

Jordanian Legal Systems Regarding Refund and Replacement in Online Trade Contracts: A Comparative Analytical Study

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ABSTRACT

The birth of the internet has resulted in a rapid increase in online shopping activities. Despite the convenience of online shopping for sellers and buyers, various problems have emerged, harming consumers. Strong consumer protection is vital because goods traded online can not directly or physically be viewed or touched. The present study explored the legal provisions concerning refund or goods replacement within the online trade contract. Jordan currently lacks a law specifically for online trade, while e-commerce in Jordan is mainly governed by three laws, namely, the Jordan Civil Law 1976, Consumer Protection Law 2017, and Electronic Transactions Law 2015. E-commerce laws in the United Kingdom, France, Indonesia, and Malaysia were analyzed and compared with relevant Jordanian laws to examine the topics of refund and goods replacement in online trade contracts. Jordanian legal systems have been insufficient in guaranteeing consumers' right to obtain refunds, goods, or services replacement from the provider or seller in online trade. Jordan thus needs to set up a special law on online trade that also legally covers matters of refunds and goods replacement.

Keywords: Electronic Transactions Law 2015, online trade, refund, replacement.

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1. INTRODUCTION

Online buying and online selling are increasingly popular among the public these days. With such development, the public consistently seeks information on the goods they wish to purchase. It compares prices by looking at online information on the prices of goods from different regions. In Jordan, more and more trade transactions are being executed via electronic systems. These transactions, also known as electronic transactions, encompass legal actions that utilize certain devices, including computers, computer networks, and other electronic media, and involve parties across jurisdictions with no requirement for face-to-face meetings. Electronic transactions have unique characteristics, and so they require a unique form of legal protection for the involved parties, particularly the consumers.

A warranty is a form of certainty or affirmation made by a seller or manufacturer on the state of their produced item. The warranty also presents the terms and circumstances—should the item fail to function as expected, fixes or repairs will be made. It entails a specific proclamation of truth by the seller or manufacturer on the validity of their product. A warranty may also be produced based on the consumer's expectations. Relevantly, an expressed warranty is an expressed guarantee provided by the seller or manufacturer to the buyer that the item purchased will function as specified, and should there be defects to the item, the seller will repair or replace it. There are various ways to express a warranty on a product, including through writing (written form), advertising (verbal warranty), or other ways (Adegbite *et al.*, 2023).

Online sales of goods and services are on the rise as the world has become a borderless virtual market after the birth of the internet. E-commerce is fast growing as PCs, WiFi services, broadband, and hotspots are growing in number all over the globe, facilitating the activities of online shopping in the online market, involving a new group of consumers called the e-consumers, who buy goods and services



using electronic systems such as the internet and other computer networks (Amin & Roshazlizawati, 2013). The online market has become the world's largest shopping mall. In Malaysia, for instance, the International Data Corporation (IDC) reported that e-commerce in the country (Malaysia) had generated sales revenue from \$105 billion in 2010 to \$144 billion in 2011 (IDC Malaysia, 2011).

E-commerce entails performing business transactions, primarily using the internet for communication purposes. However, its implementation has been marred by fraud and anomalies. As proof, the Directorate of Cyber Crime, Bareskrim, documented 1,617 online fraud cases in 2019 (Hayatuddin & Febrina, 2022). 534 cases were reported involving Instagram, 413 cases were reported involving WhatsApp, and 304 cases were reported involving Facebook. Fraudsters have employed several tactics to victimize consumers. For instance, fraudsters would present consumers with very tempting offers to represent a reputable platform, and usually, such offers are dispersed using a short message service (SMS) with a link (Hayatuddin & Febrina, 2022).

An analytical study on the subject of advertising was carried out in Jordan. Results showed that 45.83% of respondents indicated that they would demand a refund for being misled by the advertisement. In comparison, 28.92% said they would directly complain to the seller, whereas 25.25% indicated they would complain to a consumer association. The outcomes of this analytical study implied the lack of clear action that consumers in Jordan could take after being victims of misleading advertisements (Alsharu, 2020).

2. ONLINE TRADE

Activities of online trading, more appropriately known as e-commerce, entail a transformation of the conventional culture of buying and selling into a modern one. In comparison to conventional buying and selling activities, which involve direct and local transactions, e-commerce is executed using the internet, so the transactions are indirect and take place not only locally but also globally. With the advancements in digital culture and financial technology, e-commerce has become increasingly accepted as a modern way to buy and sell (Rejeki, 2022). E-commerce and conventional buying and selling both involve the following stages: 1) Offers, 2) acceptance, 3) payment, and 4) delivery. In other words, both methods of buying and selling are essentially comparable. Somehow, the medium used in each stage would differ. For instance, payment in e-commerce is made electronically, and after the payment has been made, the seller will deliver the goods (delivery stage) using a third party/logistics service company/courier for some delivery fees. The buyer pays the delivery fee willingly (Rejeki, 2022).

