International Journal of Innovation, Creativity and Change. www.ijicc.net
Volume 17, Issue 2, 2023

Contractual Imbalance in Mobile Service Contracts during the Contract Execution, A Comparative Study

Mahmoud Fayyad[1], Abdel Raouf Al-Sinnawi[2], Rannen Al-Nazir[3],
[1]Associate Professor, College of Law, University of Sharjah. Orcid: https://orcid.org/0000-0002-4525-7876, [2]Associate Professor, College of Law, Al-Quds University, [3]Legal advisor, Palestinian Land Authority. Email: [1]Mfayyad@sharjah.ac.ae, [2]asinnawi@staff.alquds.edu, [3]raneen98@hotmail.com

This research identified the indicators of contractual imbalance in mobile phone service contracts during the contract execution phase in Palestine compared to some Arab States and Western standards. Literature was reviewed to establish the key dimensions that affect this imbalance and identify how to rebalance these relations. A theoretical framework was developed and identified. Standard contracts issued by mobile phone companies in Palestine were investigated to examine the compatibility of these contracts with international best practices. The study showed that mobile phone companies arbitrarily abuse their legal status and draw up standard contracts that vest them with the right to amend contractual terms by unilateral will. Without granting subscribers the same right, companies unilaterally terminate the contract if subscribers breach any of their contractual obligations. Companies impose financial obligations on subscribers if they violate contractual obligations without compliance with legally prescribed checks and balances. The study demonstrated that these practices breach many relevant legislative provisions. The research findings and a literature review resulted in many recommendations that might serve as a clear guide for governmental representatives and decision-makers in the communication sector to ensure the contractual relationship's fairness during the contract execution phase.

Keywords: *Contractual imbalance; consumer protection; mobile phone services; standard contracts, consumer protection, Palestine*

1 Introduction

The contract aims at fulfilling the needs of and trading services and products among individuals. It is a multilateral legal relationship that seeks to provide balanced regulation of rights and obligations. Free will is the foundation for regulating various legal bonds and a source of consequent obligations. Accordingly, a duly respected legal maxim has been established, requiring that individuals comply with what they consent to of their own free will, namely, *pacta sunt servanda*. To gain the intended benefits, the contracting parties must be aware of all contract terms-quality, price, and contractual terms – of services and products available in the market to make the appropriate decision (Mwakatumbula et al., 2019, p. 1). As soon as the contract is concluded on a valid basis between its parties, they are bound to it.

With the evolution of contract theories, modern legislation has introduced exceptions to principles of the contractual theory to alleviate the stress and restriction placed by the principles of contracts. However, such exceptions have allowed room for companies that provide mobile phone services to control and amend contract details as appropriate to their interests. On an ongoing basis, they put pressure on consumers to execute their obligations by imposing financial penalties. As such, mobile phone service contracts have become arbitrary contracts of adhesion against consumers. The latter must comply with these contracts despite not receiving quality services commensurate with their obligations.

Additionally, mobile phone companies are in complete control of all contract provisions. Against their will, consumers are bound to these contracts, which serve as a prominent standard of imbalanced contracts. Of note, in Palestine, general rules of the contract theory allow and legalize the inclusion of such conditions if they are not in breach of public order and prove useful to a contracting party. The Palestinian Court of Cassation has established that "[t]he fact that the contracting party submits to the terms contained in the insurance contract shall be deemed as adhesion, warranting that judges exclude the arbitrary conditions, the breach of which did have a bearing on the occurrence of the insured accident." The consumer's consent and submission to conditions neither eliminate nor permit arbitrariness of the conditions provided for under the contract. Conversely, consumers will continue to have the right to eliminate and be freed from these conditions.[1]

As a general rule, the comparative legislation of the United Arab Emirates (UAE), Qatar, and Bahrain allow the inclusion of such conditions.[2] For example, Article 206 of the UAE Civil

[1] The Judgment of the Palestinian Court of Cassation, civil Cassation no. (24/2003), dated 19/11/2003.
[2] UAE Federal Supreme Court, Civil and Commercial Judgements, Objection No. 372 of Judicial Year 24, 26 March 2005, Technical Office 27, Vol. 1, p. 605; Court of Cassation, Civil Judgements, Objection No. 140 of Judicial Year 2005, Commercial Chamber, 26 September 2005, Technical Office 16, Vo. 2, p. 1604.

Transactions Law provides that "[a] contract may include a condition which confirms its terms, admitted by custom or usage, beneficial to one of the contracting parties or others unless the legislator prohibits it or contrary to public policy or morals, in which case the condition is void but the contract remains valid except where the condition is the prime motive of contracting and, in this case, the contract shall also be void." The Jordanian Civil Law (Article 164), Bahraini Civil Law (Article 110), and Qatari Civil Law (154) reiterate the same provision. However, all this body of comparative legislation vests the judge with the power to intervene and amend the contract terms to ensure a balanced contractual relationship under contracts of adhesion (Article 106 of the Qatari Civil Law and Article 248 of the UAE Civil Transactions Law). Islamic Sharia is the source of legislation in Palestine and these countries, which justifies their use for comparison (Assaad et al., 2020).

To provide information and communications technology (ICT) support, in cooperation with the private sector, the Palestinian National Authority (PNA) incorporated the Palestine Telecommunications Company (Paltel) under a license, which awarded Paltel a concession to establish, manage, and operate the telecommunications (telecom) sector. In 1999, the Palestine Cellular Communications Company (Jawwal) was incorporated as a subsidiary of Paltel and then transformed into a limited shareholding company. Previously known as Wataniya Mobile, the Ooredoo Company was incorporated in 2006, providing mobile telecom and internet services. At the end of 2020, Palestinian subscriptions to mobile phone services were close to 4.3 million using pre-paid and billing systems. By digital subscriber line (DSL), internet subscribers neared 373,000, including 282,000 in the West Bank and 91,000 in the Gaza Strip.

The activities of these companies are governed by the Law on Wired and Wireless Communications and Law by Decree on Information and Communications Technology. These regulations refer to regulatory matters, service pricing, and competitive standing between Jawwal and Ooredoo to internal decisions and instructions issued by the Minister of Telecommunications and Technology.[3] Not governed by this legislation, the contractual relationship between these companies and consumers is subject to the general rules laid out by the Palestinian Consumer Protection Law No. 21 of 2005 and the *Mejelle* 1877 (Civil law in force in Palestine). The latter serves as the Civil Law in force in Palestine.

[3] For example: the decision of the minister of communications and Information Technology No. 1 of 2013 on the termination rates of local calls on cellular networks. Minister of communications and Information Technology Decree No. 5 of 2012 on the definition of an effective mobile subscriber. Instruction No. (1) of 2011 on the protection of competition in the telecommunications sector. There are also decisions that determine the ministry's revenues from the licenses it grants to these companies, including Cabinet Resolution No. 2 of 2021 approving the revenues of telecommunications services licenses.

Many studies have found out contractual imbalance between telecom companies and service recipients during the pre-contract phase (Al-Masry, 2020; Bin Issa, 2017; Borgogno, 2019; Kasatkina, 2021; Liu, 2014). In advance, these companies unilaterally draft standard contracts on all transactions. Service recipients do not have the right to either review or amend these contracts (Bisping & Dodsworth, 2019a; Liu, 2015; Shanti, 2006). Relevant literature does not examine the effect of such imbalance on the rights and obligations arising from the contract, also known as the contract execution phase. As a result, a research gap does not account for the balance of the contractual relationship between service providers and recipients during the contract execution phase. This gap will be bridged by this study. To do so, the paper provides a review of the general rules of the principle of the autonomous will [the principle requiring the court to decide on all the questions submitted to it and on nothing else] under the *Mejelle* and the Consumer Protection Law. It challenges the pursuit of economic operators to refute the idea of equality in the contractual relationship to which they are a party. The paper applies the theory of contractual balance to mobile phone service contracts, particularly during the contract execution phase. It also stresses the need to investigate how the general rules are adequate to achieve contractual balance when it is lacking at this stage.

1.1 Research Problem

Mobile phone contracts are crucial in establishing a legal framework between users and service providers in the rapidly growing world of mobile technology. These contracts regulate the terms and conditions of service supplying device ownership and both parties' rights and obligations (M. I. Fayyad & Al-Nazir, 2023; Griffin et al., 2022). However, using standard contracts in the mobile phone sector has raised concerns about potential contractual imbalances between consumers and service providers. These contracts are typically standardized agreements aimed at streamlining the process of service provision and device purchasing. They frequently involve pre-drafted terms and conditions that are imposed generally, regardless of individual consumers' requirements or preferences (Faccio and Zingales 2022; Loos and Luzak 2021). While standard contracts promote ease and simplicity, emerging evidence suggests they may contribute to an imbalance of rights and obligations, favoring service providers over consumers. One key concern in mobile phone contracts is the discrepancy in bargaining power between the contracting parties and the consumers' determinant. Service providers have tremendous market power, allowing them to dictate contractual conditions. Because of this power asymmetry, contractual conditions may be highly skewed in favor of the service provider, putting consumers at a disadvantage. As a result, consumers are frequently bound by provisions that limit their rights, charge expensive termination fees, or provide restricted dispute resolution choices (Balgobin and Dubus 2022; Howell and Potgieter 2022).

Furthermore, knowledge asymmetry can arise due to the complexity and length of mobile phone contracts, compounding the contractual imbalance. Consumers frequently face long agreements laden with legal terms and intricate clauses that can be difficult to comprehend completely. Consumers must overcome this information gap because they may unwittingly consent to agreements not in their best interests (M. I. Fayyad & Al-Nazir, 2023). As a result, consumers may face hidden costs, unforeseen constraints, or restrictive terms that should have been adequately disclosed or understood. Furthermore, the mobile phone industry's rapid technical improvements add another degree of complexity to the contractual landscape. Standard contracts frequently fail to keep up with the growing features and functionalities of mobile devices, leaving users without adequate protection or clarity when new technologies are released (Faccio and Zingales 2022; Loos and Luzak 2021). For example, software updates, hardware compatibility, and personal data handling may need to be effectively addressed within existing contract frameworks.

