



## Unfair Contract Laws in United Kingdom and Pakistan: A Critical Analysis

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### Abstract

The principle of fairness has been a fundamental aspects of contract law for a long time. The principle requires the parties to a contract to be clear and fair about the terms on which the parties are going to agree. The fairness principle put certain bars on persons/parties entering into a contract about the terms that may vitiate the agreeable terms in a long run. The contract may vary in terms of its significance and utility. The difference in contracts may exist like a business to a business contract or maybe a consumer contract. The concept of unfair contract laws means to explicitly bar any sort of fraudulent, deceptive or unfair practices in the market place, which may benefit one party while making the other miserable. The thesis is based on a comparative study of United Kingdom with Pakistan in terms of unfair contract laws. Based on qualitative research, the thesis comprised of an investigative approach while taking into account the laws regulating unfair contracts, their legislative foundations and judicial constructions of both jurisdictions. All around the world, the notion of unfair contract laws is prevalent while some are making reforms with the digitalization and globalization in the current era. Policy makers and legal professional are all of the view that thorough legislation is the need of time to address modern issues which arises due to unfair contract terms in contract. The researcher in the end have tried to propose certain recommendations to protect consumers and promote fair business practices in Pakistan. Key words: contract, unfair contract practice, fair business

### Introduction

Contract is a mutual agreement of the private parties creating mutual obligations that are enforceable by law. (Chen-Wishart, 2022) Unfair contract laws are designed to protect parties from contracts that contain oppressive or unconscionable terms. The term “unconscionable” in its connotative meaning means “contrary to the dictates of conscience; unscrupulous or unprincipled; exceeding which is reasonable or customary;

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inordinate; unjustifiable”. (Smith, 2003) Unfair Contract laws were previously embodied in the common law. However, United Kingdom enacted various statutes in this regard to safeguard the basic structure of Contract and protect parties and consumers in the Consumer Contracts.

Unfair contract terms are those that are in violation of the need for good faith, which materially unbalance the rights and obligations of the parties. It covers both notices to consumers and terms of contracts. Contract provisions that unduly benefit one party—usually the business—at the expense of the customer are referred to as unfair contract terms. In the meantime, notices about terms and conditions, privacy policies, or warranty information must be presented in a way that makes sense to customers so they can understand their rights and responsibilities. When combined, these protections seek to uphold fairness and openness in the marketplace by giving customers the knowledge and security they require when negotiating with companies.

The doctrine of unconscionability has been justified by the courts in the common law system without recourse to the legal fiction. This doctrine has included two versions, which are applied by courts on the basis of application. Procedural unconscionability and substantive unconscionability. Procedural unconscionability includes the scrutiny for the presence of “bargaining naughtiness”. It means to check whether the contract terms were fair when negotiated? Or were there any procedural irregularities, like burying important terms of the agreement or using legal jargon which would cause the consent of the other party? On the other hand, Substantive Unconscionability reports for the gross unfair provision such as exorbitant prices or unfair inclusions or limitations of contractual remedies. (Richard A. Mann & Barry S. Roberts, 2003)

In the UK, the (Unfair Contract Terms Act , 1977) regulates unfair contract terms in business-to-business contracts as well as has consumer contracts to a limited extent along with the Unfair Contract Terms Directive 93/13/EEC in the EU. Whereas the Consumer Rights Act 2015 (CRA) regulates unfair terms in consumer Contracts specifically. Similarly, in Pakistan, the Contract Act 1872 bars certain unfair terms in the contracts, which would vitiate the contract in the long run. Additionally, Pakistan has almost five legislative statutes of consumer protection in every provincial territory, which too has provision of unfairness in contractual terms.

