

Jordanian Legal Provisions for Electronic Commerce: Consumer Protection Perspectives—A Comparative Study

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Abstract

E-commerce transactions are the more preferred commercial transactions today, rendering the conventional rules and norms of goods and services sale obsolete. The legal norms, statutes, or rules of commercial transactions today, should be upgraded. Online consumers need protection. Firstly, the Internet as commercial transactions medium needs legitimization. This study examined the aptness of Jordanian laws in protecting e-commerce consumers, considering that Jordan has no specific law to govern e-commerce. Legal provisions for contracts and e-commerce in Jordan are dispersed in some laws including the Jordanian Civil Law 1976, the Electronic Transactions Law 2015 and the Consumer Protection Law 2017. This study employed doctrinal method in its comparative analysis, with primary and secondary sources (statutes, cases, guidelines, textbooks, journal articles, online resources, websites, databases, etc.) as support. Results showed insufficient law governing e-commerce in Jordan. Hence, Jordan needs to establish a law that specifically regulates e-commerce, particularly in areas like e-store establishment, e-contract formation, goods return, money refund, handling of unfair e-commerce contract, and obligation violations.

Keywords

E-Commerce, Commercial Transactions, Consumer Protection, Jordanian Civil law, Electronic Transactions Law 2015

1. Introduction

The commonness and widespread of electronic transactions at present time have intensified the value and importance of electronic contracts. These electronic contracts are increasingly replacing the traditional contracts. Electronic con-

tracting of goods and services is beneficial to all relevant parties; it reduces work, time and money. Notably, contracting via electronic means may harm consumers as these consumers may fall into deception and fraud because they cannot physically examine the goods and services. Also, there has been disparity between consumers and the other parties like the suppliers. Indeed, there are methods and means that allow suppliers to attract consumers and execute the contract terms as desired (by the suppliers), which allows economic and legal position to the supplier at the expense of the consumers.

In e-commerce contracts, consumer legal protection is provided within a set of procedures, controls and means in a several legislations on goods and services contracting involving consumer via the internet. Accordingly, consumer legal protection in e-commerce contracting is via two main forms. The first form of protection is civil legal protection by contract conclusion or implementation between the consumer and merchant or provider of e-commerce (Kukuryk, 2017). In contractual relationship, consumers are frequently the vulnerable party. The second form of protection is provided by penal legal protection to deter acts that impact consumers in e-commercial contracts, whether the misapplication is direct or indirect.

2. The Regulatory Environment for E-Commerce

Access to global information networks resources has created new opportunities for e-commerce implementation. E-commerce development today is extensively affecting the goods and services national markets especially in the integration of these markets into the global economic system. In major countries, international e-commerce has become one of national priorities. Indeed, e-commerce and its speedy development in economic relations call for a broad regulatory support of its legislative functioning at both national and international levels (Kwilinski et al., 2019).

E-commerce regulation is a challenging task, because, firstly, the scope of e-commerce and its technology changes swiftly. The law in Jordan is generally constructed following the needs of society, and law formation in Jordan can be regarded as an evolutionary process. However, e-commerce is considered a dramatic change from the traditional form of commerce that the law could not keep up with. Hence, new legislation on e-commerce should be introduced, or, current legislation may be used where appropriate. Another reason why e-commerce regulation is a challenging task is the fact that technology is transnational (Swindells & Henderson, 1998).

Accordingly, the concept of e-commerce in its general sense and the applicable laws and legal provisions on e-commerce related trade and contracts are discussed in this section.

2.1. The General Concept of Electronic Commerce

The constant increase in e-commerce transactions has made electronic contracts

more common today. At both national and international levels, e-commerce is a practical reality, and thus in 1996, UNCITRAL Model Law on Electronic Commerce was adopted by UNCITRAL. This law has guided the States in their national legislation endorsement on electronic commerce. However, e-commerce was not specifically defined in the UNCITRAL Model Law for Electronic Commerce of 1996. Rather, in Article (2/a), the law provided a definition on the data message as the information that produced, delivered, received or stored using the same means (e.g., electronic data exchange or electronic mail, telex or digital copy). Meanwhile, the term electronic commerce was defined by World Trade Organization as product production, marketing, sale and distribution using communication networks (UNCITRAL Model Law for Electronic Commerce of 1996).