1.2 Research Aim

Considering the above-mentioned concerns, examining the contractual imbalances within mobile phone contracts and exploring alternative solutions is critical. This research aims to examine the current contractual practices in the mobile phone business, identify specific areas of imbalance, and recommend a more equitable and transparent contractual framework. Establishing a fairer relationship between consumers and service providers, encouraging trust, and supporting a healthy and sustainable mobile phone industry requires reevaluating traditional contracts and contemplating alternative ways. The present research adds to the continuing debate about consumer rights, regulatory laws, and industry practices by thoroughly evaluating contractual imbalances in mobile phone contracts. This study empowers consumers, informs policy conversations, and facilitates mobile phone contract standards reforms that benefit all stakeholders by illuminating the underlying difficulties and potential solutions. It seeks to shed light on the multifaceted control and manipulation of mobile phone service contract implementation by mobile phone service firms. Standard contract terms allow these companies to change the contract's terms and conditions whenever and however they choose, without the subscribers' approval (Section 1). Without a relevant court decision, companies impose penalties on customers of their own volition (Section 2). Also, such clauses may provide firms the unilateral authority to suspend and disconnect mobile phone service from subscribers in situations that jeopardize corporate interests and violate corporate bylaws. (Section 3).

1.3 Research questions

The study objectives can be achieved by answering the following questions:

- What are the key contractual imbalances encountered by Palestinian consumers throughout the execution of mobile service contracts?
- How do the legal and regulatory frameworks that govern mobile service contracts in Palestine deal with contractual imbalances, and what techniques do mobile service providers use to generate these imbalances?
- How do consumer knowledge and competition among mobile service providers affect the negotiation and implementation of mobile service contracts in Palestine, and what are policymakers' and regulatory bodies' recommendations to address contractual imbalances and protect consumer rights?
- To what extent do some neighboring nations' experiences and appropriate Western legislation offer regulatory measures to minimize the effects of this contractual imbalance?

1.4 Research Methodology

The study used a descriptive and analytical methodology to account for the phone service contracts in Palestine's mobile reality. It clarified the contractual relationship between the parties through a legal study of broad legislative requirements. A systematic approach was used to apply provisions of the law to the mobile phone service standard contracts of Jawwal and Ooredoo. The latter are compared to standard contracts of telecom companies in the UAE, Qatar, and Bahrain to demonstrate the imbalanced contractual relationship and assess the extent to which these standard contracts are balanced. The research also sometimes presented the legislative and regulatory solutions provided in many comparative Western legislations, such as some EU countries, the USA, Canada, and Australia.

1.4.1 Research Design:

a) The research utilized a mixed-methods research methodology to compare the existence of contractual imbalances in ordinary contracts issued by mobile phone operators in Palestine.
b) A content analysis approach was used to identify the presence of contractual imbalances in mobile service contracts.

1.4.2 Data Collection:

a) Sample Selection: A representative sample of mobile service contracts from Palestinian mobile phone operators was chosen. An example of a mobile service contract from one of the surrounding nations was also picked for the comparison analysis. The contracts' availability and accessibility will decide the sample size.

b) Data Collection Method: Contracts for mobile service were obtained through a variety of ways, including internet platforms, mobile phone provider websites, and hard copies from service centres. Contracts gathered from Palestine and neighboring nations were evaluated and assessed.
c) Data Variables: The analysis found and reported specific contract clauses and conditions that may result in contractual imbalances. Pricing structures, termination conditions, data use restrictions, dispute resolution methods, and customer rights and obligations were all variables.

1.4.3 Data Analysis:

a) Content Analysis: The data was analyzed qualitatively utilizing content analysis tools. Specific contractual clauses and terms were found, classified, and tagged according to their ability to cause contractual imbalances.
b) Comparative Analysis: A comparison of mobile service contracts in Palestine and adjacent countries revealed parallels and variances. The comparative investigation concentrated on the existence and magnitude of contractual imbalances and any differences in consumer rights and protections.

1. 5 Research Limitation

The research was restricted to the availability of accessible mobile service contracts from Palestine and some nearby countries. The investigation concentrated on contractual imbalances and may have overlooked the impact on consumers.

2 Unilateral amendment of the agreement

Considering the principles "*pacta sunt servanda*" and "binding force of the contract," contracts are characterized by being both consistent and stable (Sahib, 2019, p. 544) to ensure a constant binding force of the agreement throughout the contract execution phase. However, given economic developments and contractual openness, this theory has been at odds with the equilibrium of the contract, resulting in a serious imbalance between and affecting the proportionality of the parties' mutual obligations to the contract (M. Fayyad, 2012, p. 200). As such, either or both parties risk an unreasonably hefty loss, rendering cumbersome the continued execution of the contract. To this effect, the notion of equity has been given priority over the binding force of the contract in the event agreed obligations do not secure a balance between the parties. A set of theories and solutions have been devised to challenge this anomaly, ensuring that the principles above are somewhat flexible and adaptable to contemporary life developments (Mansouri, 2107, p. 3). Under different regulations, such flexibility has been conveyed in the form of statutory exceptions that allow judges and parties to amend the terms of the contract in line with the changes they experience.

However, this amendment is subject to regulatory norms; it is neither haphazard nor acts in the interest of a particular party.

The existence of a valid contract gives rise to legal effects, which are binding on both parties. Neither party can amend such effects based on the "pacta sunt servanda" principle. Fairness requires that once the contract has been legally established, neither party has the right to unilaterally change the terms of the agreement (Bisping & Dodsworth, 2019a, p. 362). Such a term has been considered unfair because it shields service providers from any claims made by consumers over the service and agreements(Lippi et al., 2017, p. 149; Mizrahi, 2021, p. 508). It demonstrates the significant imbalance in power between users and service providers. When providers modify the agreement unilaterally, it signifies that the modification took place without users' approval and that the agreement now represents the terms of a new contract. It might be unethical even if providers inform consumers that they are changing the terms of the agreement and provide them the option to accept or reject the changes (Mizrahi, 2021, p. 508).

Also, the judge cannot amend or revoke the contract because their mission is not to form contracts in place of the contracting parties. Instead, the judge's task is limited to interpreting the content of contracts regarding the intention of contracting parties. The contract may only be revoked or amended by its contracting parties' mutual consent. Such consent serves as a new contract. Otherwise, the contract is revoked for a cause established by law.

Unlike comparative regulations, the *Mejelle* does not explicitly provide for the rule of the consensual amendment. According to Article 241 of the Jordanian Civil Law,'" [i]f a contract is valid and binding upon the parties, none of the contracting parties may rescind, amend, or revoke the same except by mutual consent, litigation, or per a provision under the law." Article 128 of the Bahraini Civil Law provides that "[t]he contract makes the law of the parties. It may be revoked or altered only by mutual consent of the parties or for reasons provided by law." By contrast, although it conforms with the Jordanian and Bahraini regulations, the Qatari legislature adds a paragraph to Article 171 of the Civil Law,4 rendering this principle flexible and smooth: "A contract duly and properly concluded between the parties must be kept, and non-fulfillment of the respective obligations is a breach of that contract. Such a contract may be revoked or altered only by mutual consent of the parties or for reasons provided for by law." This provision is the most

[4] "(1) Pacta sunt servanda i.e., a contract duly and properly concluded between the parties must be kept, and non-fulfilment of the respective obligations is a breach of that contract. Such a contract may be revoked or altered only by mutual consent of the parties or for reasons provided for by law. (2) Where, however, as a result of exceptional and unforeseeable events, the fulfilment of the contractual obligation, though not impossible, becomes excessively onerous in such a way as to threaten the obligor with exorbitant loss, the judge may, according to the circumstances and after taking into consideration the interests of both parties, reduce the excessive obligation to a reasonable level. Any agreement to the contrary shall be void."

accurate and clearest given that an amendment the judge provides is more secure to the obligor. The weak party is obligated to accept any amendment under the pretext of emergency circumstances.

But what if the contract grants one of its parties the power to amend the contract unilaterally? The parties' consent to a term that vests one party with the power of amendment by unilateral will under the contract, implying a prior approval of the amendment regardless of its content. Nevertheless, such a term remains subject to the consent of both parties. It falls within the ambit of the notion of amendment of the contract by unilateral will (H. Fattal, 2013, p. 1). Uncommon in legal practice, this notion virtually departs from the rule of the agreement of parties to the content of the amendment, also known as consensual agreement (Karkuri, 2020, p. 205). That is, the fact that a party to the contract is vested with the power of amendment by unilateral will implies a wilful waiver by either party of their power to amend the contract's content. It reflects implicit consent by that party to any amendment made by the other. As a result, amendment by unilateral will is deemed a unilateral act but falls within a contractual context. It assumes a different meaning from the general concept of unilateral will because such an act is designed to produce a legal effect in the contract without the other party's consent (Sahib, 2019, p. 556).

The judiciary does not prohibit - as a general principle – this agreement. Yet, it restricts it with a set of conditions that ensure the representation rights in a balanced manner. In general, the contract should offer specific protections for the rights of consumers whose interests may be impacted by unilateral variation clauses. There are at least three ways to offer this protection: the right to notice substantial changes for consumers, allowing customers to cancel in response to detrimental changes, and restrictions on the supplier's right to make changes (Commerce Commission, 2020). Also, a contract should include a clause detailing the conditions under which changes may be made to ensure that any changes are a proportionate response to any changes in those conditions. Otherwise, the terms and conditions under which a supplier will offer a service to customers may be at the seller's whim (Commerce Commission, 2020). This part discusses these conditions considering Palestinian law and comparative legislation.

2.1 Unilateral amendment without notice

The amendment must consider the principle of good faith by maintaining a balanced representation of the parties' interests to avoid arbitrariness (M. Fayyad, 2014, p. 205). For example, Jawwal has recently obliged subscribers to change their SIM card numbers following the clause on number modification under the Jawwal standard subscription contract. If the change is not made, the mobile phone number is subject to disconnection because the SIM card is outdated. Such a change is not to the disadvantage of consumers, nor does it increase their liabilities as it is free of charge.