## **Overview of Unfair Contract Laws in the United Kingdom**

In the United Kingdom, the legal framework for addressing unfair contract laws is typically governed by the Unfair Contract Terms Act 1977 (UCTA). This substantial piece of legislation aims to guard weaker parties from unfair terms imposed by more potent entities in contracts. The Unfair Contract Terms Act applies to both consumer and non-consumer contracts, but its main focus is on unfairness created out of a contract where one party is kept aggrieved by the other in any business transaction. The Consumer Protection from Unfair Trading Regulations (CPRs) 2008 is another piece of legislation

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in the United Kingdom that introduces new rules about consumer protection and the responsibility of businesses to trade fairly in business-to-business transactions. It places a general duty on traders not to trade unfairly. The regulations also include a blacklist of 31 banned trading practices (Consumer Protection from Unfair Trading Regulations, 2008).

The legislation designed specifically for the Consumer's Rights are dealt by the Consumer Rights Act 2015 (CRA). The Consumer Rights Act aims to protect the consumers against contractual wording that could be used to give businesses an unfair advantage. To tackle the unfair advantages an authority by the name "Competition and Market Authority" has also been established by the United Kingdom government in 2013. The authority ensures fair businesses in UK and regulating anti-competitive activities. (Consumer Rights Act, 2015)

## **The Unfair Contract Terms Act 1977 (UCTA) in the UK**

The Unfair Contract Terms Act 1977 is a fundamental piece of legislation which regulates contracts by limiting the extent to which one party can avoid liability through the use of exclusion clauses such as disclaimers. It imposes further limits on the extent to which under the law of England and Wales and Northern Ireland civil liability for breach of contract, or for negligence or other breach of duty, can be avoided by means of contract terms and otherwise, and under the law of Scotland civil liability can be avoided by means of contract terms. Its purpose is to regulate the use of unfair terms in contracts and ensure a fair balance of rights and obligations between parties. The UCTA applies to both written and oral contracts and covers terms in standard-form contracts. Unfair Contract Terms Act (UCTA) would, accordingly, now not be applicable to private individuals who are in search to exclude or limit the liability. (Unfair Contract Terms Act , 1977)

The UCTA is divided into three parts. Part I applies to England, Wales, and Northern Ireland, whilst Part II applies to Scotland. Part III consists of provisions that applicable to whole UK. The UCTA covers a huge range of contractual phrases, which includes exclusion clauses, indemnity clauses, and guarantees for consumer goods.

It also covers misrepresentation, evasion by means of secondary contract, and other provisions about contracts.

## **Reasonableness Test**

Exclusion Clause is a clause in a contract where a party expressly incorporates a term to excludes or limits its own liability. An exclusion clause to be effective or ineffective, a test has been introduced by the lawmakers known as reasonableness test. The test is held as a yardstick for the certainty or reasonableness of the term included in the contract. Section 11(1) specifies that the test applies to clauses that seek to exclude or restrict liability for breach of contract, negligence, or other obligations. To assess

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reasonableness, the courts take into account various factors such as the bargaining power of the parties, the nature of the contract, and the clarity of term and the notice of the term to the other party, any previous or consistent course of business between the parties. In a notable case (*Phoenix Interior Design Ltd v Henley Homes Plc, 2021*) the court has also held that a term when it has to effective must be a usual term and not “unusual”, meaning thereby that a term which is not a common and does not demonstrate the ordinary business would be unusual. Secondly, the clause must be highlighted to the other party and must be easy to apply and not difficult like not mentioning the date or stipulating a date which is improbable and impracticable to make up to the due date. The onus of proving that a term was reasonable and fair to be incorporated in a contract shall lie on the party so contending (*Lothian, 2022*).

## **Protection of Consumers in (UCTA)**

The term Consumer has been defined by Section 12 of the Unfair Contract Terms Act as "A party to a contract whose purpose in entering into the contract is to acquire goods or services for their own personal use, or for use by another, and not for business purposes." (Section 12) (Unfair Contract Terms Act, 1977). The UCTA provides special protection to consumers by focusing on contracts where one party is dealing as a consumer. A consumer, in this context, refers to an individual who is not acting in the course of their business but taking something for one's own personal use. The unfair contract terms Act specifically declares that the purpose of consumer protection in the said Act is to ensure the goods or services provided to the consumer are fair and reasonable. The Act aims to prevent businesses from imposing unfair terms on consumers, which could potentially exploit their weaker bargaining position.