Specific e-commerce related laws have been issued in various countries. Among these laws was the French Trust and Digital Economy Act, in which the concept of electronic commerce was described as a set of digital transactions associated with business activities that take place between projects, between projects and persons, and between projects and management. Another example is the Malaysian Electronic Commerce Act 2006 issued by the government of Malaysia to assure legal recognition of electronic message, achievement of legal requirements electronically, and communication of electronic message (Ayub et al., 2007). In this act, the notion of electronic transactions was defined as commercial transactions as a single or multiple commercial communication(s), irrespective of whether the communication is contractual in nature or not, and if the communication includes matters associated with goods or services supply or exchange, agency, financing, banking, investments, and insurance (Section 5 of Malaysian Electronic Commerce Act 2006).

Within the Arab region, Tunisia's Electronic Exchanges and Electronic Commerce Law 2000 (ECL) was issued with the purpose of increasing e-commerce transactions security. The concept of e-commerce in ECL was defined as the commercial operations occurring via electronic exchanges, while electronic exchanges were defined as exchanges occurring through electronic documents (Blythe, 2006). However, Jordan is yet to have specific law to govern the matters relating to electronic commerce. Notably, Jordanian Electronic Transactions Law 2015 described the notion of Electronic transactions (refer section 2) as transactions performed electronically.

2.2. Consumer Protection from E-Commerce

As the electronic market has gone global, consumer right protection became a complicated issue, as it is no longer a domestic matter (in most countries). In USA for example, consumers customarily contended with the US firms, depended on the well-known legal protection systems, and sought protection from the nearby courts. Meanwhile, American companies that were facing issues related to direct retail sales to the consumers in foreign markets, mainly sold their goods directly to the consumers within the USA, bound by the American market

legislation. Furthermore, the American agencies for consumer rights protection mainly concentrate on American frauds involving American consumers, at the states and the federal levels (Strzębicki, 2015).

The new market has been perceived as a challenge to the national mechanisms of consumer right protection, and calls for some new, more effective structure in protecting consumers, while also furnishing business operators with comprehensible legal environment (Kirillova, Anatolyevna, & Blinkov, 2015). In this regard, a mutual trust between consumers and business operators is necessary in order to achieve optimally operational market (Kirillova et al., 2016).

The birth of electronic market has somewhat compromised the legal protection of consumers, calling for some recompense mechanisms. Among business operators, there have been cost issues, and they also have to deal with volatile juridical and legislation operation. As such, consumer right protection principles must be in place for this new electronic market, comprising novel provisions, in addition to the conventional principles of consumer right protection, to protect the rights and interests of online consumers particularly (Kirillova et al., 2016).

As it is still in its infancy stage, the international electronic trade, the accompanying principles should protect the rights of consumer and assure the attainment of the full extent of consumer benefits integral to the global market. Electronic trade was mentioned in the mid-90s in the wake of the new potential purchasing and selling through the Internet. Electronic trade can be defined in both broad and narrow manner. When describe narrowly, electronic trade can be described as advertising and sales of goods via telecommunication networks (Lee & Phang, 2015). Contrariwise, when described broadly, electronic trade is more than just buying and selling transactions. UN Commission on the Law in International Trade stated that in the domains of business and industrial cooperation, different types of transactions can be performed via electronic trade aside from buying and selling transactions, for instance, leasing, consulting, and engineering transactions (among others) (Alyoubi, 2015).

The adoption of Guiding Principles on consumer right protection by the United Nations was evidenced in the UN's General Assembly in April 1985 as it considered the EEC legislation on consumer right, and since then, consumer right protection became a matter of importance at the international level. Notably, the Guiding Principles on the consumer right protection were referred in governments' policy and legislation on consumer right protection. During the UN's Assembly's Resolution, the eight fundamental rights of consumer were highlighted as follows: Right to Choice, Right to Safety, Right to be Heard, Right to Information, Right to consumer education, Right to satisfy the basic needs, Right to Quality, Right to Redress (Kirillova et al., 2016).