It also aims to scale up user digital and roaming services while at the same time ensuring that subscribers continue to use the same mobile phone numbers. In this context, the Palestinian Court of Cassation ruled that the "principles of equity require that the norm of balanced obligations be considered. Even though we have not explicitly referenced the fact, contracts include an unwritten term stating that the economic conditions under which they are concluded remain the same upon execution. They do not experience a substantial, drastic change that was not anticipated or could not have been anticipated at the time the contract was concluded, causing a tremendous loss to a party to the contract. Based on the principles of equity, the contract must be amended to the reasonable extent that removes injustice and within the bounds of the anticipated damage on the grounds of the rule' Necessity is estimated by the extent thereof (Articles 19 and 12 of the *Mejelle*). The notion of equity does not conceive of a party to the contract being overburdened by executing an obligation that, when executed, threatens them with a severe loss beyond their control after the contract is signed and because of extraordinary incidents which could not have possibly been anticipated".[5]

Also, the scope of contract amendment should be limited to the contractual obligations contained thereunder. It should not establish new obligations or abolish existing rights required by the contract. The amendment should not lead to modifying the subject matter and cause of the contract, both of which necessitate the agreement and consent of the other party. It will also avoid building a contractual relationship that substantially differs from that agreed to earlier. The amendment will be restricted to a mere replacement of such components by similar ones while at the same time maintaining the substance of the contract intact and keeping all respect annexes and insurances (Bin laealaa, Abd Alnuwr & Jarbueat, 2021, p. 259). Amendment of substantial conditions (the price condition and service specifications) by unilateral will requires the other party's consent. Along this vein, the Jordanian Court of Cassation ruled in its Judgement No. 1208 of 2019 that the contractual condition, which entitled the bank to amend the interest rate by unilateral will, was invalid. Financial interests are calculated based on the agreement between the creditor and the debtor. If both parties agree to a particular price, the creditor may not raise it unilaterally. If raised by the Central Bank, the new interest prices apply to the new contracts formed after issuance. Concerning preceding operations and contracts, the agreement made when contracting must prevail. If both parties agree to a particular price, the creditor may not raise it unilaterally. If the relationships between parties to the contract is grounded in their own agreement, instructions of the Central Bank on the setting of interest rates are not deemed to be part of public order, which the parties may not agree to contravene. The only exception is an agreement to the breach of the maximum interest rate, given that the borrower is a weaker party in the contractual relationship. According to the same ruling, due consensual interests are principally governed by the agreement

[5] The ruling of the Palestinian Court of cassation, appeal no. (1054/2017) dated 12/10/2020.

between the creditor and the debtor. If both parties agree to a specific price, the creditor may not raise it on a unilateral basis. If raised by the Central Bank, the new interest prices apply to the new contracts formed after issuance. With respect to preceding operations and contracts, the agreement made when contracting must prevail.

In practice, the amendments introduced by mobile phone companies are contrary to this control. Amendments mainly affect substantial elements of the contract. For instance, subscription to renewed 3G bundles is automatically modified as announced on the Jawwal webpage. As put by a caption to the relevant announcement, "After subscribers are notified, Jawwal can make any amendments to services and subscription thereto, programs and program tariffs, and conditions of subscription to these services and programs." Telecom companies in Qatar, UAE, and Bahrain also fail to explicitly mention the amendable terms, allowing these companies to introduce any amendment to any terms. In most cases, however, the amendment affects the bundle price, speed, or validity date. Since these are the key elements of a subscription, any amendment implies a different bundle than a consumer has subscribed to means a new contract that varies from the previous one. Following the amendment, renewal must therefore occur with the consent and approval of the consumer. Sheer notification is not sufficient.

Moreover, for the amendment to be valid, it is also a condition precedent that the outcomes of the amendment be consistent with its approved purpose. The amendment will play a significant role in maintaining the orderly proceeding of the contract execution and subject matter. As such, by amendment, parties seek to produce the optimum legal effect as desired under any circumstances that may affect the contract (Sahib, 2019, pp. 559–561) as well as to protect the weaker party against exploitation (Bin laealaa, Abd Alnuwr & Jarbueat, 2021, p. 257) (20). Thus, any amendment that does not have any of these matters as its purpose will be null. It is only designed to achieve personal gains and interests at the other party's expense. For example, service prices are raised, given lower annual corporate profits. Along this vein, if another subscriber wishes to access a mobile phone number, neither Jawwal nor Ooredoo is entitled to alter that number based on the clause on the change of numbers under respective standard subscription contracts. This change does not serve subscribers' interests or impact service continuation. On the contrary, it may lead to disconnecting service from the same number. This term is provided under the standard subscription contract of both Jawwal and Ooredoo: "The company/Ooredoo reserves the right to change the mobile phone number, including to change the digital plan or devise any change to numbers, as needed without objection on the part of the subscriber thereto."

2.2 Unilateral amendment with a notice

In Palestine, contracts are grounded in principle "*pacta sunt servanda*" and premised on consenting wills. However, the norm "increase and decrease in the price and in the thing sold after the conclusion of the contract" enacted by the *Mejelle* can be applied to the unilateral amendment clause, which the providers enclose to mobile phone service contracts. This norm permits the price and sale adjustment provided the other party is notified. Otherwise, the amendment is of no effect (Articles 254 and 256 of the *Mejelle*). Contract terms are amended by the offer and acceptance at the meeting where the contract is concluded. The effect is given to the contracting parties being concerned with the conclusion of the contract rather than to their presence in a single place (the unity of time not unity of the place). Therefore, the meeting place is dissolved by aversion even if the contracting parties do not depart from their places. The *Mejelle* does not provide for the possibility of considering any prior consent by a party as acceptance of any subsequent amendment to the terms of the contract. In specific, such amendment serves as a new offer of new details under the contract, all of which require a new offer and acceptance (Articles 102 and 107 of the *Mejelle*) (Takruri, Othman & Sweiti, 2016, p. 52). Against this backdrop, the lack of acceptance in conformity with the amendment, which reflects an offer by the provider, implies a lack of consent to the contract amendment (Articles 245 and 246 of the *Mejelle*).

Also, Article 507 of the UAE Civil Law explicitly provides that an increase or reduction of the designated price is attached to the notice and acceptance of the other party. The Bahraini and Qatari legislatures do not set forth such a prescription. Under the subscription contract of the Ooredoo pre-paid program, Clause 5 also provides that "Ooredoo shall have the right to introduce any changes or amendments to any of these terms and conditions. Such changes or amendments shall be binding on the subscriber as soon as they are issued. They are part of the agreement and read in addition to that as one unit. About online service delivery, the Jawwal website includes a remark on most available services, namely, "[a]fter subscribers are notified, Jawwal can make any amendments to services and subscription thereto, programs and program tariffs, and conditions of subscription to these services and programs." The Ooredoo website also contains the same observation: "After subscribers are notified, Ooredoo can make any amendments to services and subscription thereto, programs and program tariffs, and conditions of subscription to these services and programs."

Although telecommunications companies in Palestine and the Arab countries consider this right, the method of notification used does not achieve the desired purpose because it is carried out on their websites. The problem with these contractual terms is that they do not oblige companies to indicate how to inform the consumer about this amendment. The fact that companies announce these amendments on their websites is not enough. Customers have implicitly consented to the

new terms if they continue to use the company's services after the company posts them on its website. They may not only forfeit the ability to discuss their rights with the corporation over fees, risks, rights, and obligations, but they may also be ignorant of this information because they are oblivious to the changes(Liu, 2015, p. 686).

The validity of this procedure is questionable for three reasons(Liu, 2015, p. 686). First, it is incompatible with the rules governing consumers' right to information. Consumers shouldn't be required to periodically review their extensive service contract to learn about the modifications (if any) for themselves. Instead, customers should at least be informed of any subsequent changes to the terms of the agreement (*ACCC v JJ Richards & Sons Pty Ltd [2017] FCA 1224*). Second, the company needs to notify its customers of revoking their consent if they disagree with the agreement, rendering the terms ineffective. Third, this agreement is founded on unequal rights and obligations between the parties, which is unfair in light of the basic rules of law.

The situation under contracts in other Arab States is not much better, though. The Emirates Telecommunications Corporation (Etisalat) dedicates a separate section under contract forms, entitling the company to amend contract terms by unilateral will. Except for price adjustments where a notification is sent to subscribers, contract forms provide for announcing any amendment on the company's electronic channels. Under its service terms and conditions, the Bahrain Telecommunication Company (Batelco) explicitly provides for the company's power to initiate and announce unilateral amendments online. Both companies do not specify the nature or mechanism of their notifications. The notice is only bound to 28 days, during which subscribers can terminate the service if they do not accept the amendment without paying compensation or fines to the company.

On the other hand, the Emirates Integrated Telecommunications Company – DU consumer service agreement states that a written notice is sent to report any change. Showing better treatment of consumers, Qatar Ooredoo limits change and amendment, if needed, to respective obligations under the applicable enforcement framework and to the approval of the Qatari Communications Regulatory Authority. Unlike other companies, Ooredoo Qatar has multiple ways of notifying consumers of the changes made. Under the general terms and conditions for individual services, the "Changes to the Agreement or Fees" clause prescribes those changes "enter into effect when they are published on our website or when you are notified thereof by other means, such as SMS or voicemail." However, Ooredoo Qatar does not designate a period for termination. Electronic publication in other States is much better than failing to provide notifications. However, the publication cannot justify obligation, given that the contractual relationship has not necessarily been initiated on company websites. The consumer is not supposed to access the website monthly or weekly to ensure a change has been made. Regarding the notice period, the authors believe that

Palestinian companies must comply with this restriction, giving consumers the right to decide whether to continue the contractual relationship. These companies should not suffice with notifications.

Along this vein, for valid adjustment of telecom service prices, Jordanian law stipulates that the price be published in two local newspapers. In all cases, the licensee must notify the Authority of any amendments they make to such wages and prices." The ministry setting telecom service prices can justify the Jordanian legislature's position towards unrequired approval of consumers. These are charged to ensure the public interest and protect consumers against exploitation. The Law on Wired and Wireless Telecommunications Services does not provide for amending the remaining elements of the mobile phone service contract at the providers' own will.

The U.S. judiciary recognizes the unreasonableness of expecting the consumer to regularly vist the company's website to determine if the terms of service have changed (*Douglas v. U.S. Dist. Court ex rel Talk America, 495 F.3d 1062 (2007*). "Parties to a contract have no obligation to check the terms periodically to learn whether the other side has changed them," wrote the judges. "A contract's parties are not required to regularly review the terms to be aware if the other party has amended them," wrote the judges(Paterson, 2013). The U.S. judiciary does not prohibit authorizing the service companies this right but on the condition of direct information that enables the consumer to know about it (*Douglas v. U.S. Dist. Court ex rel Talk America, 495 F.3d 1062 (2007*).

