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Criteria for Identifying Unfair Contract Terms and Their Legal Remedies: A Comparative Study of Iranian, French, and United States Law

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1. Round 1

1.1. Reviewer 1

Reviewer:

The paragraph introducing the statement that “The concept of the unfair contractual term has developed as a response to this tension between contractual autonomy and substantive protection” should define the central terminology more rigorously. The article uses “unfair term,” “unfair contractual term,” “unfair condition,” “abusive provision,” “oppressive clause,” and, in the American context, “unconscionable clause.” These concepts are related but not fully interchangeable. A comparative article should identify from the outset whether “unfair contractual term” is being used as an umbrella analytical concept and then explain that French law and U.S. law employ distinct doctrinal categories. Without this clarification, there is a risk of conceptual equivalence being assumed where important doctrinal differences exist.

The paragraph beginning “Iranian law presents a particularly important setting for this inquiry” requires a more exact account of the legal status of Article 46 of the Electronic Commerce Act. The manuscript correctly notes that the provision is sector-specific, but it should specify more clearly that the article does not create a general doctrine applicable to all private contracts. The distinction between “ineffectiveness,” “invalidity,” and “non-enforceability” should also be made at this stage because these concepts become central later in the remedies section. The wording should avoid presenting Article 46 as though it were simply the Iranian equivalent of Article 1171 of the French Civil Code.

The paragraph describing French law and stating that “Article 1171 of the French Civil Code addresses non-negotiable terms determined in advance in adhesion contracts where they create a significant imbalance” would benefit from greater doctrinal precision concerning the scope of Article 1171. The analysis should emphasize that the provision is tied to the statutory notion of the adhesion contract and that its operation must be distinguished from consumer-law protection under the Code de la consommation. The current paragraph is broadly correct but could give the impression that these regimes are merely cumulative

manifestations of a single rule. The article should instead make clear that they differ in personal scope, contractual scope, legal basis, and remedial consequences.

In the paragraph beginning "The personal characteristics and relative positions of the parties also influence the fairness assessment," the article should be more cautious about using subjective characteristics. Factors such as education, legal sophistication, access to counsel, economic dependence, urgency, and experience may be relevant, but excessive reliance on individualized vulnerability can reduce predictability. The manuscript should specify which characteristics are legally material and how they interact with objective criteria. It would also be useful to distinguish consumer vulnerability from commercial dependence because a small enterprise may possess professional expertise while still being structurally dependent on a dominant contractual partner.

The paragraph beginning "An objective criterion is equally necessary to prevent the analysis from becoming entirely subjective" should develop the concept of the "reasonable contractual standard" more systematically. The manuscript refers to professional practice, legitimate expectations, comparable contracts, and market norms, but does not explain their hierarchy. The article should address how a court should proceed if established industry practice itself is systematically one-sided. It should explicitly state that market custom may serve as evidence of ordinary allocation of risk but cannot conclusively determine fairness, particularly where the practice has developed under conditions of concentrated market power.

The paragraph beginning "Economic analysis provides another dimension of the assessment" needs a more precise methodology for determining economic imbalance. Terms such as "disproportionate contingent liability," "principal economic value," and "commercial rationale" are conceptually useful but too open-ended for judicial application. The author should explain whether the assessment should compare expected value, risk distribution, substitutability, insurance capacity, transaction price, or the availability of alternatives. Even a short clarification would prevent the economic criterion from being reduced to an intuitive judicial assessment of whether a clause appears harsh.

In the Iranian-law discussion, the paragraph beginning "The Civil Code provisions governing contractual conditions provide a partial mechanism for controlling problematic clauses" should identify more precisely the relationship between unfairness and Articles 232 and 233 of the Civil Code. The present text correctly warns that an unfair term does not automatically fit established invalidity categories, but the analysis should go further by identifying which types of unfair clauses may potentially correspond to impossible, useless, unlawful, or otherwise legally defective conditions. The article would be stronger if it showed doctrinally why the existing categories are insufficient rather than merely asserting fragmentation.

