

The Role of Class Actions in Supporting the Consumer Rights

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Introduction

The main purpose of the law regarding the consumers' rights is to create equality in the relation between producers and suppliers on the one hand and the suppliers and the consumers on the other hand. The applied commutative justice takes the relationships and the differences in the contractual power into account without abusing the weaker party rights by considering the state intervention in the relation between producers and consumers justifiable due to the importance of economic liberalization, the expansion of mass production, the increasing number of multinational companies, and the unequal power of the parties in consumption. Thus, the established commutative balance or justice requires both parties' agreement. Accordingly, the law on consumption is formed with the idea of establishing balance and regulating the relations by imposing certain conditions on the stronger side (producers and suppliers) and identifying legal rights for the weaker party (consumers).

Theoretical Framework

In the Iranian statutory law, the consumer rights faces many challenges such as the lack of clarity of consumer concepts, the lack of access to information, lengthy legal proceedings, heavy costs of litigation, and the producers' dependence on state-owned as well as quasi-governmental institutions. Thus, what will be focused in this essay is merely the role of a class action in solving the challenges posed by the cost of the proceedings, the length of the proceedings, and the lawyers wages, many of these challenges have been solved by class action while at the same time class action increasing the efficiency of consumer reparations methods. In so doing, firstly, the class actions are described and secondly, the legal challenges of the proceedings in the realm of consumers' rights will be explained. Ultimately, the role of the class

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actions in solving these challenges will be addressed. At the same time , some Opposition regarding the necessity of the class actions are mainly based on the foreign countries proceeding and legal systems. therefore , We do not explain these views and only considering the barriers of brining a class action in Iranian law and how to apply this method of procedure suffices.

Methodology

This study attempts to find an answer to questions above by using an analytical-descriptive approach. To this aim, the present study seeks to examine the existing challenges of protecting the consumer rights in Iran while reviewing the class action lawsuit to ensure their rights.

Results and Discussion

Consumers' rights have two main purposes: correcting the product defects and protecting the consumers' loss. The present study showed that the identification of class actions is the complementary factor and the final circle of providing the desired goals since the goals of class actions system are increasing judicial efficiency, reducing the costs of court proceedings, saving the costs of bringing the dispute, increasing the parties access to the legal solutions, preventing the conflicting decisions over time, and predicating the judicial processes which promotes the consumers' rights on the one hand and improves the production processes on the other hand. However, this research additionally showed that the use of class actions in the realm of consumer rights requires reducing the workload of the courts, the cost of proceedings as well as preventing the conflicting views which can lead to gaining one of the most important goals of consumers' rights namely *deterrence*. The consumer rights can be accomplished if the producers are more careful in terms of complying with the product standards and informing the consumers about a defect or deficiency in the products. This may be done slowly or may not be accomplished in the absence of a solution such as a class action. This issue highlights the importance of using this solution namely 'resorting to the class actions' in completing the substantive efforts to support the consumers.

Key words: Effective support, Class litigation, Judicial economy

JEL Classification: E21, k13, k41.

References (in Persian)

- Adib, M. (2010). Moghadameyi bar hoghogh Masrafkonande (An introduction to consumer rights), *Journal of the Bar Association*, No. 108, pp. 1.45.
- Egura, J. C. (2000). Tarife masrafkonande (Consumer definition), *Journal of Legal Research*, Vol 29-30 ,pp. 309-330.
- Bahrani, B. (2003). Ayeen dadrasi madani karbordi (*Civil procedure code (Applied)*). Tehran: Behina Publishing.
- Shams, A.(2013). Ayeen dadrasi madani (*Civil procedure code*). Tehran: Tehran Publishing.
- Vahedi, G. (2011). Ayeen dadrasi madani (*Civil procedure code*). Tehran: Tehran Publishing.
- Ramwi, G. (2013). Hoghoghe masradkonande va hoghogh sonati (The law of the classical system and consumer rights, *Information Newspaper*, 25777

Mostafa Montazkani, F. (2011). Motaleyi bar naghsh sazmanhaye mardomnahad dar hemayat az hoghogh masrafkonande (A study on the role of non-governmental organizations in protecting consumer rights in the country), *Journal of Business Reviews*, pp. 61-63.