The expansion and progression of the goods and services industry have both positive and negative impacts. Consumers, who are humans, are bound by human activities to fulfill their needs. These consumers have the freedom to select products or services from producers based on their interests and abilities, and because of this, producers are compelled to be more productive and efficient to achieve their business goals and, consequently, profits. Producers being on both sides -as the ones meeting the needs of consumers and also as the ones seeking to achieve profits- will have bad implications for the consumers. Producer condition affects (among others) the quality of goods or services furnished to the end consumer (Holijah & Rizal, 2022).

The present study accordingly explored the existing laws regulating online trade. The present study also delved into the principles of Islamic law to make a comparison between this law and the available legal provisions in Jordan, focusing on the buyer or consumer rights in returning the goods or in obtaining a refund and ending the contract if attainable.

2.1. Islamic Law

Islamic law is based on several sources that are classed into primary sources and secondary sources. Ijma' and Qiyas are the secondary sources of Islamic law. In the Jordanian context, the Islamic law called the Majalla is grounded upon the Hanafiyah School of thought, which was founded by Abu Hanifah Al-Nu'man during the 8th century—the Hanafiyah School of thought is among the four notable Islamic Schools of thought. Islamic law, also known as the Shari'ah, has been used in Jordan to close the existing gap in legislation. Matters pertaining to consumption in contemporary societies are governed by the directives and regulations established from the verses in the Quran and the Sunnah. Transactions between individuals in Jordan are governed based on certain principles of Islamic law. The main purpose of governing these transactions based on Shari'ah or Islamic law is to serve the interest of the society collectively (Al Sharu et al., 2021).

In Islamic law, the concept of 'khiyar' protects the consumer. It gives the consumer the right to choose either to purchase a contract or to cancel it. Hence, if the consumer finds that the goods purchased are defective, then, applying khiyar al-aib, the said goods can be returned to the seller or replaced with new ones that have no defects, or the consumer can choose to accept the defective goods, but with a decreased price, by mutual agreement (Rejeki, 2022).

As mentioned, the right of *khiyar* is the right of the buyer to decide to cancel or continue the sale and purchase agreement if the product is defective, but during the contracting of the sale, the seller is unaware that the product is defective. The provision of the right of *khiyar* is to prevent ‘*dzolim*’ treatment of the buyer during buying and selling transactions, and the buyer is often considered the weaker party. Furthermore, all involved parties in the transactions must be willing to engage in such an affair. Willingness to engage in the buying and selling transactions could prevent the involved parties from facing losses should the product traded be found incompatible. In this regard, as mentioned earlier, the right of *khiyar*, that is, the option to continue or cancel the trade, is provided to the consumer.

Accordingly, the present study highlights the buying and selling transactions by way of e-commerce and the issues associated with selling defective/rejected goods that inflict harm to consumers as the buyer. The right of *khiyar al aib* to resolve consumer dissatisfaction or buying and selling disputes as an alternative solution to the inflicted online trade parties is deliberated in this study. Notably, Islamic law does not deal directly with the issues of online trade. Rather, the law provides broad principles for the involved contractors to give them an understanding of how to close a valid contract (Alhusban, 2014). In essence, the *Majalla* provides no details on information requirements, but requires that purchaser must have knowledge about the sold goods (IIU Malaysia, n.d.).

2.2. International Regulation of Online Trade

Across the globe today, new legislation and rules on new form of transactions are being developed, particularly on the services involving the information community. These new legislation and rules shape the legal status of the information community services suppliers and regulate their obligations to clients, for instance, in furnishing the information on contract conclusion or on erroneous order cancellation procedures (Kirillova *et al.*, 2016).

Accordingly, the buyer is provided with the opportunity to learn the contract clauses beforehand through technological referral (link) to another document, for instance. Within the domain of electronic trade, consumers can gain and execute their rights and obligations of their own will and serve their personal interests. Furthermore, buyer has freedom to express their rights and carry out their obligations based on the contract, and also point to any of the clauses in the contract perceived as contradicting the legislation (Wang *et al.*, 2016).