Also, the type of notice that was given relied on how the change would affect customers. Consumers should receive a notice to terminate the contract in reaction to certain changes that might negatively impact them (Commerce Commission, 2020). The notice period must be reasonable for the consumer to search for suitable alternatives for him (*ASIC v Bendigo and Adelaide Bank Limited [2020] FCA 716*). Its calculation should also start from the consumer's awareness and not from the date it was sent to him or announced on the company's website. The company must prove this date (*ACCC v Servcorp Limited [2018] FCA 1044*). According to a recent Australian Federal Court ruling, unilateral variation clauses were unfair since they failed to provide the consumer with adequate notice identifying the nature of the terms being changed (*Australian Competition and Consumer Commission v Acquire Learning & Careers Pty Ltd [2017] FCA 602; [2017] ATPR 42-543*). Austria adopted additional protective measures according to which service providers cannot demand additional payments from consumers, including service charges until the end of the contract term and the price of subsidized equipment, in case of unilateral changes to the contract terms (EU Consumer Organization, 2017).

The Wireless Code in Canada forbids any modifications to core contract conditions (service content, monthly rate, and contract period) without receiving consumer consent in writing. The

consumer also can refuse the proposed changes (Telecom Regulatory Policy 2013, paras 92–93). This prohibition is based on the conclusion that requiring the consumer to either accept the change or cancel the contract, which may result in the customer incurring an early cancellation fee, does not satisfy consumer concerns (Telecom Regulatory Policy 2013, para 88). But what if the first user agreement waived consent to receive notice of future changes? The Palestinian law and the Arab and Western regulations being compared do not provide solutions. Many attorneys are still pushing this kind of unilateral modification clause in new terms of service agreements. The Ninth Circuit's ruling makes it apparent that the judges believe consumers should be informed whenever an agreement changes. Several websites do this by emailing users or posting notices on their websites.

2.3 Declining unilateral amendment

According to the aforementioned provisions of the *Mejelle*, in contracts based on consideration, the amendment relating to the subject matter of the contract after it is concluded must be made by offer and acceptance independently of the offer and acceptance made at the time the contract was concluded. As such, any condition that runs counter to this provision breaches the law and is null because it lacks the element of consent to the condition in question. This norm renders the unilateral amendment clause null and void unless it involves acceptance by the consumer. Likewise, it invalidates any amendment under this clause due to the nullity of the condition that grants this right. Accordingly, the provider may not stipulate that they be given unilateral amendment power. This amendment continues to require consent. Legislation of the Arab States, in comparison, follows the same approach. For instance, Article 267 of the UAE Civil Transactions Law and Article 241 of the Jordanian Civil Law provide that the contract is *pacta sunt servanda*; it may only be rescinded, amended, or revoked by mutual consent of the parties or for the reasons established by the law. If a contract is valid and binding, no contracting parties may revoke, modify or rescind it except by mutual consent, court order, or a law provision. Articles 171 and 128 of the Qatari and Bahraini civil laws, respectively, provide similar.

In Palestine, Article 53 of the Law by Decree on Information and Communications Technology provides that "[t]he licensee shall be prohibited from providing the subscriber with telecommunications services they did not request or cancel or add paid services without the explicit and documented consent of the subscriber." Accordingly, this provision denies the provider's right to amend any contract terms without the subscriber's approval. This approach is in line with the general rules under the *Mejelle*. Also, Article 59 of the Law in Wired and Wireless Communications prescribes that "[t]he licensee may only change the list of their wages or prices after notifying the Ministry and announcing the new prices at least one month before they are in effect, on condition that their prices do not exceed the condition of the license agreement." Thus,

the legislature does not recognize any amendment to the prices of provided services unless the ministry is notified. In addition, subscribers will be informed one month before the new prices take effect. In other words, this provision requires consumers' consent to the amendment. The one month is allotted to subscribers to express consent to continuing service after the change introduced to fees.

Also, Article 131 of the Palestinian Communications Law prohibits service providers from violating the Higher Council's tariff, prices, or fees set by the Secretariat General. Accordingly, the Secretariat makes consumer protection policies based on regular market and competition monitoring, ensuring service providers do not abuse their powers. The authors are of the view that the restrictions placed by the Qatari law on the role of telecom companies are evident in the contract of Ooredoo Qatar. The same restriction is prescribed by Article 21 of the UAE Communications Law. The difference between these countries is that the UAE hands communication reins to Etisalat, a commercial and investment company independent of the State. Qatar vests all powers to the State-run Supreme Council of Information and Communication. The Bahraini legislature is more flexible towards service providers. Article 58 of the Communications Law allows any service provider to set the appropriate service tariff. Still, it associates relevant decisions with controls determined by the authority in light of the rules of equity and justice.

A review of the standard contracts issued by Jawwal, Ooredoo, and telecom companies in Qatar, Bahrain, and UAE shows that the amendment's clauses do not provide for subscribers' prior consent for any amendment introduced by these companies. Advance notification of, and confirmation of consent by, the subscriber is not required. The amendment is binding on the consumer and of immediate effect from the date of its issuance or date of issuance of the amendment according to the mechanism indicated under the agreement. This condition and subsequent immediate obligation of the consumer constitutes a legal violation of the provisions of Articles 245 and 246 of the *Mejelle*. To this avail, the company's amendment is invalid and inapplicable to consumers. Also, the contract issued by Jawwal contains various terms, which render permissible the amendment by both companies without the requirement for subsequent consent by consumers. Entitled "Amendment of Terms and Conditions", standard term 11 of the Jawwal Post-paid and Mix bundle subscriptions provides as follows: "(a) The Company shall preserve its right to alter, amend, or reissue the terms and conditions mentioned above from time to time. Such amendment shall be binding on the consumer from the date of its release by the company. It shall be deemed an integral part of this contract/application." The same Jawwal contract includes a special term (Clause 5) for modifying mobile phone numbers and another for changing prices (Clause 6).

In the E.U., the unfair contract terms directive invalidates contract terms that allow price increases without giving the consumer a right to cancel the contract if the final price is excessively high compared to the price agreed upon when the agreement was made (Bisping & Dodsworth, 2019a, p. 363). However, the unfair contract terms directive 13/1993 permits price variation term if "the contract sets out transparently the purpose for and method of the variation so that the consumer can anticipate the alterations made (RWE Vertrieb AG v Verbraucherzentrale Nordrhein-Westfalen eV, 2013). Also, the Council Directive 2018/1972, Art. 105/4 stipulates that "*end-users have the right to terminate their contract without incurring any further cost upon notice of changes in the contractual conditions proposed by the provider*." Therefore, consumers should be able to exercise their right to terminate the contract free of charge if they are not satisfied with this amendment (EU Consumer Organization, 2017). The Court of Justice of the European Union invalidated contract terms that link this increase with objective indicators of the prices set by public institutions (*Verein für Konsumenteninformation v A1 Telekom Austria AG 2015, para. 26*). Under the U.K.Fair Trading Act 1973, the provider may only change contract terms related to the service's price or specifications after obtaining prior consent from the consumer (Commerce Commission, 2020). The exercise of this right should be linked to the achievement of serious and legitimate interests of the company (Sise, 2021). According to the Court of Appeal, price increases would generally be acceptable if they were "part of an appropriately balanced guideline" (*Du Plessis v Fontygary Leisure Parks Ltd 2012, paras. 49, 52*). As long as the method for calculating the modification is written clearly, there is often some opportunity for contract conditions that allow price changes. Also, there is another problem related to the effectiveness of the general rules in governing offer and acceptance of contracts made using modern means of communication. Due to the various technical means of electronic communication, the current regulations have been unable to provide clear guidelines. The effectiveness of acceptance through modern communication is still uncertain (Hashim, 2018).

In the U.S.A, these restrictions treated this right as a new offer issued by the company, so the consumer must accept it. The consumer should also be given sufficient time before deciding on this amendment. For instance, the U.S. Court of Appeals for the Ninth Circuit judges ruled that service providers should not be authorized to change the agreement arbitrarily without noticing their users (*Douglas v. U.S. Dist. Court ex rel Talk America, 495 F.3d 1062 (2007*). A party may not unilaterally amend the terms of a contract but must first acquire the other party's approval. Unless accepted, a revised agreement is only an offer and does not bind the parties. Chapter II of the Australian Consumer Protection Act 2010 provides the same provision. Even legalizing early contract termination without penalty may be unfair if the consumer has already paid a high cost that would be lost. Suppliers should consider providing pro-rata reimbursements on such charges if consumers cancel the contract in reaction to a unilateral alteration that is detrimental to them (Sise, 2021). For instance, the ability to terminate the contract in Austria without penalty or

payment for subsidized equipment is allowed in certain justifiable circumstances, such as when operators unilaterally change the terms and conditions (EU Consumer Organization, 2017). Consumers should have the right to terminate the contract and demand compensation if such termination causes damage to his financial interests (Sise, 2021).

3 Imposing financial penalties

Mobile phone service companies include contractual conditions, vesting them with the power to impose financial penalties on consumers if they breach their contractual obligations. However, contracts do not determine the penalty, provide for recourse to the court, or demonstrate the occurrence of any damage by the consumer for violating performance, giving discretion to companies to set the proper penalty when a breach is made by the consumer (Hamamda, 2018, p. 42). Providers frequently include conditions that penalize contract termination for preventing consumers from changing providers before the contract expires. This practice must be banned from the market because it is a significant barrier to switching (EU Consumer Organization, 2017).

The *Mejelle* does not explicitly provide for regulating this right. However, according to general provisions and based on the notion *pacta sunt servanda*, the agreement between contracting parties is valid and effective. This right is known as the penalty clause: They are "*damage stipulations that either reasonably forecast expected or actual damages, or provide for damages that are difficult to ascertain judicially, whereas a penalty clause "either unreasonably forecasts expected or actual damages arising from the breach, or sets damages that are easily ascertainable by a court*" (Assaad et al., 2020). Since the objectives of penalty clauses are to enforce performance or predict future damages, they may include measures of compensation and sanctions (Assaad et al., 2020). The penalty clause is provided for by comparative civil laws, including in Egypt, Lebanon, Syria, and Jordan, but all differ regarding how to estimate compensation. Article 224 of the Egyptian Civil Law provides that the contracting parties estimate the penalty clause when it is established under the contract. The debtor is not assigned to establish it.