As provided in the international law, among the principles of electronic trade are as follows: (Strzębicki, 2015).

1) Freedom of a network contract: Nobody can be forced to conclude a network contract or be imposed on burdensome conditions during the conclusion

of such contracts;

2) Appropriate state interference on the internet: The state is to use only the absolute necessary measures of regulation in resolving urgent tasks in high technologies development, and impose limitations and prohibitions, only if using other regulating mechanisms is impossible;

3) Dispositive methods surpass in legal regulation: Imperative norms are only applicable to protect vital rights and legal interests of individuals, the community and the state, while dispositive methods should apply to matters pertaining to electronic trade;

4) Free development of electronic trade and of supporting free competition: Related legislative must not impair free competition, nor become hurdles to international electronic trade.

There are eight basic consumer rights mentioned in the Assembly Resolution of United Nation. Equally, the importance of the principles of online consumer right protection cannot be ignored (Velentzas, Broni, & Pitoska, 2012). The legislative regulation of electronic trade is also bound by the equality principles of the interacting participants (just like the situation of traditional trade), and so, participants are assured of freedom of contract, unhindered entrepreneurial activity, free movement of goods, services and finances across the entire region, among others.

3. Mechanism of Legal Regulation toward Electronic Commerce Contracts

Essentially, a contract encompasses the union of two or more wills in forming certain legal effect, and in the Anglo-American States law, this is called the law of contract. A contract is either consensually composed and has unilateral impact, or of a netting or donation contract (immediate or ongoing contract nature), or a limited contract or a potential contract. Contrariwise, electronic contract does not show structure, types and content, and is bound by its provisions composition in the contract's general theory. An electronic contract comprises an agreement, and the offer in this contract is acknowledged by an international network that allows remote communication which may be perceptible via offeror-offeree interaction. The legally defined contracts are remotely concluded (Ibrahim, 2006).

Observing the UNCITRAL, there needs to be explicit consent from all involved parties that they are going to perform their transaction via the internet. Accordingly, the Electronic Transaction Law in its Article 5/A states the applicability of its provisions on transactions on which the involved parties agree to implement the transactions thereof through electronic means, unless its provision states otherwise. Nonetheless, the UNCITRAL Model Law on commerce did not define E-contract at the international level. Somehow, in its Article 11 in the first paragraph entitled "Contract formation and validity," the use of data messages for the purpose of expressing and accepting the offer in contract formation is permissible unless agreed otherwise by the contract parties. Clearly, these defini-

tions imply that the electronic contract does not only cover the contracts concluded through the Internet, but also covers all those concluded using other electronic methods of communication, like facsimile.

The approach employed by Jordanian legislator is comparable to that of the UNCITRAL law (Ibrahim, 2006). In the Electronic Transactions Law 2015, there is no definition of electronic contract, but a definition of electronic transactions as transactions performed using electronic means. In Jordanian electronic transaction law the subject of electronic contract is not addressed considering that it is under the responsibility of the jurisprudence and the justice, not the legislator (Alnsoor, 2017).

Considering the discussed, several issues associated with the establishment of the required critical mechanisms in the formation of electronic commerce. Among the mechanisms include unfair contract, money refund and goods returns, online traders, and penal liability as discussed below:

3.1. Unfair Contract in E Commerce Issue

Since the late 1980s, unfair terms regulation has been a major agenda in the European contract law, and the Unfair Contract Terms Directive was the early European secondary legislation covering the bases of contract law (Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts). In this regard, issues relating to the Principles of European Contract Law (DCFR, published by Sellier 2007), and the Draft Common Frame of Reference published recently at hand (Howells & Wilhelmsson, 2003), are likely to be highly scrutinized in European contract law development, in both theory and practice. In contract law, particularly the consumer contract law, the practical issues have been on the reaction of the law towards unfair contract terms. This issue also has linkage to the position of the fairness principle in understanding contract law. In fact, the approach used in dealing with unfair terms reflects the many ideological-theoretical foundations of contemplation on contracts. The aforementioned issue has been a matter of great interest even though the notion of fairness rules in all contexts (Wilhelmsson, 2008).