Unfair Contract Terms Act limits how people can avoid being responsible for breaking a contract, causing harm, or lying, depending on who they are dealing with. For instance, UCTA bars a person from any contract term or notice which would lead his escape from being responsible for causing death or injury by being careless. But this rule only works if the person he is dealing with is a consumer. By dealing with a consumer the producer needs to be more vigilant and responsible as causing of harm and death due to negligence is bared from excluding clauses under the UCTA. (Section 2(1) of (Unfair Contract Terms Act , 1977).

## **Prohibition of Unfair Contract Terms By UCTA**

Under the Unfair Contract Terms Act (UCTA), certain contract terms are deemed unfair and, therefore, are exclusively been declared as unenforceable by the Act. This express declaration bared certain acts previously used as an excluding or exemption clause. Section 3(1) of the Act states that liability for breach of contract cannot be excluded or restricted if it arises "in the course of a business" and "in respect of the sale of goods to a consumer." The Act also bars “unreasonable indemnity” which states that a consumer

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cannot be indemnified by the mere negligence of the party nor by the breach of contract, unless it satisfies the prerequisites of the reasonableness test as prescribed in Section 11 of the same Act. Likewise, guarantee of the consumer goods ordinarily provided for the personal use or consumption are borne by the Act. Any defect found as a result of production or manufacture then the goods cannot be excluded by the clause of guarantee to the consumer. This means that the monetary compensation or any other remedy cannot be stipulated beforehand for the personal negligence. (Section 5 of (Unfair Contract Terms Act, 1977)

## **|The Consumer Protection from Unfair Trading Regulations 2008**

The (The Consumer Protection from Unfair Trading Regulations, 2008) is another piece of regulatory legislation that not only bars certain acts or omission in the course of consumer transaction business, but it also creates certain criminal offenses. The regulations prohibits 31 such acts and practices that are considered unfair and unjust and also does not provide any space for aggressive practices in the commercial arena. Schedule 1 of the Regulations provides for banned practices in all situations.

The schedule ban misleading availability, misleading context, prize draws, pyramid schemes, aggressive sales, illegal demand and many more. The consumer protection from unfair trading regulations recognizes various kinds of consumers: average, targeted and vulnerable consumer. On this behalf, the regulations have categorized four types of practices common to all types of consumers. There are practices which are prohibited in all circumstances regardless of the situation or intention such as false endorsements while other practices arise due to the course of transaction like misleading actions or omission, aggressive practices and general duty not to trade unfairly. As for the actions or omission which effects the consumer not prohibited in all circumstances, the court has a general recourse to test the actions and omission with the eye of an average consumer that is that the consumer is reasonably well informed, circumspect and observant (Consumer Protection From Unfair Trading, 2023).

## **|Consumer Rights Act (CRA) 2015**

In the United Kingdom, (the Consumer Rights Act , 2015) serves as a pivotal legislation for strengthening and augmenting the regulation of unfair contract terms. The CRA is a significant piece of legislation that bolsters consumer protection by amalgamating and modernizing various preceding laws, like the Unfair Terms in Consumer Contracts Regulations of 1999.

The (Unfair Terms in Consumer Contracts Regulations, 1999) served as a vital precursor to the Consumer Rights Act. Its number one goal become to guard consumer from unfair contract terms and make certain that they're treated fairly in their dealings with businesses. The regulation especially applied to conventional phrases in contracts among businesses and consumers, aiming to slash the use of unfair phrases and



empower consumers to undertaking such terms in court. Courts had been authorized to declare unfair terms as unenforceable, thereby providing consumers means to seek redress and fostering a fairer balance in contractual relationships. The Consumer Rights Act of 2015 introduces devoted laws regarding digital content, making sure that consumer own well-defined entitlements and answers when they acquire digital goods such as applications and software etc.

