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STATUTORY IMMUNITIES AGAINST PREDATORY CREDITOR PRACTICES: A DOCTRINAL ANALYSIS OF “LESION” (GHABN) IN THE SAUDI INSOLVENCY REGIME

Salih Mohammad M Alhamami^{1*}, Ghaleb Mubarak S Alhamami², Mohammed Ali M. Alasmari³, Ahmed Ahmed S Al-Tuwaili⁴

¹Najran University, Najran, Kingdom of Saudi Arabia, smalhamame@nu.edu.sa, <https://orcid.org/0009-0005-3751-347X>

²Najran University, Najran, Kingdom of Saudi Arabia, gmalhammami@nu.edu.sa <https://orcid.org/0009-0001-8981-4603>

³Islamic University of Madinah, Kingdom of Saudi Arabia, m.alasmari@iu.edu.sa <https://orcid.org/0009-0006-3016-3283>

⁴Najran University, Najran, Saudi Arabia, ahmedaltawily@hotmail.com

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Corresponding Author: Salih Mohammad M Alhamami
(smalhamame@nu.edu.sa)

ABSTRACT

In the complex dynamics of insolvency litigation, the vulnerability of the distressed debtor often exposes them to predatory opportunistic behavior by creditors. While global insolvency discourse typically prioritizes asset recovery and creditor maximization, this study investigates a critical counter-narrative within the Saudi Bankruptcy Law: the protection of the debtor from "Lesion" (Ghabn) and fraudulent claim inflation. By adopting an inductive-analytical methodology, the research explores how Saudi jurisprudence integrates the Islamic legal concept of Ghabn (gross disparity) with modern statutory provisions to criminalize the exploitation of financial distress. The findings indicate that the legislator has established a "conduct-based" immunity, where the validity of bankruptcy proceedings is contingent upon the good faith and equitable conduct of the creditor. This mechanism serves not only to protect individual debtors but to preserve the integrity of the commercial ecosystem against bad-faith litigation.

KEYWORDS: Ghabn (Lesion), Predatory Lending, Creditor Malfeasance, Saudi Bankruptcy Law, Equitable Defenses, Commercial Ethics.

1. INTRODUCTION

The architecture of contemporary insolvency systems is frequently criticized for its inherent asymmetry, often favouring the aggressive enforcement rights of creditors over the rehabilitation of the debtor. However, advanced legal systems recognize that the stability of the market relies on curbing "moral hazard" not only on the part of the debtor but also regarding the conduct of creditors.

The Saudi legal framework has undergone a paradigm shift, moving towards a model that enforces strict ethical standards in commercial dealings. The Saudi Bankruptcy Law does not merely function as a liquidation manual; it operates as a regulatory instrument that balances rights with obligations of probity. This legislative trajectory is consistent with the Kingdom's broader vision, which "operationalizes principles of prevention and oversight to protect life, property, and the environment through clear frameworks" (Alasmari & Zurib, 2025). In the specific context of insolvency, this "oversight" translates into rigorous scrutiny of creditor claims to prevent the weaponization of debt.

This study focuses on a specific, sophisticated protective mechanism: the prohibition of Lesion (Ghabn) and the criminalization of Claim Inflation. This mechanism addresses the scenario where a creditor, exploiting the debtor's desperate need for liquidity or fear of bankruptcy, imposes unconscionable terms or artificially inflates debts to force insolvency proceedings.

1.1. Significance of the Study

The academic value of this research lies in its exploration of the intersection between Contract Law and Insolvency Law

1. **Ethical Grounding:** It highlights how the law enforces "Honesty and Probity" (Amanah) in economic activities, elevating these from moral virtues to binding legal requisites.
2. **Public Policy:** It establishes that protection against lesion is a matter of Public Order; parties cannot contract out of these protections, ensuring that the sanctity of the market supersedes private agreements.
3. **Deterrence:** By analyzing the sanctions attached to these violations, the study demonstrates the law's capacity to deter predatory litigation.

1.2. Research Problem

The primary problem addressed is the "Creditor-Centric Bias" prevalent in traditional bankruptcy

analyses, which often ignores the phenomenon of "Involuntary Bankruptcy Abuse." The Saudi Law remedies this by penalizing creditors who use deception to trigger proceedings. However, this protective shield specifically the application of Ghabn doctrine within bankruptcy courts lacks a consolidated theoretical framework in existing literature.

1.3. Methodology

The study employs an inductive methodology to survey the statutory texts (specifically the Penalty Provisions) and an analytical methodology to deconstruct the legal elements of Ghabn within the specific context of the Saudi Bankruptcy Law (Royal Decree M/50).

2. CONCEPTUAL FRAMEWORK: THE DOCTRINE OF LESION (GHABN)

To understand the statutory protection, one must first delineate the jurisprudential roots of the concept of Lesion within the Saudi legal environment.

2.1. Defining Protection and the Debtor

- **Protection** In this context, protection is not merely a procedural shield but a substantive immunity. It is defined as the legal prohibition preventing creditors from unlawfully infringing upon the debtor's assets through manipulation of debt value (Cornu, 1998).
- **The Bankrupt** The law defines the bankrupt as a debtor whose "debts have absorbed all of his assets." This definition implies a state of vulnerability. The law seeks to ensure that this state is real and not manufactured by the exaggerated claims of a hostile creditor.