In safeguarding the economic and other interests of consumers, the EU consumer rules go beyond protecting the physical safety of consumers. In consumer law, the Unfair Contract Terms Directive (UCTD) has been regard as the most vital legal framework (Howells & Wilhelmsson, 2003). Since the dawn of the 70s, European countries like France and the UK have acknowledged the modern contract law that allows legislature intervention. Hence, the manner in which legislatures deal with the unfair contract should be highlighted, as can be exemplified by UK's protection of consumers from unfair T&Cs in Winn and Haubold, derived from EU Directives; (Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts, [1993]).

Bargaining powers of consumers are often weaker and consumers are also left with few means in negotiating the standard form contracts. Furthermore, con-

sumers often lack the understanding of the actual value of a contract and the economic effect of his commitment upon a business encounter with a visiting sales representative, and purchasing goods via a distance contract prevents consumer from viewing or testing the goods before purchasing (Strzębicki, 2015).

In the UK, ECCC is regarded as a standard form contract which also reflects adhesion contracts, and most contracts on the Internet are in the form of standard click-and-point agreements (Furmston, 2006). Consumer contracts can effectively become a standard form contract or adhesion contract as these contracts do not affect protection, because consumer regulations provide protective rules in both cases. Somehow, in the UK context, the exact English translation of “*contrat d’adhésion*” (adhesion contract) does not exist (Furmston, 2006).

UK differs from Jordan in terms of consumer protection against unfair T&Cs owing to UK’s special rules on B2C relationships. In fact, consumers in UK are actively protected and empowered by strong consumer contract law protection, via the provision of specific and comprehensive regulations to handle consumer issues even before e-commerce activities take place (Alhusban, 2014).

Jordan Civil Law (JCL) states that the court has no power to intervene in contracts except as provided in Article 204 on adhesion contracts for the purpose of monitoring unfair terms to protect the weaker contracting party. Somehow, such method is only applicable to countries with special laws that protect consumers in general or specifically protect consumers against unfair T&Cs. The other method is a legislative method that is commonly employed in European law. It prohibits certain terms, regarding these terms as void, or, at least, as voidable. Considering that Jordan does not provide specific law on T&Cs in consumer contracts, JCL becomes the only legal framework used to protect the contracting parties against unfair T&Cs. JCL provides protection in two ways, namely; general protection for all contracts types like B2B and B2C, and specific protection for certain contract types like adhesion contracts.

The provisions for unfair terms in Jordanian Consumer protection law 2017 (JCPL) have been criticized. Firstly, there has been a lack of a suggestive list of terms with potential unfairness (a grey list), and such list is vital in countries of which court rulings are merely an secondary source of law, as can be exemplified by Jordan. Having this list would ease the process of judging the fairness status of a given term. Another issue with JCPL is that it offers no mechanism for terms interpretation should there be ambiguity. Article 240 of JCL states that a doubt shall be interpreted in favor of a debtor (Alhusban, 2014).

3.2. Rights of Refund and Replacement in E-Contract Issue

The Islamic Law states that all losses must be compensated. Somehow, in breach of contract, the one to be compensated is the creditor, as the creditor is the party suffering the actual loss. According to Islamic Law experts, the creditor may be compensated when the loss is caused by the negligence of the debtor. On the other hand, expected profit loss cannot be compensated due to uncertainty of

the expected profits. Meanwhile, real losses caused by negligence of debtor (e.g., costs incurred by collections because of debtor's negligence) may be recompensed (Holijah & Rizal, 2022).

The European legislation appears to comprehensively protect the consumers, as it protects consumers in different stages including the stages of distribution, production, and consumption of services and goods. Accordingly, the European Union has declared several European directives for structuring the legal relationships between consumers and traders to protect consumers from harms caused by the use of goods. Furthermore, to preserve moral integrity and protect consumer satisfaction, additional legislation has been imposed by the European Union to govern the methods used for propaganda and advertising (Howells, Micklitz, & Wilhelmsson, 2009).