## **Empowering Consumers and Ensuring Fair Contracts in the Consumer Rights Act 2015**

The Consumer Rights Act (CRA) indicates a radical and updated approach to safeguard consumers in the United Kingdom. It tackles concerns associated with unfair settlement terms while endowing purchasers expanded rights and solutions. The emphasis is placed on fostering transparency and fairness in transactions between businesses and consumers, in the end striving for greater equitable and well-balanced contractual surroundings.

The Consumer Rights Act (CRA) makes an extensive impact by using imparting consumers more potent rights and answers in situations wherein they come across unfair contract terms in contracts and notices each. Notably, Section sixty-two of the Act offers customers the authority to question the fairness of a contract time period in any agreement or consumer notice.

If a term is deemed unfair, it will not be enforceable against the consumer, effectively preventing consumers from being unfairly constrained by oppressive or unfavorable contractual provisions.

Section 63 of the Consumer Rights Act (CRA) contemplates various terms which may or must be regarded as unfair. This section provides for the part 1 of Schedule 2 which is a non-exhaustive and indicative part of the Act. The part provides twenty such terms which are exclusively borne while making a contract with the consumer. These include exclusion of death and personal injury, the imposition of compensation or sum on the consumer where the consumer decides not to conclude or perform the contract, a term with the object that the trader can terminate the contract without any notice etc. (Part 1 of Schedule 2 (Consumer Rights Act, 2015))

The Act confers the executive powers on the Competition and Markets Authority and other regulators for the enforcement and regulations of the terms deemed unfair and unjust. Section 71 of the Act also stipulates the duty of court to look into the contract term that whether fulfills the requirement of a fair and just term ,even if none of the parties to the contract has raised the issue.(Section 71 of (Consumer Rights Act, 2015))

## **The Competition and Markets Authority (CMA)**

The United Kingdom relies on the (The Competition and Markets Authority, 2013) to have a substantial impact in upholding consumer protection laws, notably those

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pertaining to unfair contract terms. While it is not a legislative entity, the Competition and Market Authority functions as a non-ministerial government department with the objective of fostering competition and upholding equitable markets. Its primary mission is to protect consumer well-being by examining business practices and contracts that could potentially harm consumers.

The CMA wields significant investigative authority, affording it the capability to carry out comprehensive assessments of business procedures and contractual arrangements. These investigative prerogatives empower the CMA to initiate inquiries either as a proactive measure or in response to grievances brought forth by consumers, or various aggrieved parties. These investigations serve as a means for the CMA to pinpoint potential breaches of consumer protection legislation, including unfair contract terms that have the potential to exploit or detrimentally affect consumers.

## **Unfair Contract Terms Guidance by Competition and Market Authority**

The laws pertaining to unfair contract terms and notices primarily reside within the Consumer Rights Act 2015, which serves to streamline and safeguards rights provided to consumers through preexisting laws. To assist businesses in comprehending the criteria that render terms and notices unfair and the potential repercussions of employing such language, the CMA has issued guidance. This guidance further offers advice to businesses on ensuring that their contract terms and notices are both equitable and lucid. These guidance act as a coordinator between the Consumer Rights Act and the authority. This guidance protects the consumers from abusive and unfair contract terms in a contract. The guidance explains what constitutes an unfair term, how to assess whether a term is unfair, and what actions can be taken if a term is found to be unfair. The guidance also contains examples of terms that may be unfair in different sectors and situations, such as banking, insurance, travel, and online services. The guidance also provides for test regarding the authenticity of a contract term or notice and has provided in the guidance a “fairness test”. In 2.10 of the guidance, the rule of fairness has been established which constitutes two elements for the fairness test: significant imbalance which is detriment of the consumer and good faith. (Unfair contract terms Guidance, 2015)

When the CMA identifies potential breaches of consumer protection laws related to unfair contract terms, it possesses the authority to take enforcement action against business traders, stakeholders and manufacturers. Such enforcement actions may involve imposing fines, issuing warnings, or seeking legal remedies through court proceedings to protect consumers' interests and uphold fair contractual practices. This serves as a deterrent for businesses from engaging in practices that could be harmful or unfair to consumers.



