholars, particularly in Jordan, have recognized that the theory of submission contracts was developed to protect consumers, who are often in the weaker position due to their economic vulnerability. Legal mechanisms are necessary to address this imbalance and protect the weaker party from exploitation, especially during the execution of the contract and the formation stage, where lack of knowledge or

experience can significantly affect the outcome. Multinational nation-states, including Jordan, have increasingly recognized the importance of consumer protection in electronic agreements. This is supported by legal frameworks such as the Jordanian Consumer Law No. 7 of 2017, which aims to protect online consumers from issues like undetectable product problems, vendor-imposed terms and conditions, and product risks associated with digital platforms. This research evaluates the extent of civil protection for consumers under Jordanian laws, focusing on electronic contracts and the safeguards provided for online consumers.

### 4.2.6 The Concept of the Weak Party in Consumer Contracts

In legal systems around the world, consumer protection measures are put in place to address the inherent imbalance between consumers and professionals in contractual relationships. Professionals typically hold a position of power, possessing expertise and the ability to set the terms of contracts, while consumers, often without the same level of knowledge or bargaining power, must ultimately fulfil the economic cycle by purchasing goods or services. In response to this dynamic, the Jordanian legislature passed Law No. 7 of 2017 on Consumer Protection, marking a significant achievement in providing formal protections for consumers. This law aims to ensure that consumers are adequately informed before making contractual decisions, protecting them from unfair exploitation and ensuring the terms of agreements are transparent and accessible. Within the context of submission contracts, consumers are often in the weaker position, where the professional controls the terms and imposes them on the consumer. In these situations, it is essential for the professional to provide consumers with all necessary information so they can make informed decisions. This requirement of full disclosure is at the core of fair contractual communication, as it allows both parties to understand their commitments and obligations before finalizing the contract. If the professional fails to provide adequate information, liability shifts to them for any misunderstanding or unfair terms, as they are responsible for ensuring the consumer's full comprehension of the contract.

Beyond consumer protection scenarios, the exclusion of arbitrary conditions plays a critical role in preventing the misuse of economic power by professionals. Arbitrary conditions are typically imposed by experts who leverage their professional authority to push unfair terms onto non-professional

consumers. These conditions are seen as exploitative because they take advantage of the consumer's lack of expertise. Consumer protection laws are designed to safeguard the consumer by addressing this imbalance, recognizing that the consumer's weakness stems not just from economic vulnerability but also from a lack of knowledge and experience in the professional's field. Importantly, consumer protection does not extend to all actions undertaken by a consumer. If the consumer's actions directly relate to the professional activity or expertise, they may fall outside the scope of consumer protection, as they are seen as engaging in the professional's domain. However, actions that are not tied directly to the professional's area of expertise are treated as those in which the professional is considered the consumer.

In a single notable decision, the Jordanian Court of Cassation noted that arbitrarily imposed conditions are invalid for objective reasons, particularly if the circumstances violated legal provisions unconnected with intent misdemeanours or criminal offenses. For instance, in adhesion contracts, where terms required by the professional are oftentimes void of negotiation, the court has determined that virtually any provision violating the law, particularly ones that are damaging to the insured person, is nullified. The court additionally pointed out that where the contract is vague, the interpretation ought to be in the insured's Favor and not against unjust or exploitative terms. This judicial position prevents professionals from imposing conditions that release professionals of their duties, particularly in insurance contracts where clauses meant to relieve the insurer of liability are scrutinized. This developing legal framework underscores the need for consumer protection in contractual relations to stop the weaker party from being exploited due to the power dynamics in professional-consumer relations.

## 5. Recommendations

Considering the findings, it is recommended that the imbalance often present in contracts, particularly between professionals and consumers, be explicitly addressed within Jordanian Civil Law. Legislation should clearly outline the rights and obligations of both parties, ensuring that the weaker party is adequately protected against unfair or arbitrary terms. Such regulations should aim to correct disparities in power, providing consumers with greater legal safeguards in submission contracts, adhesion contracts, and other consumer-related agreements. Additionally, judges should be granted the authority

to intervene and amend contracts as a matter of public policy, particularly in cases where there is an evident disturbance or imbalance. This power should allow judges to act proactively, even in situations where neither party has requested intervention. This recommendation addresses the reality that the weak party often lacks the knowledge or experience to identify unfair contract terms or assert their rights effectively. By empowering judges to amend contracts in favour of the weaker party, the legal system would enhance its ability to maintain fairness and protect vulnerable consumers from exploitation. These measures would contribute to a more equitable legal framework, fostering consumer confidence and ensuring that contract terms reflect fairness and justice, rather than benefiting the stronger party at the expense of the weaker one. Strengthening consumer protection in this way would help Jordanian law better reflect the principles of justice and fairness in its contractual relationships.

## 6. Conclusion

This study demonstrates that the concept of contractual weakness arises from the tangible inequality between the contracting parties, where the weaker party is often left at a disadvantage. The imbalance within the contractual relationship frequently influences the content and terms of the agreement, especially when it comes to defining the rights and obligations of each party. The central concern is to safeguard the rights of the weaker party in such relationships. While the principle of freedom of will suggests that the conclusion or non-conclusion of a contract should reflect mutual consent, binding the parties to the terms they agree upon (legal equality), the actual disparities in power, economic status, and social standing (actual equality) create the need for legal intervention. These inequalities require the legislator's intervention to protect the interests of the weaker party, particularly in situations where the terms of the contract place an unreasonable burden on them compared to the benefit they would have received. Therefore, mutual consent is essential, but it must be informed by goodwill, customary practices, justice, and consideration of the weak party's position within the contractual framework. This ensures that contracts are not merely the result of unequal bargaining power but reflect a fair balance that accounts for the vulnerabilities of the weaker party.

## 7. Implications

The present analysis helps make a tremendous contribution to the theoretical understanding of

contractual human relationships, with a specific focus on the idea of contractual weakness. It explores the idea of equality within the context of contract law and tackles the gap between the legal, financial, and sociological dimensions of contractual weakness, especially in the framework of Jordanian municipal law. The study's findings provide important insights which can direct judges in making educated choices in contractual disputes. Furthermore, these results may be used by legislators and policymakers to propose amendments to contract law, inspired by the study's conclusions. Such amendments could possibly improve the defines of the rights of the weaker party in contractual human relationships, ensuring a far more sensible as well as just contractual environment which considers the vulnerability of the weaker party and seeks to bring fairness in contractual dealings.

## 8. Limitations and Future Research

There are numerous limitations to this study. At first, the study focuses solely on Jordanian law as it pertains to contractual relationships, which may introduce a bias in the research and restrict the generalizability of the results. Furthermore, the research was unable to collect original data within the time limitations, potentially impacting the credibility and thoroughness of the study. Future research could expand the scope by examining the legislative systems of both common law and civil law countries within the context of contractual relationships, offering a comparative perspective. Furthermore, gathering primary data from legislators, legal practitioners, and other relevant stakeholders could provide a more comprehensive understanding of the topic and strengthen the research's validity. Such efforts would offer a more nuanced and global perspective, enriching the overall discourse surrounding contractual weakness and consumer protection.

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