Conversely, the onus of proof of establishing that damages did not occur rests with the creditor or that the amount fixed was grossly exaggerated. Article 363 of the Jordanian Civil Law provides that compensation is estimated in proportion to the actual damage when it occurs. The court assesses it. Article 364(1) of the Jordanian law also provides that the two contracting parties may fix in advance the amount of compensation by a provision under the contract or by a subsequent agreement, considering the provisions of the law. Article 364 (2) prescribes that the court may amend the agreement in all circumstances and at the behest of both parties, making the estimation equal to the damage. It is considered null and void under an agreement to the contrary. Therefore, the penalty clause is subject to an increase or decrease depending on the amount and volume of

damage. In contrast ، the Egyptian and Syrian civil codes permit the reduction, rather than the increase, of the amount of the penalty clause.

On the other hand, the *Mejelle* provides that "[i]njury may not be met by injury," "[i]njury is removed," and "[a] person who performs an act, even though not intentionally, is liable to make good any loss caused thereby." (Article, 19, 20, and 92 respectively). Since the contract produces effects, any breach or lack of performance is compensable by law, on condition that that breach of the contract is established to have occurred by failure to perform, together with establishing the damage. Put differently, every creditor who suffers injury by the debtor's failure to perform their pledge must prove two matters: (1) establish that the debtor did not perform his pledge, and (2) give evidence of the amount of the damage suffered.[6]

Of note, comparative legislation does not permit any party to the contract to impose financial penalties if the latter is in breach of their contractual obligations. However, these penalties come under the ruling of a threat of a fine rather than compensation for damage. On the other hand, contracting parties may determine in advance the amount of compensation by providing for the same under the contract or a subsequent agreement, subject to the provisions of the law (Articles 390, 364, 303, 226, and 266 of the UAE Civil Transactions Law, Jordanian Civil Law, Kuwaiti Civil Law, Bahraini Civil Law, and Qatari Civil Law respectively). Consensual compensation is an agreement between the contracting parties, stating that if the debtor fails to execute their obligation, executes their obligation in a partial or defective manner, or is late to execute it, they will pay the agreed compensation to the creditor. An agreement may be made as to the amount of compensation. The agreement is called the penalty clause because it is usually included as part of the conditions of the original contract. The penalty clause may be agreed to under a subsequent agreement between the contracting parties on condition that this is in place before the debtor violates their obligation. If performed after that, it is not a penalty clause but a reconciliation between the creditor and the debtor.

This condition reflects prior approval by the consumer for any financial compensation estimated by the provider when the former is in breach of contract performance. However, rather than adopting the notion of the penalty clause, the *Mejelle* opts for the public law system for compensation for contractual responsibility. Even if the agreement of the two parties fixes a financial penalty, the debtor is bound to claim by recourse to the court. The debtor is also obliged to give evidence that the compensation is equal to the anticipated direct damage when concluding the contract. This is "because our legal system does not allow a ruling to be rendered on that condition unless evidence is exhibited, confirming the amount of the damage suffered by the

[6] Palestinian Court of cassation, appeal no. (9/2018), issued on 24/4/2018.

creditor as a result of the breach of obligation by the debtor, as well as whether the damage is certain or not."[7] Also, the *Mejelle* presumes that contractual responsibility is established when the contract is not performed and that the debtor's error causes the damage suffered. Consequently, the creditor is optional to prove the elements of contractual responsibility. The debtor is assigned to defend himself against responsibility, giving evidence that the damage is attributed to an external cause or contributory fault (Takruri, Othman & Sweiti, 2016, p. 406). Along this vein, the consumer's consent to the clause enabling the provider to impose and fix the financial penalties by unilateral will does not entitle the provider to take such a measure and bind the consumer to pay its amount except by recourse to the court.

3.1 Samples of standard terms of penalty clauses

In Palestine, financial penalties imposed on mobile phone service companies on consumers are a late payment fee. This involves punitive damages fixed by the company due to the consumer's lax performance of their obligations, whether damage has been suffered or not. In post-paid subscription, the fee is included in the amount of the monthly subscription bill claimed from the consumer. The sum is automatically deducted from the pre-paid service price in a pre-paid subscription. In the latter case, the consumer is not aware that they are under the obligation to pay the fee or that it is added to the service prices they are bound to pay (Abu Laila, 2007, p. 10). Clause 4(g) of the standard conditions of the Jawwal Post-paid and Mix bundle subscriptions provides that: "Jawwal has the right to continue to deduct debts or bills due by the subscriber through automatic bill payment, if any, until full payment, without objection on the part of the subscriber as per the schedule it deems fit." This is an explicit provision that Jawwal can automatically deduct the debts the consumer owes without informing the consumer. Debts include services, fees, and fines owed by consumers throughout their subscriptions. This clause violates the general provisions on contractual responsibility mentioned above.

In practice, at the time of conclusion, mobile phone service companies require a sum of money to secure their right to satisfy their financial rights. If the subscriber owes compensation, the company is entitled to seize the sum allocated to secure satisfaction of the compensation (Abu Laila, 2007, p. 11). Jawwal obliges consumers wishing to subscribe to Post-paid and Mix mobile phone services only to sign a bill of exchange as a security in the event the consumer does not pay due amounts. Conditions also include termination of the consumer's right to prior notification, the institution of challenges and claims, and payment of the bill of exchange. Consumers also sign a declaration, vesting Jawwal with the power to return and deduct insurances, bank guarantees, or any securities provided by consumers from the amount of cumulative debts owed by consumers. Standard terms

[7] Palestinian Court of cassation, appeal no. (1430/2017), issued on 22/12/2020.

and conditions of the Ooredoo pre-paid subscription program do not prescribe any penalties against consumers in the event of a violation of the Ooredoo internal policies, contract terms, conditions, or communications laws.

For example, in its consumer service agreement, DU provides: "We might ask you to pay an amount in advance in consideration of some services. We may use this deposit or amount paid in advance to pay for their services or use it as a payment for any other account you have with us".

It is worth noting that laws on mobile phone service contracts in Palestine do not provide any regulation of such conditions. The same is true of the comparative laws of the UAE, Qatar, and Bahrain. These do not regulate the imposition of penalties and fines too. From the authors' perspective, such a legislative gap in many regulations allows room for control and hegemony by telecom companies. On the other hand, although it does not address this particular issue, the Qatari legislature includes the following provision under the Communications Law: "Service providers shall be prohibited from exercising non-competitive practices. Service providers who are classified as enjoying a Strong Position in the market, or who is Dominant in a market or several markets of Telecommunications in the State shall undertake not to abuse their market power or Dominance in those markets or anything related to them. The Secretariat-General may determine whether any Service Providers' conduct constitutes an abuse of the market power, an abuse of Dominance, or any other non-competitive practice. If the Secretariat General decides that abuse has occurred, it may act as it sees fit." Also, Article 65 of the Bahraini Communications Law provides the same effect. By contrast, the UAE law does not provide a similar regulation given that Etisalat UAE is the regulatory agency and the State neither controls nor monitors its operations.

The foregoing means that no matter how companies attempt to derogate from the notion of contractual balance through terms or conditions, this provision is on the lookout for and prevents these companies from abusing their control over consumers. It can be adequate on its own, so the fact that comparative laws fail to regulate the clause on the powers of telecom providers by amending, repealing, or penalizing these powers can be neglected. Of particular note, the imbalance can vary in form depending on evolving contracts and transactions. It may not necessarily be limited to cases of amendment and revocation by unilateral will.

3.2 Conditions for valid contractual compensation

Mobile phone service companies attempt to endow themselves with administrative powers, including imposing financial penalties by unilateral will insomuch as public service delivery falls within the ambit of administrative work (Al-Jubouri, 2014, p. 144). However, not only does the administrative contract's character not apply to mobile service services, but it is fully contradictory

to the general provisions of civil contracts. Hence, for this right to be realized, the following condition needs to be met:

(a) Notifying the consumer before the penalty is imposed: A caution or warning should be addressed, notifying the consumer of their omission or error. If the wrongdoing is not rectified, a financial penalty will be pending. Providing for the penalty under the contract does not substitute for notification (Al-Furqani, 2020, p. 1662). However, the *Mejelle* assumes that initiating proceedings, including process service, is a substitute for notification. The Palestinian Court of Cassation ruled that "[t]he general rule of contracts binding on both parties requires that if a contracting party does not fulfill their obligation under the contract, after notifying the debtor, the creditor shall be entitled to claim avoidance of the contract unless the contract includes exemption of notification. As long as the will of both parties to the contract opts for waiving such notification, and whereas this agreement is not in breach of the law or public order, it shall be applicable".[8]

(b) Granting an adequate period to the consumer. Notification primarily aims at avoiding continuous errors or breaches. The consumer can only redress it when they have adequate time.

(c) Obtaining a court decision on the amount of compensation. Principally, a penalty is imposed by the court after the damage is established by the affected party and elements of contractual responsibility are met (59). No party may unilaterally fix compensations or assume contractual responsibility is in place without initiating the legal proceedings applicable to the claim of financial compensations.

However, any financial compensation remains conditioned to judicial evidence and entering of a binding ruling thereon. Thus, the indebted consumer has the right to refrain from submission to or compliance with any financial penalty imposed by the other party at its unilateral will. The judge can review and adjust the amount of such compensation to be commensurate with the damage caused to the contracting party.[9]

Under Western legislation, the contracting parties may establish their obligations but are not free to determine the penalties for breach in the event of non-performance (Assaad et al., 2020). The good faith principle presupposes that the parties to a contract would conduct themselves honestly and fairly to prevent depriving the other parties of their rights to benefits under the agreement

[8] Judgment of the Palestinian Court of cassation, appeal no. (1002/2017), dated 21/3/2021.
[9] Qatari Court of Cassation, Civil Judgements, Objection No. 210 of Judicial Year 2013, Civil and Commercial Chamber, 10 December 2013, p. 474. Qatari Court of Cassation, Civil Judgements, Objection No. 70 of Judicial Year 2006, Civil and Commercial Chamber, 5 December 2006, Technical Office No. 2, Vol. 1, p. 300. Qatari Court of Cassation, Civil Judgements, Objection No. 107 of Judicial Year 2014, Civil and Commercial Chamber, 17 June 2006, p. 300.