## **Judicial Interpretation and Notable Case Laws**

The UK courts have consistently demonstrated a judicious and effective application of unfair contract laws, safeguarding consumers and other businesses from exploitative and unfair terms with a precision that upholds both equity and legal integrity. Common law has always been in favor of the oppressed even before the UCTA was enacted. The common law provided protection to both parties of the contract as well as consumers by seeking whether the term was incorporated in the contract or the clause covers the loss in question.

In the case of (*Olley v Marlborough Court Ltd*, 1949) the claimant entered into a contract with the defendant to stay in a hotel room, where a notice inside the room disclaimed the defendant's responsibility for any loss or stolen articles unless they were deposited with the managers for safekeeping in a sealed package with a receipt obtained. The claimant's belongings were stolen due to the defendant's employees' negligence in safeguarding the room key. When the claimant sued for the loss, the defendant attempted to rely on the exclusion notice. The court, however, ruled in favor of the claimant, finding that the notice was not effectively incorporated into the contract. The ruling was given because the contract was formed at the front desk during the room reservation, and the claimant only became aware of the notice afterward, rendering it too late to be part of the agreement. Furthermore, the notice in the bedroom, when properly interpreted, did not absolve liability for loss or theft resulting from the defendant's employees' negligence; it solely applied to non-negligent loss. This case underscores the principle that an exclusion or limitation term cannot be considered part of the contract unless the claimant had reasonable notice of it before entering into the agreement.

In the famous case of (*Curtis v Chemical Cleaning & Dyeing Co*, 1951), the claimant, Curtis, entrusted her wedding dress for cleaning to the defendant, the Chemical Cleaning and Dyeing Company. During the purchase of the company services, the defendants presented a form for the claimant to sign, and she sought clarification from the service assistant regarding the consequences of signing. The assistant informed her that the form merely contained an exclusion of liability clause pertaining to potential damage to beading and sequins on garments. However, unknown to Curtis, the exclusion of liability clause extended to cover all possible damage that might occur during the cleaning process. When Curtis returned to collect her dress, it had suffered damage, prompting her to file damages claim against the defendants. In response, the defendants argued that she had no grounds for the claim due to the exclusion of liability clause. The Court of Appeal ruled in favor of the claimant, asserting that while a party is typically bound by the entirety of a signed written contract, even if they haven't fully read it, a clause should not be legally enforceable if the drafting party misrepresents the clause's implications to the other party. Consequently, the exemption of liability clause



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was not deemed adequately incorporated into the contract, and the claimant was granted damages.

In the case of (*Thornton v Shoe Lane Parking Ltd*, 1970), the claimant parked his car in the defendant's automated car park, and while a notice outside mentioned charges and excluded liability for car damage, it did not refer to any personal injury. Further into the premises, a pillar displayed eight detailed 'conditions,' with the second condition disclaiming liability for injuries on the premises. An automated machine issued a ticket upon entry, which contained small lettering stating it was 'issued subject to conditions displayed on the premises.' The claimant, however, was unaware of these notices and subsequently suffered an injury on the premises, leading to a lawsuit under occupier's liability. The defendant sought to rely on the exemption condition on the pillar, but the Court of Appeal ruled in favor of the claimant, finding that the defendant had not provided reasonable notice of the condition, thus rendering it non-incorporated into the contract. The case established that a normal written clause is not part of an unsigned contract unless the claimant is aware of it, the defendant provided reasonable notice of the document's contractual terms, or a reasonable person would realize that the document contained such terms. In cases involving 'unusual or onerous' clauses, the defendant must take extra measures to ensure the claimant has reasonable notice of the clause itself, not merely the existence of contractual clauses, with the notice typically needing to be prominently displayed for it to be effectively incorporated. Furthermore, the court highlighted the significance of providing reasonable notice before the contract's creation, as notices seen after the contract's formation are typically considered too late to be binding. Lord Denning also contended that terms on a ticket issued by an automated machine cannot be contractually binding, as customers have no opportunity to refuse them when they place money in the machine, making it crucial for reasonable notice to be given before the contract is established.