In dealing with unfair bargaining power, especially in consumer contracts which awards rights to consumers as the weaker party and enforces obligations on businesses as the stronger party as a way to maintain a balanced contractual relationship, the modern contract law does not solely refer to the freedom of contract principle as a sole source of rights and obligations (Al Sharu, Mohd Noor, & Abdul Rahman, 2019).

In the context of Malaysia, the Malaysian consumer protection Act 1999 (CPA 1999) Part IV states that the court could annul or diverge the felonious contract and provide consumer with the ancillary relief, among others, by instructing money and property refund, loss recompense, and payment of repair of the defective goods (Al Sharu, Mohd Noor, & Abdul Rahman, 2019). Furthermore, section 29 of CPA 1999 provides ancillary relief for consumer, as remedy. Here, the court can order money refund or property return or reimbursement to the loss or damage. Also, the Court may order the seller to repair or provide parts for goods, at the person's own expense. In addition, at his expense, seller could supply special services to those who suffered or are expected to suffer loss or damage, as the case may be.

On 15 November 1999, the Tribunal for Consumer Claims (TCC) was introduced under Part XII of the CPA, the same date of the enforcement of CPA, with the purpose of providing e-consumers with low-cost and informal redress of grievances that they encounter with e-commerce (Amin & Bakar, 2010). In this situation, TCC will hear and decide on the claim. The hearing will proceed even when a party is absent, so long that all involved parties have been duly served with the hearing notice. The TCC may order the defendant to reimburse the damages to the claimant, supply or resupply the goods, or repair or replace the goods, or recompense the price or other amount paid by consumers. The TCC may also order the defendant to comply with express or implied guarantees in terms of the supply of goods or services, bound by CPA (Amin & Mohd Nor, 2013).

Under the "option of defect," the Jordan Civil Law grants consumers the right to return an item and obtain a refund if the goods purchased are faulty. Somehow, this situation is becoming more blurry for consumers especially if they

have been deceived or pressured into buying, particularly in the situation in which they (the consumers) are the ones with the burden to present the loss evidence. In this regard, consumer protection for money refund or goods or product replacement is generally covered by JCL 1976, but this law has no specific mechanisms for remedy, in the context of online trade especially.

Clearly, a fast, more flexible and less formal process for goods refund or replacement in online trade is necessary. Section 7 of Jordanian consumer protection law 2017 follows the general principles of JCL 1976, relating to defects of consent theories particularly on mistake and fraud. Here, the law does not seek to redress knowledge imbalance between contracting parties to allow consumer to make informed decisions. Instead, the law seeks to redress the consent if it was misleading or mistaken.

3.3. Online Traders Issue

Online stores and physical stores are governed by different rules. In the traditional system, government authorities have full control over all commercial transactions, and so, relevant government agencies have control over all transactions of goods and services to assure the validity of the commercial activities taking place internationally.

In general, commercial contracts concluded online and in the traditional manner are essentially similar, because both commercial contracts would bind both parties to the contract, except that the electronic contracts are concluded online. However, commercial contracts concluded online could result in the issues of evidence and proof, and the establishment of special legislative and judicial jurisdiction to govern the transactional activities.

In the United Kingdom there exist terms of “contract on dispatch” between online trader and online shopper. These contract terms are concluded after the goods are dispatched. Contract on dispatch terms are in compliance with Regulation 9 of the United Kingdom Electronic Commerce (EC Directive) Regulations 2002, whereby online traders are required to establish the technical steps to follow in concluding a contract.

In Jordan, online traders may employ the terms of “contract on dispatch” in their terms and conditions. However, the present study opines that the terms of “contract on dispatch” contradict consumer protection in online shopping, and Regulation 9 should not be used as reference for Jordan. In fact, the terms of Contract on dispatch prevent the consumer from acting in accordance with the presence of a contract when goods are not dispatched even if the payment has been made. For this reason, Jordan needs to reform its legislation in order that the impact of “contract on dispatch” terms on the contractual rights of online shopper could be minimized.