At present, the UNO-member states and international organizations are seeking to revise the principles on electronic transactions. This is to provide the electronic trade participants with assurance from the law, concerning the transactions that they are involved in, through the internet (Aldhouse, 1999). Accordingly, the revised principles will be brought forth to the international community. Consumer right protection in electronic trade and international cooperation issues in consumer right protection are among the two special issues to be addressed (Wang *et al.*, 2016).

Advancements of technologies today have led to the establishment of global electronic market, and this consequently led to the emergence of new and complex issues relating to protection of consumer right. In most countries, protection of consumer rights had been a domestic issue. Consumers in the USA for instance, traditionally, would mainly deal with the US firms, use the well-known legal protection systems of protection and seek protection from the nearby courts nearby. Additionally, local companies in the USA today may be faced with many hurdles in direct retail sales to consumers in foreign markets, as these companies usually would sell their goods directly to the local consumers, guided by the American legislation on markets. Furthermore, the American agencies of consumer right protection were focusing on local cases of frauds involving local consumers, at both state and federal levels (Strzembicki, 2015). However, the situation has changed as the market has expanded globally.

The conventional systems of consumer right protection have been challenged by this new form of market, resulting in a need for some new structure to assure that consumers of this new market is effectively protected, while businesses could operate in a predictable legal environment (Kirillova & Blinkov, 2015). Both consumers and business operators must trust one another, so that the market could maximally achieve its potential (Kirillova *et al.*, 2016).

In order to assure protection of consumer right on a global scale, a workable structure in the judicial system and in applied legislation is necessary. The provision of alternative solutions to sensitive issues, private sector initiatives, partial overlapping of legislation of different countries and international cooperation are equally necessary in the formation of a safe global electronic market. Somehow, becoming global is highly challenging, for instance, trading with substandard products is highly challenging because the electronic trade creates a growth prospect for both “digital” goods and forged goods. Meanwhile, substantial amounts of fraudulent transactions on the internet have been reported by the US Federal Trade Commission. Specifically, the reported fraudulent transactions in 2014 were at 42% (55.7 million dollars), 45% (110.3 million dollars) in 2012, and 55% in 2013 (166.6 million dollars; Falk & Hagsten, 2015).

At present, consumers of the new market have not been sufficiently protected, in addition to the lack of mechanisms for redress. For operators of business, high costs and dubious juridical and legislation operation environment were among the main challenges. It is thus necessary to establish some new legal provisions for protecting the rights of consumers within the electronic market, in addition to the traditional consumer right protection provisions, to protect the online consumers, particularly in terms of their interests and rights (Kirillova *et al.*, 2016).

The electronic trade was a concept first mentioned during the mid-90s. It highlights the potential of executing buy and sale transactions over the internet. Notably, this term has both narrow and broad meaning. In a narrow sense, the electronic trade can be understood as the advertising and sales of goods through telecommunication networks (Lee & Phang, 2015). On the other hand, electronic trade can be broadly understood as a wider range of functions including the transactions of buying and selling. Accordingly, the UN Commission on the Law in International Trade mentioned that electronic trade can involve buying, selling, supplying, factoring, engineering, leasing, consulting, and other transactions within the industry and business cooperation (Alyoubi, 2015).

The current international electronic trade is still in its infancy. In the development of the electronic trade principles, the use of the right approach is important to assure that consumers will be assured with full protections and benefits available in the global market. Notably, issues relating to consumer right protection began to intensify at the international level in April of 1985 following the United Nations General Assembly that highlighted the EEC legislation on consumer rights. The Guiding Principles of consumer rights protection were referred to in elaborating the policy and the legislation on this matter.

The UN's Assembly Resolution included 8 basic rights of consumers in presenting the guiding principles in protecting consumer rights, 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, and right to redress (Kirillova *et al.*, 2016).

Accordingly, the principles of electronic trade provided by the international law are as follows (Kirillova *et al.*, 2016):

1. Freedom of a network contract: nobody can be forced into concluding a network contract, or nobody can be imposed with onerous conditions during contract conclusion;
2. Proper state interference in the internet: the state will use only the necessary regulation measures to resolve urgent tasks in technology development, and the state will impose limitations and prohibitions only if other regulating mechanisms are ineffectual;
3. Dispositive methods are prioritized in legally regulating the electronic trade: the imperative norms are used merely to preserve the vital rights and legal interests of the personality, the community, and the state.
4. Free development of electronic trade and support to free competition: the legislative acts must not hinder free competition, nor should the acts impede the international electronic trade.