The aforementioned cases served as the cornerstone for the legislative document of the Unfair Contract Terms Act of 1977. Through their legal precedents and profound impact, these cases have woven a rich tapestry of jurisprudence, which envelops the realm of unfair contract terms in the United Kingdom. They stand as steadfast sentinels, guarding and fortifying consumer rights and protection across a diverse spectrum of sectors, casting a luminous beacon of fairness and equity upon the legal landscape.

## **Overview of Unfair Contract Laws in Pakistan**

For more than five score years Pakistan remain a British colony. In all these years, the laws enacted by the Great Britain remained as legacy for their colonies even after their creation as an independent state. Pakistan remained an unswerving state in overriding or amending the laws previously enacted by their colonizers (Malik, 2018). For this reason, Pakistan also adopted the common law practice of using the equity principle in courts for questions which were not covered by any legislation yet. This means the

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question is leftover to the prudence of the Judge, presiding over the court. In Pakistan, courts have held in various circumstances the principle of unconscionability. The doctrine of unconscionability empowers courts to invalidate contractual provisions that are unjust or heavily favor one party over the other. But unlike the United Kingdom, Pakistan has no limited legislation for unfair contract terms which exclusively bars or limits certain terms or notices for the business or consumers.

The (The Contract Act, 1872) in Pakistan is the primary legislation regulating the contract law. The Contract Act addresses various vitiating factors that can render a contract unenforceable at the discretion of the aggrieved party. Additionally, in the context of consumer protection, each province in Pakistan has enacted specific legislation that provides definitions and guidelines for identifying and challenging unfair contract terms in consumer agreements. These provincial laws empower consumers by delineating specific criteria that can be used to determine the fairness or unfairness of contract terms, thereby enhancing consumer rights and protections.

An independent governmental agency, the (Competition Commission of Pakistan, 2007) has been established in order to look after and ensure free competition in economic spheres and to protect the consumer from unfair trade agreements. The commission has established the (Office of Fair Trade (OFT)), which aims at protecting consumers against deceptive marketing practices.

## **Doctrine of Unconscionability in Pakistan**

The doctrine of unconscionability is a legal principle that allows courts to invalidate contracts or clauses that are unfair, oppressive, or excessively one-sided. The doctrine aims to protect parties who are vulnerable, ignorant, or under duress from being exploited by the other party. The principle is applied by the Pakistani courts despite any express legislation regarding the wording or act or omission of the party at whose hands the other party suffers.

In the case of (Abdul Rahim Vs Messrs United Bank Ltd of Pakistan , 1997), the High Court of Sindh held that “ Courts not only assess the procedural fairness before finalizing contracts but also ensure the substantive fairness of the contract outcomes. They can scrutinize the fairness of contractual consequences using doctrines like "unconscionable bargains," "inequality of bargaining power," and "economic duress." If one party dominates the other, and the contract appears unfair, the law presumes undue influence, shifting the burden to the stronger party to prove they didn't overbear the others will. The classical theory of contract law primarily emphasizes procedural fairness, promoting freedom of bargaining power while ensuring fair negotiation and conclusion processes. However, in modern times, this classical theory has faced criticism and erosion, with courts sometimes striking down or amending contract terms when they lead to highly unfair, unjust, and unreasonable outcomes.”



## **The Contract Act 1872 and Unfair Contract Terms**

Within the framework of the Contract Act, 1872, a fundamental requirement for a valid contract is the existence of free consent, signifying a shared, non-coerced, and unimpaired agreement devoid of coercion, undue influence, fraud, misrepresentation, or mistake. These are classical vitiating factors which renders a contract voidable at the option of one party. These factors include coercion (the use of force or threats to secure consent), undue influence (exploiting dominance or trust to gain an unfair advantage), fraud (deliberate deception about material facts), and misrepresentation (innocent or negligent misstatements) and mistake. These factors does not come and become part of the main contract like an exclusion or limitation clause, but are outside part of contract depending upon the conduct of the benefiting party.