References (in English):

- Administrative Office of the US Courts. (2013). *Report of the civil rules advisory committee*. Retrieved from www.uscourts.gov/file/15486/download.
- Alberta Law Reform Institute. (2000). *Class actions* (Report No. 85). Retrieved from www.cfcj-fcjc.org/inventory-of-reforms/alberta-class-proceedings-act.
- AltaLRI Memorandum, (1995). *Discretionary power of court, federal judicial center, manual for complex litigation*. Eagan, Minnesota, West Publishing.
- Australian Law Reform Commission. (1999). *Managing justice* (Report No. 89). Retrieved from <https://www.alrc.gov.au/report-89>.
- Bale, P., Cartwright, F., & Dickins, H. (1994). Group actions in a product liability context, 45 *Hofstra Law Review*, Vol. 7.
- Basten, J. (1996). Representative proceedings in new South Wales, *Law Society Journal*, 34(2), pp. 18-45.
- Camp, J., & Matthews, D. (1998). Actions brought under the class proceedings act, RSBC 1995, c 50, *CLE Society of BC Torts*, pp. 20-47.
- Campion, J. A., & Stewart, V.A. (1997). Class actions: Procedure and strategy, *Advocates*, 19, 20-42.
- Claridge, T. (1997). Heart patients settle class action, Canadians who get defective pacemaker part to share in \$23.1 million, Toronto, The Globe and Mail (6 October 1997)
- Cooper, E. H. (2001). Class action advice in the form of questions, *Duke Journal of Comp and International Law*, pp. 215-248
- Cornwall, A. (1995). Class actions get go ahead, *Alternative Law Journal*, VOL. 20, NO 3 JUNE •1995, pp. 138-140.
- Morabito, V., & Epstein, J. (1996). *Class actions in Victoria _Time for a new approach* (Report No. 2). Retrieved from <https://trove.nla.gov.au/version/10364817>.
- Davis, M. J. (1998). Toward the proper role for mass tort class actions, *Oregon Law Review*, 77, pp. 157-233.
- Dickson, A. (1998). Class proceedings certification, Manitoba, *Canadian Lawyer Publication*.
- Donnan, J. (2000). Class actions in securities fraud in Australia, *18 Company and Securities Law Journal*, pp. 80-104
- Garner, B. (2009). *Black law dictionary*, Eagan, Minnesota United States, West Group.
- Greer, M. H. (2010). *A Practitioner's guide to class actions*. Chicago: American Bar Association.
- Harlow, C., & Rawlings, R. (1992). *Pressure through law*. London: Routledge.
- Hensler, D. R., Pace, N. M., Dombey-Moore, B., Giddens, E., Gross, J., & Moller, E. K. (2000). *Class action dilemmas: Pursuing public goals for private gain*. Santa Monica: RAND Institute for Civil Justice.
- Heureux, N. (1992). Effective consumer access to justice: Class actions. *Journal of Consumer Policy*, 15, pp. 445-462.