2.2. The Juridical Nature of Ghabn

Saudi law, rooted in Islamic jurisprudence (Fiqh), approaches contracts through the lens of commutative justice.

- **Definition** Ghabn is defined as the "lack of equivalence between two considerations in commutative contracts" or the "gross disparity between what is given and what is received" (Al-Sanhouri, 2004).
- **The Element of Exploitation** Unlike some civil codes that look purely at mathematical disparity, the Saudi approach often links Ghabn with Exploitation (Istighlal). It occurs when one party takes advantage of the other's distress a common scenario in pre-insolvency negotiations.

3. THE CRITERION OF MATERIAL LESION IN TRANSACTIONS

Before applying the concept to bankruptcy, the study establishes the general criteria for identifying lesion in commercial transactions under Saudi law.

3.1. The Scope of Applicability

Lesion is exclusively conceivable in Commutative Contracts (Mu'awadat). It is inapplicable in gratuitous contracts (like gifts) because the donor expects no counter-performance. In the context of bankruptcy, this is relevant to loan agreements, supply contracts, and settlements where the debtor offers assets in exchange for debt relief.

3.2. The Temporal Dimension

The assessment of lesion is strictly temporal.

- **Formation vs. Execution:** The disparity must exist at the time of contract formation. Market fluctuations that occur later do not constitute lesion.
- **The Threshold of Tolerance:** The law acknowledges that absolute mathematical equality is impossible. Therefore, "Minor Lesion" (Ghabn Yaseer) is tolerated as part of trade. Protection is activated only when the disparity becomes "Gross" (Ghabn Fahish), exceeding the customary limits of profit and entering the realm of exploitation (Al-Rashdan, 2010)

4. OPERATIONALIZING PROTECTION: ANTI-LESION MEASURES IN BANKRUPTCY PROCEDURES

The core contribution of this paper is the analysis of how these general civil law principles are weaponized within the specific procedural framework of the Saudi Bankruptcy Law to protect the debtor.

4.1. Bankruptcy Rules as Public Policy

The study posits that bankruptcy regulations are mandatory rules related to Economic Public Policy. Consequently, any transaction characterized by fraud or gross lesion that aims to manipulate the bankruptcy estate is voidable, regardless of the parties' consent.

4.2. Criminalization of Claim Inflation (Article 202)

The strongest manifestation of this protection is found in Chapter Thirteen (Offenses and Penalties). Article 202 of the Bankruptcy Law serves as the

statutory anchor for this protection.

- **The Offense:** The law explicitly criminalizes the act of a creditor who "submits a claim against the debtor with intent to defraud, including inflating its value."
- **The Legal Logic:** When a creditor artificially inflates a claim:
 1. They create a fictitious imbalance in the debtor's liabilities.
 2. This act constitutes Gross Lesion because the debtor is being forced to answer for a value they did not receive.
 3. It triggers Wrongful Commencement, potentially forcing a viable company into liquidation based on false solvency calculations.

4.3. The Element of "Intent to Defraud"

The statute links the inflated claim to "intent." This aligns with the jurisprudential view that Ghabn often requires an element of bad faith.

- **Pre-Commencement Violation** The law creates a retrospective protection. Even acts committed before the opening of the procedure are punishable if they lead to the opening. This prevents creditors from "setting up" the debtor for failure.
- **During Procedure** It also covers conduct during the procedure, protecting the debtor from creditors who might try to manipulate voting power in a proposal by inflating their debt value.

4.4. Remedies and Sanctions

The protection is enforced through three avenues

1. **Nullity** The inflated portion of the claim is voided.
2. **Dismissal** The court may dismiss the bankruptcy petition if it is based on lesion-infected claims.
3. **Criminal Liability** The creditor faces penal sanctions, reinforcing the seriousness of the violation.

5. CONCLUSION

5.1. Findings

The doctrinal analysis yields the following conclusions

1. **Substantive Justice** The Saudi Bankruptcy Law moves beyond procedural efficacy to ensure substantive justice. It refuses to validate insolvency proceedings based on exploitative or unbalanced transactions.
2. **The "Clean Hands" Doctrine** The law imposes

a "clean hands" requirement on creditors. A creditor seeking the court's aid in liquidation must come with accurate, non-exploitative claims.

3. **Comprehensive Coverage** The protection against lesion is omnipresent, spanning the pre-filing phase and the active procedural phase, effectively immunizing the debtor against malicious financial engineering.

5.2. Recommendations

To further strengthen this mechanism, the study

recommends

- **Typology of Lesion** The issuance of judicial guidelines that categorize specific "Red Flag" transactions (e.g., predatory bridge financing immediately prior to insolvency) as presumptively involving lesion.
- **Forensic Auditing** Enhancing the role of the Bankruptcy Trustee to specifically audit historical transactions for evidence of Ghabn, not just for preferential transfers, but for valuation disparities.

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