3.4. Criminal Liability

Strict criminal liability offence has often been used in preventing traders and producers from harming the consumers through trading manipulation. In order

to protect the consumers from the power of producers, strict criminal liability has been employed by governments. Such imposition could indeed protect consumers from unsafe products while keeping the rights of consumer to safe products (Ismail et al., 2012).

Meanwhile, the government of Malaysia has taken some legal measures to protect consumers from unsafe products. Among these measures include the introduction of several legislations, including the enforcement of criminal liability on violators of laws. These measures clearly benefit the consumers because it is the government that handles these law violators, while the process is costly and time consuming (Al Sharu, Mohd Noor, & Abdul Rahman, 2019).

As stated in the Malaysian Consumer Act 1999 (CPA 1999), violation of any of the provisions of Parts II and III section 25 (1) is regarded as an offence, which is punishable based on two categories of offender, namely the corporate body offender category and the non-corporate body offender category. If the offender is of a former category, the offender may be fined up to two hundred and fifty thousand Ringgit for the first offence, and up to five hundred thousand Ringgit for the subsequent offence. If the offender is of the latter category, the offender may be fined up to one hundred thousand ringgit or jailed for up to three years, or both for the first offence, and for the subsequent offence, the offender may be fined up to two hundred and fifty thousand ringgit or jailed for up to six years, or both.

Consumer in Jordan may use the judiciary to defend his personal interests that have been debased by professionals. However, the use of the judiciary must be via a collective action, not individually, and so, the consumer is to employ the consumer protection associations to represent him to defend his rights and obtain settlement (Sections 11 and 17 of Jordanian Consumer protection law 2017).

Consumers in Jordan are not allowed to directly initiate a public right lawsuit. This is because the crimes mentioned in Consumer Protection Law are classed as restricted crimes and so, the aggrieved party cannot directly initiate the common right lawsuit. Instead, a competent directorate would send a notification to the professional following the affirmation of the conduct of violation as provided by the law (Judgment No. 534 of 2020, Amman Criminal Court of First Instance in its appellate capacity/North Amman, 2020).

It should be noted that the Consumer Protection Law in Jordan does not comprehensively cover the issue of penalties, and therefore, electronic related crimes are bound by the provisos of Article 15 of the Jordanian Electronic Crimes Law, and article states that those committing crimes punishable by any legislation in force via the information network, information system, or website, or engages in, interferes, or provokes its commission are punishable by the penalty mentioned in that legislation.

Clearly, legislation in Jordan has no proper legal provisions on the punishment of e-commerce crime, and so, there is no specific or even appropriate direct punishment for advertiser or provider relating to e-commerce in Jordan. On

the other hand, legislation in Malaysia has stringent liability offence. As mentioned, the punishment provision is sporadic, indirect and insufficient for e-commerce advertiser and provider in Jordan (Alsharu, Alhamed, & Al-Amaren, 2022). Furthermore, section 386 of the Penal Code 1960 could not adequately safeguard the victim or the consumer, and as previously mentioned, there are no provisions in Jordanian Law that directly punish the advertiser or the provider, and the existing ones are insufficient (Section 433 of the Jordan Penal Code 1960).

4. Conclusion

In essence, this paper demonstrates that despite the presence of some legal rules governing electronic commerce, in Jordanian context, certain legal provisions on electronic commerce need to be established for the purpose of protecting the consumer in Jordan and protecting the parties in the electronic contract. Furthermore, the provisions in Jordanian legislation appear to be scattered as there is no special law in this country that governs electronic commerce, and so, this study discussed some relevant topics relating to e-commerce, such as the topics of money refunds and goods returns, electronic contracts organization, and unfair contract, in within the context of electronic commerce. Notably, Jordan needs to properly address the criminal responsibility of violating obligations and other crucial matters in relation to electronic commerce. Also, for the context of Jordan, the prevailing civil law, the consumer protection law, and the electronic transactions law are still inadequate in protecting consumers in matters pertaining to electronic commerce.

Conflicts of Interest

The authors declare no conflicts of interest regarding the publication of this paper.

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