(Assaad et al., 2020). Some European states have established a broad range of protective measures that have been demonstrated to successfully address consumer issues and positively affect the market, making it more transparent and equitable. For instance, in France, Belgium, and Austria, consumer-friendly regulations that allow early termination without penalty are in place (EU Consumer Organization, 2017). The equitable approach to penalty clauses, which refers to the courts' interference in civil law, was first proposed in the final German Civil Code draft and marked a turning point in adopting this approach (BGB 2013) (Assaad et al., 2020). Section 343 of this law states: "*If a payable penalty is disproportionately high, it may on the application of the obligor be reduced to a reasonable amount by judicial decision. In judging the appropriateness, every legitimate interest of the obligee, not merely his financial interest, must be considered. Once the penalty is paid, the reduction is excluded*". It would only be acceptable for a service provider to offer consumers a termination penalty as a deterrent to switching if the offer also includes subsidized smartphones or other devices. No termination fees should be permitted if the contract covers the delivery of electronic communications services and no subsidized equipment is included (EU Consumer Organization, 2017).

According to Austrian legislation, consumers are only required to pay the service price until the deal ends and are not subject to early termination fees or payments for subsidized equipment. Regardless of the overall length of the contract, Belgium law requires that termination penalties be permitted only during the first six months of the agreement. Consumers are always allowed to break their contracts after the first six months. The only charges that may be justified are those related to any compensation that must be paid for a discounted smartphone or other equipment items. This policy significantly stimulated switching, which helped to promote competitiveness in the mobile industry, where switching rates have stayed high. In France, a consumer can terminate a 24-month contract after the first year has passed by paying the provider only one-fourth of the balance of the monthly service fees as compensation (EU Consumer Organization, 2017).

Also, English law gives consumers the right to early termination. In this case, he is obligated to compensate the provider for the damages he suffered due to this unjustified termination. It must reflect the provider's anticipated loss in facts (Bisping & Dodsworth, 2019a, p. 361). This charge is determined using the monthly subscription cost multiplied by the number of months left in the contract (Ofcom, 2015, para. 80). The English perspective is grounded on general contract law principles. It emphasizes what the provider would have obtained in a lawsuit for the cost or damages (Bisping & Dodsworth, 2019a, p. 362). Early termination fees are a common legal practice to protect the provider's expectation by making it easier for parties to quit an agreement. The same appears true in the USA, where fixed penalty clauses are converted to prorated systems under contractual penalties in the lack of particular laws regulating unfair conditions. Both Section

356 of the Restatement (2d) of Contracts and Section 2-718 of the Uniform Commercial Code (UCC) prohibit the use of penalty provisions (Bisping & Dodsworth, 2019a, p. 362).

Also, English law authorizes the judiciary to review the amount of this compensation under the provisions of law. The U.K. telecoms regulator has determined that the early termination fee is a default payment that must be paid because the consumer broke the contract terms, not a cost related to the service. Therefore, the charge must fairly reflect the provider's expected factual loss. Suppliers used to charge an amount equal to the outstanding monthly payments plus a discretionary discount for full payment (Ofcom, 2015, para. 80). The charge is subject to the term control provisions of the Consumer Rights Act 2015's assessment for fairness (Ofcom, 2015, para. 73). This amounts to a repudiation of the contract and gives the service provider grounds to sue the consumer for damages. The contract usually stipulates the damages as early termination fees (Bisping & Dodsworth, 2019a, p. 361). The monthly subscription fee multiplied by the number of months left in the contract determines this fee.

Canadian law gives the consumer the same right as English law but regulates it better for the consumer's benefit. In Canada, the fee for early termination is set at the cost of a subsidized handset. It must be decreased proportionately to the established period's duration or, in the absence of a subsidized handset, 10% of the minimum monthly fee for the contract's remaining months, up to a maximum (Telecom Regulatory Policy 2013, G-3). The difference in the UK is that the monthly subscription fee is accrued even when the smartphone is not included in the contract or when the service agreement and the phone credit arrangement are completely separate (Bisping & Dodsworth, 2019a, p. 361). The Canadian viewpoint centers the argument around competition. Early termination fees in the USA vary depending on the offered handset type (standard or smartphones) and the contract's remaining time balance. Therefore, the monthly payments required by the mobile phone agreement are not considered when calculating the early termination fee (Bisping & Dodsworth, 2019a, p. 362). The policy emphasizes the agreement made by the parties, so only the provision allowing for an early termination fee is evaluated for fairness under the law governing unjust terms.

In conclusion, it is recommended to include a rule restricting termination penalties to the first six months of the contract if a subsidized smartphone or equivalent advantage was provided (EU Consumer Organization, 2017).

4 Unilateral termination of the agreement

According to general rules, given that it is temporal, the mobile phone service contract ends upon the expiration of the period agreed to between the parties. Under normal circumstances, contracts terminate as soon as obligations are implemented. They may expire upon the equivalent fulfilment of clearance, renewal, representation, or joint liability. On the other hand, an obligation may end without being fulfilled through release, the statute of limitations, or impossible execution. As soon as the contract expires, the contractual relationship between parties to the contract disappears (Ben Dadouche, 2011). In addition, during the execution of mobile phone service contracts, emergency circumstances might occur, or a party might breach the contractual relationship when it implements its obligation before the deadline of execution expires. That party obstructs the contractual relationship, causing it to break away before being fully executed. Hence, the contract becomes dissolved. This is an unusual way to terminate the contractual relationship, driving the affected party to have recourse to court and claim the revocation of the contract and compensation for the damage caused due to failure to execute the contract (Dodin, 2017, p. 165).

Regarding the norm *pacta sunt servanda*, contracting parties have recently come to enable one another to harness their will to serve their interests and draft a contract, including all phases, in different templates and multiple forms. The evolution of transactions and the nature of contractual relationships that can be concluded swiftly have made parties opt for speedy means of termination that also fit the requirements of business ties. These developments have thus created the notion of agreeing to allow a party to terminate and dissolve the contractual relationship at its free will, whenever it wishes, and without consultation with the other party, all under the designation of "unilateral termination". Contract terms that allow the providers to stop providing their services at any time, for any reason, and without giving users prior notice are unjust since they would subject consumers to constant uncertainty(Mizrahi, 2021, p. 508). Users cannot control or predict when the service ends (Bradshaw et al., 2011, pp. 203–204).

That termination can fall within the category of penalties for the other party who breaches the contract execution, makes an error during the phase of contract formation or execution or deceives the other party. The act in contradiction with the principle of good faith vests the other party with the power to terminate the contract without the consent of the contravening party (Sahib, 2019, p. 561).

4.1 Samples of standard termination terms

In practice, mobile phone companies in Palestine have abused this right by including a clause under the contract entitling them to terminate the agreement before it is fully executed. Regardless of whether the Consumer made a mistake, the contract ends on the ground that the consumer agreed before to vest the provider this right. For example, Clause 8(m) of the standard conditions of the Jawwal Post-paid and Mix bundle subscriptions prescribes that to provide mobile phone services, "subscribers declare their approval and awareness of the company's right to disconnect the service provided to them in case they make discourteous statements and/or abuse the telecom system in fraud or malicious acts or cause mobile phone disturbance prohibited by law, *as well as any other breach that runs counter to the conditions for telecom services* […]" [emphasis added.] This provision endows Jawwal with the right of immediate termination in response to any act made by the consumer which the company considers to be violating its conditions. It is irrelevant whether the cause is, in fact, a breach of execution or just an infraction of Jawwal bylaws. Likewise, Ooredoo's standard terms and conditions under the pre-paid program subscription contract put clauses to the same effect. Namely, Clause 2(3) states, "Ooredoo has the right to terminate the user's subscription in case they breach these terms and conditions, laws, and regulations applicable in Palestine." Moreover, Clause 2(4) states that "Ooredoo is committed to provide, and refrain from disconnecting, service to subscribers except as indicated by these terms and conditions."

Likewise, under its contract, Etisalat UEA includes a special section entitled "Suspension, disconnection, or termination of service by Etisalat." Furthermore, Etisalat UAE frees itself from notifying consumers of disconnection: "Etisalat notifies the customer and, if possible, furnishes an opportunity to regularise the situation before any suspension, disconnection, or termination of the service." Not only that, but the contract provides for cases of termination by Etisalat as the company deems necessary and fit, even if the client makes no errors.

DU and Ooredoo Qatar employ less arbitrary terms under their standard contracts. The DU standard contract states that "[i]f we are permanently unable to provide any of our services to you for any reason, we will send a written notice to you within 30 days before any affected service is terminated". The Ooredoo Qatar contract states, "Ooredoo can terminate the service if your residence license is abolished." Of note, Ooredoo Qatar associates service termination with a notice period conducive to the client. Terminating the service delivered to the public for any justified reason in line with a reasonable notice period, including denial of service delivery in Qatar by any competent authority, is subject to the provider's discretion. In this case, the consumer will be responsible for paying for the service over the period that includes the termination date only, not after that. On the other end, Batelco was more abusive. Service conditions include the following explicit term: "Batelco preserves the right […], at its discretion, to terminate user's access to any

or all Batelco sites or relevant services at any time and without prior notice. It does not incur any responsibility whatsoever towards users for such termination". The authors are of the view that this discrepancy between companies is triggered by variable clarity of provisions, leaving much room for companies to act arbitrarily in accordance with their economic positions and objectives.

4.2 Regulatory framework for unilateral termination

Law does not provide for cases in which a party to the contract is allowed to terminate the contract by unilateral will. Still, according to general provisions, the law includes a set of forms for dissolving the contractual relationship by agreement of both parties. These can be built on to examine the legality of this clause under mobile phone service contracts.

4.2.1 Rescission: Recission means that both parties to the contract agree that each rescinds the other of consequences of the dissolution of the contractual relationship on the ground that the will, which created the contract, can put an end to and terminate it either explicitly or implicitly, provided that public order, public morals, and law are taken into consideration (Takruri, Othman & Sweiti, 2016, p. 354). In this vein, Article 163 of the *Mejelle* provides that: "[r]escission is setting aside and stopping a contract of sale." Article 190-196 of the *Mejelle* also regulates the provisions of recession by the agreement of both parties. These provisions correspond with Articles 189-190 of the Qatari Civil Law, 147-148 of the Bahraini Civil Law, and 267-270 of the UAE Civil Law. Article 190 of the *Mejelle* stresses that recession must be by mutual agreement and by identical offer and acceptance before the duration or implementation of the contract expires. As a result, the *status quo ante* must be re-established before the contract conclusion, contradicting the original contract concluded between both parties (Articles 190-196).