## **Personal Injury or Oppose to public policy is Unfair**

The Contract Act of 1872 offers a nuanced perspective on unfair contract terms, with its definition remaining implicitly limited, thereby entrusting the judicial system with the delicate task of discerning the true essence and intent of the contract. Section 23 of the Contract Act allows the court to unravel the intricate web of the contract's objectives and purposes. The section entrusts the power to the court to determine whether Court terms bear the weight of fairness or unjust exploitation. If it is found that any object or consideration of the agreement involves or implies injury to the person or property, or the court regard it as immoral or against the public policy.

The courts have held that when an agreement is found to be unconscionable, unjust, inequitable or oppressive leading to a vexatious litigation would be against the public policy. (Mughal, Proof of Execution of Documents Required by Law, its Modes and Manners- Importance in Evidence, 2016)

## **Compensation for Penalty Stipulated in the Contract Act**

A very brief explanation about an unfair contract term is also mentioned in Section 74 of the Contract Act. The Section provides for a situation where a party before the breach of a contract warn the other about the consequences and put a penalty in a contract on a condition that if the contract is breached in future. The law there specifically bars the party which is going to receive the penalty that the compensation must be reasonable and not exceed the amount mentioned in the contract. Although the section does not bar about the amount but the courts have a consensual view that the amount of penalty or stipulated damages must not be unfair and unreasonable.

## **Unfair Contract Laws in Consumer Protection Acts**

Pakistan did not have a unified national consumer protection law like prevailing in the United Kingdom. Instead, consumer protection laws are primarily enforced at the provincial level, with each province having its own consumer protection legislation. Pakistan currently has five different consumer protection laws because all five



legislations confide the original and appellate jurisdictions in separate judicial and executive authorities. These laws are enacted and administered by the provincial governments to address various aspects of consumer rights and protection (Mehak Rashid; Abdus Samad Khan; Nuaman Gul; Hina Alauddin; Riaz Ahmad Khan., 2020). Each Consumer Protection laws has provided for a Strict liability and thus repudiated the concern of unfair contract laws at a minimum level. The journey of consumer protection legislation in Pakistan has been marked by delays and inconsistencies. The initial law was enacted in 1995, but it took 16 years to frame the necessary rules. The effectiveness of legislation is significantly hampered until these rules are in place. While KPK managed to establish rules in 2007 after a decade, it failed to expand its network of consumer courts and district councils, resulting in only four consumer courts. Punjab, on the other hand, has been more proactive, with 17 special consumer courts and district councils. Sindh, after introducing the Consumer Protection Ordinance in 2004 (though it lapsed due to non-presentation in the provincial assembly), managed to pass legislation in 2015, but the province still lacks consumer courts and district councils, despite the legal requirement to establish them. Baluchistan faces a similar situation, with only legislation in place and no functional courts or councils to protect consumers' rights. This highlights the need for more comprehensive and timelier implementation of consumer protection measures in the country (Idrees, 2022).

The Consumer Protection Acts which covers the research related questions are discussed below.

## **The Islamabad Consumer Protection Act 1995**

The Islamabad Consumer Protection Act is the oldest legislation in Pakistan regarding the safeguard and protection of consumers. The Act does not elaborate any unfair term to be regarded as bared but it creates a body to be known as “Council”, which would be regulated by governmental officials and they would promote and protect the rights of the consumer including the right to fair trade practices and exploitation of the consumers. (Section 5(d) of the (The Islamabad Consumers Protection Act, 1995)).The Act authorizes an authority which would receive the complaints on behalf of the council for investigation and determination thereof.