- Kaplan, B. (1967). "plan.؟فحاتdilemmas: p؟راتalia" Continuing work of the civil committee: 1966 amendments of the federal rules of civil procedure (Part 1), *Harvard Law Review*, 81, pp. 356-416
- Kirby, M. D. (1983). Reform the law: Essays on the renewal of the Australian legal system. Melbourne: OUP.
- Kleefeld, J. C. (2001). Class actions as alternative dispute resolution, *Osgoode Hall Law Journal*, 39, pp. 817-841.
- Lindblom, P. H., & Watson, G. D. (1993). Complex litigation: A comparative perspective, *Civil Justice*, pp. 33. 78
- Lord Woolf, (1996). *Access to justice: Final report to the lord chancellor on the civil justice system in England and Wales*. Retrieved from Lord Woolf, (1996). Access to justice: Final report to the lord chancellor on.
- Manitoba Civil Justice Litigation Committee. (1996). *Civil justice review task force report*. Retrieved from digitalcollection.gov.mb.ca/awweb/pdfopener?smd=1&did=22063&md=1.
- Manitoba Law Reform Commission. (1999). *Class proceedings* (Report No. 100). Retrieved from www.manitobalawreform.ca/pubs/pdf/archives/100-full_report.pdf.
- Mildre, M. (2001). Group actions. In G. G. Howells (Ed.), *The law of product liability* London: Butterworths.
- Morabit, V. (1997). Taxpayers and class actions. *UNSW Law Journal*, 20, pp. 372-389.
- Morabito, V. (2001). I deological plaintiffs and class actions-an Australian perspective, *University of British Columbia Law Review*, 34, pp. 459 – 514.
- Newberg, H. B., & Newberg, C. A. (1992). *On class actions* (3rd ed.). Colorado Springs: McGraw-Hill Inc.
- Owles, D. (1991). Class actions in the English courts tranquilizers, *Product Liability International Journal*, 37, pp. 32-69.
- Page, S. J. (2000). Class actions in Canada: How they work and their impact on health organisations and businesses, *Health Law in Canada*, 21(1), pp. 1-23.
- Pino, T. (1984). Class actions in Victoria, *Law Institute Journal*, pp. 42-90.
- Prichard, J. R. S. (1984). Class action reform: Some general comments, *Canadian Business LJ*, 9, pp. 265- 309.
- Stuyck, J., Terryn, E., Colaert, V., & Van Dyck, T. (2007, January 17). Analysis and evaluation of alternative means of consumer redress other than redress through ordinary judicial proceedings tender specification. *The Study Centre for Consumer Law – Centre for European Economic Law Katholieke Universiteit, Leuven, (Belgium)*,
- Morabito, V. & Epstein, J. (2000). Attorney-general's law reform advisory council, class actions in Victoria-time for a new approach.London :Sweet & Maxwell.
- Watson, G. D. (2001). Class actions: The Canadian experience, *Duke Journal of Comp and International Law*, pp. 1-93.
- Weinstein, J. B. (2001). Compensating large numbers of people for inflicted harms: Keynote address, *Duke Journal of Competition and International Law*, 11, 165-174.
- Willging, T., Hooper, L., & Niemic, R. (1996). *Empirical study of class actions in four federal district courts: Final report to the advisory committee on civil rules*, Washington :Federal Judicial Center.

Zuckerman, A. (1999). Justice in crisis: Comparative dimensions of civil procedure. In A. Zuckerman (Ed.), *Civil justice in crisis: Comparative perspectives of civil procedure*, Oxford, Oxford University Press.

Cases:

Abdool v Anaheim Management Ltd, 1994.
Abdool v Anaheim Management Ltd, 1995.
Amchem Products Inc v Windsor, 1997.
Causey v Pan American World Airways Inc, 1975.
Dabbs v Sun Life Ass Co of Canada, 1999.
Femcare Ltd v Bright, 2000.
Gold Coast City Council v Pioneer Concrete (Qld) Pty Ltd, 1997.
Harrington v Dow Corning Corp, 2000.
Hobbs v Northeast Airlines Inc, 1970.
Hollick v Metropolitan Toronto (Municipality), 1998.
Johnson Tiles Pty Ltd v Esso Aust Ltd, 1999.
Kenora (Town) Police Services Board v Savino, 1997.
King v GIO Aust Holdings Ltd, 2000.
Marks v GIO Aust Holdings Ltd, 1996.
McKrow v Manufacturers Life Ins Co, 1998.
Nantais v Telectronics Proprietary (Canada) Ltd, 1995.
Phillips Petroleum Co v Shutts, 1985.
Pittman Estate v Bain, 1994.
Schutt Flying Academy (Aust) Pty Ltd v Mobil Oil Aust Ltd, 2000.
Scott v Ontario Business College, 1977.
Scott v TD Waterhouse Investor Services (Can) Inc, 2001.
Smith v Canadian Tire Acceptance Ltd, 1995.
Sutherland v Canadian Red Cross Soc, 1994.
Tiemstra v Insurance Corp of BC, 1996.
US Parole Comm v Geraghty, 1980.
Walker Estate v York Finch General Hospital, 1997.
Wicke v Canadian Occidental Petroleum Ltd, 1999.
Woodhouse v McPhee, 1997.