Applying the provisions on recessions to the unilateral termination clause under mobile phone service contracts is difficult. These also view such a clause as null and void. In particular, the recession is a new contract that must fulfill both parties' consent, which does not apply to the previous clause on consent. Article 194 of the *Mejelle* places as a condition precedent that "the thing sold should be in possession of the purchaser at the time of the rescission." This is inconceivable in consumer services. More importantly, the recession is retrospective as the *status quo ante* is restored, and the former agreement is contravened. This is also out of reach under mobile phone contracts.

4.2.2 Consensual avoidance: Avoidance is the retroactive dissolution of the contractual relationship under binding contracts when a party is in breach of and refrains from the performance of its obligations (Yahya, 2010, p. 18). Consequently, the resolutory condition is deemed as contract termination by unilateral will. It means that both parties agree, at the time of conclusion,

to a clause on avoidance of the contract. This clause includes the situations and circumstances which enable each party to avoid the contract at its unilateral will under the resolutory condition. Parties may agree to avoid the contract by default without recourse to court when its agreed conditions are met. However, such an agreement does not release the party with the power to avoid excusing the other party unless otherwise explicitly agreed. Lack of prior agreement under the contract to all this precludes unilateral termination by any party (Kubri, 2021, p. 22).

The resolutory condition takes place when a party violates the performance of its obligations. In other words, no party has the right to avoid unless the performance is breached (R. Fattal, 2020, p. 58). Also, according to the norm of non-abuse of rights, the resolutory condition is considered null and void. Parties may not invoke this condition if it causes more pain than the gain it materializes or if it does not explicitly and inevitably require avoidance as soon as a breach occurs when the wording conclusively provides to this effect. The rule of consensual avoidance is the closest to the notion of termination by unilateral will. Still, companies are bound to state the circumstances of avoidance in respective contracts. The drafting of contracts must be explicit and clear because the said circumstances reflect the content of the agreement between both parties.

Of note, general rules of the theory of contract under comparative Arab legislation do not, as a general principle, vest any parties to the contract with the power to revoke the contract by unilateral will. However, it grants discretionary power to the national judge to rule for avoidance of the contract at the request of the affected party. For instance, Article 140 of the Bahraini Civil Law provides that "[i]n bilateral binding contracts if one of the parties does not perform his obligation, the other party may, after serving a formal summons on the other party, demand from the judge the performance or dissolution of the contract, with damages, if due, in either case, unless the party demanding dissolution does not also perform his obligation." This provision does preclude the agreement by parties to the contract to consider the contract to be avoided *sua sponte* without the need for a court decision when the obligations arising thereout are not fulfilled (Article 271 of the UAE Civil Transactions Law). This provision does not grant any legal privilege to any parties to the contract, but they benefit from it equally. The Bahraini Law goes as further as protecting the weaker party against abuse by the legal status of the other party. Article 141 of the Bahraini Civil Law prohibits *ipso facto* dissolution without a court judgment or subject to the condition for limiting the Court's power concerning dissolution of the contract unless it is clear that such action represents the full express desire of the contracting parties who are aware of its actual effects. In other words, this condition is invalid if the corresponding party is not explicitly informed either in terms of the fact that it exists or the legal effect arising therefrom.

It is worth noting that, in conformity with the notion of consensual avoidance, the laws on mobile phone service contracts consider that disconnection and termination by the provider at its unilateral

will must be consequent to a breach of performance or infraction of public order or general principles. This is emphasized by Article 63 of the Law on Wired and Wireless Communications, which provides that "[t]elephone service may not be blocked or eliminated for a subscriber unless that subscriber has caused material damage to the network, used the telephone in a manner that runs counter to the law, or fails to pay the due fees and wages despite addressing a written warning to them." Also, Article 62 of the Law entitles the provider to disconnect the telephone line, which causes disturbance to other subscribers after reporting to the minister and notifying the consumer of the relevant number.

Article 53 of the Law by Decree on Information and Communications Technology prohibits contract termination without notifying the consumer. It is required that the reason be material damages caused by the subscriber to the networks, telephone use in contravention to the law, or failure to pay fees and wages. Even if agreed to when the contract is concluded, any reason beyond is null and void because it violates a peremptory rule under the law. This is highlighted by Article 60 of the Law by Decree on Information and Communications Technology:
"1. The licensee may not disconnect, eliminate, or block the communications service, or breach quality service standards, for subscribers. Exceptions to these shall be made for the following cases: (a) If the subscriber deliberately causes material damage to the communications network while they use the service or uses the communications service in a manner that runs counter to effective legislation, subject to the written approval of the Authority or they receive a court decision thereon; (b) If the subscriber fails to pay financial fees owed by them for the service delivered during the period specified for payment in the subscription bill, provided that the licensee has delivered the bill to the subscriber per the agreed mechanism under the subscription contract; (c) The licensee shall be prohibited from disconnecting, eliminating, or blocking the communications service from subscribers or users, or breaching quality service standards as a result of material, administrative, or technical irregularities between them and another licensee without prior written notice from the Authority."

Based on these provisions, service can only be disconnected under a court ruling or a written decision from the ministry. Any termination is prohibited unless driven by both laws' reasons and cases exclusively mentioned. A relevant notice to the ministry must precede termination. Consumers must be informed of the breach or infraction made by them. By contrast, mobile phone companies do not comply with these controls in practice. With no respect for the fact that this condition contravenes the law's general and special provisions, these companies often exercise their absolute right to disconnect and eliminate the service in line with clauses supplemented to standard contracts.

By contrast, comparative legislation of the UAE, Qatar, and Bahrain do not provide clearly and explicitly for allowing the provider to disconnect or terminate the service for consumers.
Per Western legislation, a termination clause won't be deemed "reasonably acceptable to defend the legitimate interests" of the trader if it responds excessively to the dangers that the trader faces (Commerce Commission, 2020). Suppose the provider chooses to terminate the contract due to a unilateral change. In that case, he must refund the consumer the money due for future services he did not receive (*ASIC v Bendigo and Adelaide Bank Limited [2020] FCA 716*).

About Western law, the common law states that only substantial occurrences, such as the violation of a condition, a serious breach of an intermediate term, or the consumer's repudiation of the contract, give rise to the right to terminate an agreement in reaction to a violation (Commerce Commission, 2020). These common law rights are diminished by terms that enable the service provider to cancel in response to inconsequential behaviors and restrict consumers' rights excessively. According to the Director of Australian Consumer Affairs Victoria, it was unfair for the trader to have the right to terminate the contract immediately if the customer violated its terms (Commerce Commission, 2020).

German law does not allow early termination unless the supplier modifies the contract (Telecommunications Act Section 46/8). Unless the service recipient moves and the telecommunication services are not offered at the new address, the consumer is obligated for the whole duration they have agreed to (Bisping & Dodsworth, 2019a, p. 360). Even if the customer takes advantage of the option to port his mobile phone number to another provider, the contract will continue, and a new phone number will be assigned (Telecommunications Act Section 46/4). The relationship that the parties' agreement established between them is upheld by German law (Bisping & Dodsworth, 2019a, p. 362). Also, German law obligates service providers to inform consumers about the termination time on the monthly bills (EU Consumer Organization, 2017).

5 Conclusion

This research paper clarifies that contractual imbalance is closely linked to equal interests among parties to the contract. Contractual balance is unthinkable if a party is controlled and under pressure by the other party of the more powerful legal position in the contractual relationship. Therefore, this incident of contractual imbalance derives from the procedures taken by the powerful party during the performance phase. It is dominated by the abuse of rights, ill faith, and exploitation in the interest of one party without the other. In this context, mobile phone service contracts provide a clear example of perpetuated exploitation and monopoly of consumers. It has been evident in the steps implemented by mobile phone service companies, which burden consumers. The clauses on

amendment, termination and imposition of penalties at the unilateral will of the mobile phone service provider are tailor-made to usurp the will of consumers and paralyze the negotiation and settlement process between the parties. Ultimately, the provider is in full control of the contract.

Against this backdrop, Jawwal, Ooredoo, and telecom companies in other States (Qatar, Bahrain, and UAE) have exploited the principle *pacta sunt servanda* and imposed restrictions and conditions on consumers while at the same time turning a deaf ear to the *Mejelle* general rules of contractual relationships and limits of the will of contracting parties. Additionally, companies have only implemented befitting provisions that govern mobile phone service contracts. Having adhered to the surface meaning of these provisions, they have yet to comply with the rules of good faith and transparency in the contractual relationship. Therefore, mobile phone service contracts have been transformed from service contracts to contracts for exploitation void of any manifestation of contractual balance.

Reflecting contractual imbalance, the study has demonstrated that contractual conditions under the contracts in question are invalid in light of the general norms laid out by the *Mejelle*. For example, the condition for amending the contract by unilateral will is a clear break from the element of consent. This condition affects essential elements of the contract, creating a new contract with new elements, including consent. In addition, the provisions of the Law on Wired and Wireless Communications and Law by Decree on Information and Communications Technology explicitly restrict the provider's ability to block, disconnect, or terminate mobile phone service contracts by a set of conditions, which the provider cannot derogate from. Otherwise, they will be held to account by the ministry. A set of restrictions constrains the operation of conditions for predetermined compensation. This study has demonstrated that telecom companies need to comply with these conditions. Prior agreement by parties to fixing compensation before it is realised does not preclude the provider's obligation to take heed of the procedures and conditions for claiming compensation as provided for by general rules. Combined, the principles of good faith, transparency, and equity necessitate that the provider provides consumers with all the proper means to build an equitable contractual relationship and ensure that the purposes of the contract are best realised during the performance, even if the legislature has not regulated the necessary methods to maintain contractual balance.

In general, this research paper recommends the following:

- consider the legal provisions regulating means of protection against contractual imbalance as peremptory rules that do with public order and that parties may not contravene them.
- drop any claims of financial compensations unilaterally fixed by the provider or agreed to in advance under the contract terms.

- provide for the binding status of notifying consumers of any amendment introduced to the contract and prevent enforcement of the amendment until written approval is obtained from consumers.

References

Abu Laila, T. (2007). Conventional compensation in civil law, a comparative study, (in Arabic: Altaewid aliatifaqiu fi alqanun almadanii, dirasat muqarana) [Master Thesis]. An-Najah National University, Nablus, Palestine.