The paragraph stating that "Article 975 of the Civil Code adds another possible control mechanism" requires clarification regarding the doctrinal threshold of public order. The manuscript appropriately warns against transforming public order into a general fairness clause, but it should specify the circumstances under which a severely abusive contractual term might actually reach the threshold of public-order intervention. The distinction between a term that is merely oppressive to one party and a term that violates fundamental legal or social values should be explicitly articulated. This is important because otherwise the article presents Article 975 as both potentially relevant and largely unavailable without explaining when it becomes applicable.

The discussion of French law in the paragraph beginning "French consumer law develops the concept further" should distinguish more carefully between the general statutory standard and the legal significance of black and grey lists of terms. The article currently states that such lists increase predictability, but it should explain that different evidentiary consequences follow from terms that are absolutely prohibited and terms whose unfairness is presumed. Because the article later recommends a similar mechanism for Iranian law, the French model should be analyzed with enough specificity to justify that transplant.

Authors revised the manuscript and uploaded the document.

1.2. Reviewer 2

Reviewer:

The paragraph introducing United States law with the sentence "United States law approaches the problem through the doctrine of unconscionability" should acknowledge more explicitly the decentralized character of American contract law. The article currently refers to "United States law" as though it were a single unified national system, although the Uniform

Commercial Code depends on state enactment and judicial doctrine varies among jurisdictions. The article should therefore state that the analysis presents the dominant or representative American approach rather than a completely uniform rule. This qualification is particularly important because the required relationship between procedural and substantive unconscionability differs across jurisdictions.

In the final paragraph of the Introduction, where the manuscript argues that "unfairness should be established through an integrated assessment rather than through a single rigid factor," the research contribution should be stated more explicitly. At present, the paragraph identifies the article's principal argument, but it does not sufficiently distinguish that argument from existing comparative scholarship. The author should specify whether the proposed multidimensional framework is a synthesis of existing Iranian, French, and American criteria, an original normative model for Iranian law, or both. A clear statement of originality would substantially strengthen the scholarly justification for the article.

The first paragraph of the section "Conceptual Framework and Criteria for Identifying Unfair Contract Terms," beginning "An unfair contractual term may broadly be understood as a provision that… creates a significant and unjustified imbalance," requires further conceptual refinement. The expression "significant and unjustified imbalance" is central to the entire article, yet "unjustified" remains underdefined. The manuscript should explain what counts as a sufficient justification: commercial necessity, reciprocal advantage elsewhere in the contract, risk pricing, regulatory requirements, insurance considerations, or some combination of these factors. Without an articulated justification test, the proposed standard risks becoming circular because a term may be labeled unfair simply because the imbalance is considered unjustified.

The paragraph beginning "The first element in identifying unfairness is therefore the existence of a meaningful imbalance" should distinguish more carefully between imbalance in primary contractual obligations and imbalance in ancillary rights and remedies. A clause regulating price or principal performance raises different policy concerns from a clause restricting liability, modifying limitation periods, granting unilateral termination rights, or allocating procedural burdens. This distinction is especially significant because some legal systems limit judicial scrutiny of the adequacy of price or the main subject matter. The article would therefore benefit from clarifying whether its proposed Iranian framework should permit review of core contractual exchange terms or primarily regulate ancillary terms.

The discussion in the paragraph beginning "Procedural circumstances constitute another major criterion" should more precisely define "meaningful negotiation." The manuscript repeatedly relies on this concept, but it does not identify the evidentiary indicators by which a court could determine whether negotiation was real rather than nominal. The article should discuss factors such as whether alternative wording was proposed, whether the drafting party was willing to amend the term, whether previous versions of the contract existed, whether the disputed clause was specifically discussed, and whether the weaker party had a realistic capacity to reject it. Such detail would make the proposed analytical test more judicially operational.

The paragraph stating that "Transparency is closely connected with consent but deserves separate consideration" is analytically important but should differentiate linguistic transparency from economic transparency. A term may be grammatically clear yet fail to enable a party to foresee its financial consequences. Conversely, a technically complex term may be economically predictable to a sophisticated commercial party. The article should therefore develop a two-dimensional transparency test encompassing formal comprehensibility and practical foreseeability. This would also strengthen the later discussion of electronic contracts, where terms may be technically accessible but functionally obscure.

Authors revised the manuscript and uploaded the document.

2. Revised

Editor's decision: Accepted.

Editor in Chief's decision: Accepted.