## **The Khyber Pukhtunkhwa Consumer Protection Act 1997**

The ([Khyber Pakhtunkhwa] Consumers Protection Act, 1997) provides for the prohibition of unfair trade practices through an amendment made in 2015. The unfair trade practices covers a wide range of definitions which include deceptive marketing and advertising practices that are prohibited, including misrepresenting the quality, sponsorship, or compliance with standards of goods or services; falsely offering second-hand products as new; providing misleading information about the price of products or services; making false claims about professional services, disparaging competitors, or

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falsely advertising items at bargain prices with no intention to sell at the stated price. It also addresses false promises of gifts or prizes and inaccurate descriptions of goods and services offered through mail order. The definitions incorporated the electronic media usage in the unfair trade practices. (Section 2(o) of the ([Khyber Pakhtunkhwa] Consumers Protection Act, 1997)). The Baluchistan assembly adopted the same definition of unfair trade practices in their consumer protection Act of 2003.

## **The Punjab Consumer Protection Act 2005**

The (The Punjab Consumer Protection Act, 2005), is somehow the most sophisticated in terms of unfair terms in a consumer contract. The legislation not only define unfair practices to be unlawful but also prohibit the exclusion of any sort of liability. In part five of the Act, the unfair practices has been elaborated. (Section 21 of (The Punjab Consumer Protection Act, 2005)). While on two occasions the exclusion of liability has been prohibited. Once, when the liability is arising out of a defective product while other is the strict liability arising out of defective and faulty service. This means that if someone is responsible for causing harm to a consumer, they can't escape their liability (responsibility) by using the terms of a contract or any notices (Section 12 and 17 of Punjab consumer Act 2005). The Sindh legislative Assembly later in 2014 adopted the same mode and tone adopted by the Punjab Consumer Protection Act.

## **The Competition Commission and the Office of Fair Trade (OFT) in Pakistan**

The Office of Fair Trade (OFT) was established in 2008 with the goal to encourage businesses to comply with competition law and improve their trade practices through self-regulation while acting decisively to stop hardcore or flagrant offenders of the Competition law in Pakistan. The office aims to protect consumers from deceptive marketing practices and to ensure due rights. The office has issued guidelines over a period of time for the consumers to protect them from any sort of unfair and fraudulent practices. The latest of all is the guidelines on Deceptive Marketing Practices published in April 2023 (DECEPTIVE MARKETING PRACTICES , 2023). The office works as an investigative agency to hold where unfair practices are carried out.

## **Summary of Key Findings**

This study examines the legal frameworks of the United Kingdom and Pakistan in relation to unfair contract laws, highlighting significant disparities that might impact consumer protection and corporate equity. The differences arise due to variations in legislation, including their provisions, enforcement methods, and stakeholder engagement.

The United Kingdom has a robust and extensive legal system for regulating unfair contract terms, which applies to all sorts of contracts and includes safeguards to protect

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consumers. The Consumer Rights Act of 2015 and the Unfair Contract Terms Act of 1977 establish a robust framework for protecting consumer rights and promoting equitable corporate practices. Companies who participate in unfair commercial practices are liable to face punishment from the UK's Competition and Markets Authority (CMA) and other regulatory entities. The establishment of a robust consumer protection system is further facilitated by public awareness initiatives and the engagement of civil society.

Nevertheless, the legal infrastructure in Pakistan for addressing unfair contract clauses is still evolving and has difficulties in both execution and enforcement. The protection of consumer rights is insufficient owing to the absence of legislation that particularly addresses unfair contract conditions and the challenges in implementing such laws. The progress of consumer education is still far from satisfactory, and regulatory entities such as Pakistan's Competition Commission are just now starting to realize its whole capabilities. The lack of standardized contract terms and obligatory disclosures hinders transparency in business.

These discrepancies have significant ramifications. British customers enjoy the advantage of a well-defined legal structure that enables them to contest unjust contract clauses. Effective enforcement measures and substantial fines prevent companies from participating in such practices. Public education campaigns and the active participation of civic society enhance consumer confidence, hence fostering a fairer and more balanced economic environment.

Pakistani clients have difficulties as a result of a lack of clear legal guidelines, ineffective implementation, and insufficient understanding. Companies may engage in unethical practices without sufficient consideration for the potential detrimental impact on their reputation, client base, and financial performance. The advancement of consumer protection is hindered by the ineffective utilization of stakeholder engagement, including public-private partnerships and civil society involvement.

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