Al-Furqani, N. A. (2020). The entitlement of the penal clause and the limits of the judge's authority in amending the contract, (in Arabic: Aistihqaq alshart aljazayiyi wahudud sultat alqadi fi taedil aleaqda). Researcher Journal for Academic Studies, 7(2), 1655–1669.

Al-Jubouri, M. (2014). The administration's authority to impose criminal and financial penalties in administrative contracts, (in Arabic: Sultat al'iidarat fi tawqie aljaza'at aljinayiyat walmaliat fi aleuqud al'iidaria). New University House.

Al-Masry, A. (2020). Contractual balance at contract formation, an analytical study, (in Arabic) "ltawazun aleaqdiu eind nash'at aleaqda, dirasat tahlilia." Al-Azhar University- Gaza Strip.

Assaad, R., Asce, S. M., Abdul-Malak, M.-A., & Asce, A. M. (2020). Legal Perspective on Treatment of Delay Liquidated Damages and Penalty Clauses by Different Jurisdictions: Comparative Analysis. Journal of Legal Affairs and Dispute Resolution in Engineering and Construction, 12(2), 04520013. https://doi.org/10.1061/(ASCE)LA.1943-4170.0000387

Balgobin, Y., & Dubus, A. (2022). Mobile phones, mobile Internet, and employment in Uganda. Telecommunications Policy, 46(5). https://doi.org/10.1016/J.TELPOL.2022.102348

Ben Dadouche, N. (2011). The termination of the obligation without fulfilling it in positive law and Islamic jurisprudence, a comparative study, (in Arabic: Anqida' alialtizam dun alwafa' bih fi alqanun alwadeii walfiqh al'iislamii, dirasat muqarana [PhD dissertation]. Oran University, Algeria.

Bin Issa, Q. (2017). The right to access information between transparency and confidentiality (Alhaqu fi alnafadh 'iilaa almaelumat bayn alshafaafiat walsiriyati). Scientific Monitor, 2, 189–208.

Bin laealaa, Abd Alnuwr & Jarbueat, M. (2021). The current transformations of the general theory of the contract: a renewal of the contract or a relaxation of the classical rules, (in Arabic: altahawulat alraahinat linazariat aleamat lileaqda: tajdid lileaqd 'am takhfif min hidat alqawaeid alkilasikia. Algerian Journal of Legal and Political Sciences, 58(5), 203–227.

Bisping, C., & Dodsworth, T. J. (2019a). Consumer Protection and the Regulation of Mobile Phone Contracts: A Study of Automatically Renewable Long-Term Contracts Across Jurisdictions. Journal of Consumer Policy, 42(3), 349–375. https://doi.org/10.1007/S10603-019-09417-0/METRICS

Bisping, C., & Dodsworth, T. J. (2019b). Consumer Protection and the Regulation of Mobile Phone Contracts: A Study of Automatically Renewable Long-Term Contracts Across Jurisdictions. Journal of Consumer Policy, 42(3), 349–375. https://doi.org/10.1007/s10603-019-09417-0

Borgogno, O. (2019). Usefulness and dangers of smart contracts in consumer transactions. The Cambridge Handbook of Smart Contracts, Blockchain Technology and Digital Platforms, 288–310. https://doi.org/10.1017/9781108592239.016

Bradshaw, S., Millard, C., & Walden, I. (2011). Contracts for clouds: comparison and analysis of the Terms and Conditions of cloud computing services. International Journal of Law and Information Technology, 19(3), 187–223. https://doi.org/10.1093/IJLIT/EAR005

Commerce Commission, N. Z. (2020). Changing the terms of a contract (variation clauses) Tips for writing fair terms. http://www.comcom.govt.nz/fair-trading/guidelines/business-guide-to-unfair-contract-terms-/

Dodin, M. (2017). Dissolution of the contract: a comparative analysis between the Journal of Judicial Rulings and the Unidroit Principles 2010, (in Arabic: Fusikh aleaqda: tahlil muqaran bayn majalat al'ahkam aleadliat wamabadi alyunidrua 2010). Journal of Legal and Political Sciences, 15, 165–182.

EU Consumer Organization. (2017). CONSUMER PROTECTION IN THE COMMUNICATIONS SECTOR.

Faccio, M., & Zingales, L. (2022). Political Determinants of Competition in the Mobile Telecommunication Industry. In Review of Financial Studies (Vol. 35, Issue 4). https://doi.org/10.1093/rfs/hhab074

Fattal, H. (2013). The unilateral will is a source of commitment between rejection and endorsement, (in Arabic: Al'iiradat almunfaridat msdrua liliailtizam bayn alrafd waltaayid). Maarif Magazine, 15(8), 1–35.

Fattal, R. (2020). The legislative amendments related to the termination of the contract for an indefinite period and the determination of the consideration by unilateral will in the amended French Civil Code in 2016 and 2018, (in Arabic: Altaedilat altashrieiat almutaealiq. Journal of Law and Political Science, 3, 53–67.

Fayyad, M. (2012). A glance at unfair terms in consumer transactions in Arab legal systems and Islamic law: What Arab lawyers can learn from the European experience? International Journal of Private Law, 5(2), 200–227. https://doi.org/10.1504/IJPL.2012.046061

Fayyad, M. (2014). Measures of the principle of good faith in european consumer protection and islamic law, a comparative analysis. Arab Law Quarterly, 28(3), 205–230. https://doi.org/10.1163/15730255-12341283

Fayyad, M. I., & Al-Nazir, R. (2023). Inequality of bargaining power in cellular telecommunication services agreements. Telecommunications Policy, 47(4), 102540. https://doi.org/10.1016/J.TELPOL.2023.102540

Griffin, M., Lyons, S., Mohan, G., Joseph, M., Domhnaill, C. Mac, & Evans, J. (2022). Intra-operator mobile plan switching: Evidence from linked survey and billing microdata. Telecommunications Policy, 46(7). https://doi.org/10.1016/J.TELPOL.2022.102343

Hamamda, A. (2018). Penalties in the implementation of administrative contracts in the Saudi system, (in Arabic: Aljaza'at fi tanfidh aleuqud al'iidariat fi alnizam alsaeudii). Al-Manar Journal for Legal and Political Research and Studies, 6, 39–77.

Hashim, R. C. (2018). Postal rule in acceptance via email. Commonwealth Law Bulletin, 44(1), 111–127. https://doi.org/10.1080/03050718.2018.1552523

Howell, B. E., & Potgieter, P. H. (2022). Effective competition and ineffective mobile industry regulation in South Africa. Telecommunications Policy, 46(7). https://doi.org/10.1016/J.TELPOL.2022.102317

Karkuri, M. (2020). The authority of the parties to the tourism and travel contract to amend and terminate its provisions by unilateral will, (in Arabic: Sultat tarafay eaqd alsiyahat wal'asfar fi taedil wa'iinha' 'ahkamih bial'iiradat almunfarida). Journal of Politics and Law Notebooks, 12(2), 202–216.

Kasatkina, M. (2021). Consumer Protection in the Light of Smart Contracts. ELTE Law Journal, 1, 95–105. https://doi.org/10.54148/ELTELJ.2021.1.95

Kubri, H. (2021). The legal framework for the termination of contracts binding on both sides, (in Arabic: Alatar alqanuniu lifaskh aleuqud almulzamat lijanibayn) [Master Thesis]. Middle East University, Amman.

Lippi, M., Palka, P., Contissa, G., Lagioia, F., Micklitz, H. W., Panagis, Y., Sartor, G., & Torroni, P. (2017). Automated detection of unfair clauses in online consumer contracts. Frontiers in Artificial Intelligence and Applications, 302, 145–154. https://doi.org/10.3233/978-1-61499-838-9-145

Liu, Y. (2014). User control of personal information concerning mobile-app: Notice and consent? Computer Law and Security Review, 30(5), 521–529. https://doi.org/10.1016/J.CLSR.2014.07.008

Liu, Y. (2015). Consumer protection in mobile payments in China: A critical analysis of Alipay's service agreement. Computer Law and Security Review, 31(5), 679–688. https://doi.org/10.1016/j.clsr.2015.05.009

Loos, M., & Luzak, J. (2021). Update the Unfair Contract Terms directive for digital services (Issue February). https://dare.uva.nl/search?identifier=446faa08-bedd-42e7-a4ec-6adfd6357b17

Mansouri, K. (2107). The theory of emergency conditions and their impact on the economic balance of the contract, an analytical study in the light of the UAE Civil Transactions Law, (in Arabic: Nazariat alzuruf altaariat wa'atharuha fi altawazun alaiqtisadii lileaqda, dirasat [Master Thesis]. United Arab Emirates University,.

Mizrahi, B. (2021). Risky Fine Print: A Novel Typology of Ethical Risks in Mobile App User Agreements. Villanova Law Review, 66(3). https://digitalcommons.law.villanova.edu/vlr/vol66/iss3/1

Mwakatumbula, H. J., Moshi, G. C., & Mitomo, H. (2019). Consumer protection in the telecommunication sector: A comparative institutional analysis of five African countries. Telecommunications Policy, 43(7). https://doi.org/10.1016/j.telpol.2019.02.002

Ofcom. (2015). Guidance on unfair terms in contracts for communication services. https://www.ofcom.org.uk/__data/assets/pdf_file/0012/40620/guidance.pdf

Paterson, J. (2013). The Fine Print Project: Looking for Fair Terms in Telecommunications Contracts.

Sahib, A. (2019). The role of the individual will in amending the contract, (in Arabic: dawr al'iiradat almunfaridat fi taedil aleaqd). Ahl Al-Bayt Magazine, Peace Be upon Them, 23, 542–566.

Shanti, S. (2006). Legal regulation of the use of model clauses in consumer contracts, a comparative study, (in Arabic) "Altanzim alqanuniu liastikhdam alshurut alnamudhajiat fi aleuqud aliastihlakia, dirasat muqaranatin." Birzeitu University.

Sise, P. (2021). Unfair contract terms 05: Unilateral variation clauses. Clayton Utz.

Takruri, Othman & Sweiti, A. (2016). Sources of obligations, (in Arabic) "masadir alialtizami." Academic Library.

Yahya, I. (2010). Dismissal Termination of the contract with the consent of the two parties, a comparative study, (in Arabic: Al'iiqalat fasikh aleaqd birida altarafayn dirasat muqaranatin, salat majistir fi alqanun alkhasi) [Master Thesis]. An-Najah University, Nablus, Palestine.