It is equally necessary to delve into the principles of online consumer rights protection (Velentzas *et al.*, 2012). Similar to conventional trade, the legislative regulation of electronic trade is grounded upon the principles of equality for participants during interactions. Participants have been assured freedom of contract, free movement of goods, finances, and services, and unobstructed entrepreneurial activity, in addition to legal protection of the rights of the electronic trade.

3. COMPARATIVE ANALYSIS OF REFUND AND REPLACEMENT

Islamic Law requires all losses to be compensated, but for losses incurred due to contract breach, the loss to be compensated is the real loss suffered by the creditor. According to experts in Islamic law, it is possible to compensate the actual loss suffered by the creditor resulting from the negligence of the debtor. Somehow, losses of projected profit cannot be compensated since there is no certainty of such profits. On the other hand, actual losses, for instance, losses resulting from the costs of collecting payments owing to the debtor's negligence, may be compensated as well (Holijah & Rizal, 2022).

European legislation provides consumers with comprehensive protection during different stages of the process, including the distribution, production, and consumption of services and goods. Several European directives have been introduced by the European Union (EU) towards the formation of legal relationships between consumers and traders, with the main purpose of protecting consumers from the harm caused by the use of goods. The EU has also introduced additional legislation to preserve moral integrity by protecting consumers from heedless contracting amidst the existence of various methods of propaganda and advertising (Howells *et al.*, 2009).

The principle of freedom of contract cannot be the sole source of rights and obligations in modern contract law, particularly when bargaining power between parties is unequal, and consumers are often the weaker party. Notably, in consumer contracts, rights are often awarded to the weaker party (e.g.,

consumer), while obligations are often imposed on the stronger party (i.e., business) in order to achieve a balanced contractual relationship (Howells *et al.*, 2009).

3.1. United Kingdom

In the UK, the legislature responsible for maintaining a balanced contract to protect the consumers is the ECCC (Alhusban, 2014). For example, businesses are to provide consumers with pre-contractual information to facilitate them (consumers) in making an informed transactional decision (The Electronic Commerce (EC Directive) Regulations 2002 s (6)–(10)) In terms of terms and conditions (T&Cs), the ECCC imposes restrictions on the principle of freedom of contract (Unfair Contract Terms Act 1977 and Consumer Protection from Unfair Commercial Practices Regulations, 2008).

In the UK, a consumer contract is classed as a form of adhesion contract, while most contracts on the internet encompass standard click-and-point agreements (see Gibbons, 2022). However, such classification does not impair consumer protection, as the extant consumer regulations also provide protective rules on it. Meanwhile, the situation in Jordan is different in terms of consumer protection against unfair T&Cs owing to the specific rules on B2C relationships. The contract law in the UK actively empowers and protects consumers, particularly through its specific and all-embracing regulations to handle consumer issues even before the activities of e-commerce took place (Alhusban, 2014).

The EU Directives provide the framework for most rules of national consumer protection, and for this reason, in covering specific domains in the ECCC, the UK legislature does not need to address specific rules. For instance, in protecting consumers against unfair T&Cs on the internet, the existing consumer protection rules for the traditional context (offline) are applied to protecting consumers within the electronic setting (online; Winn, 2002). Meanwhile, the common law cannot be perceived as fair because it depends on the principle of freedom of contract. In this regard, the court is the contract enforcer and is the body that makes sure that the contract does not contain force, fraud, or misrepresentation. As mentioned earlier, special legal frameworks have been established to deal with unfair contract terms. Nonetheless, the common law remains the law referred indirectly to govern this matter (unfair contract terms). In dealing with T&Cs, the common law focuses on exemption clauses that can be included in the contract, whether by signature or by notice (If the contract contains unexpected terms, the one who formulated the contract must give notice to the other contractor; see *Thornton v Shoe Lane Parking* (1971) 2 QB 163.) or by a course of dealing.

3.2. France

In France, the last stage of contract development in relation to the freedom of contract principle was during the implementation of the European Directive of Unfair Terms in Consumer Contracts. An additional set of Directives was later introduced to form a general framework for consumer contracts. The framework includes some rights and obligations to re-balance the contractual relationship in B2C transactions. The legal system in this country imposes certain limits on the power to form legally enforceable obligations through agreement. In this regard, consumer contracts will only bind after the legislative requirements are fulfilled (see Alhusban, 2014). Nonetheless, based on the French system, the adhesion contract elements do not protect consumers from unfair T&Cs because the French legislature acknowledges that freedom of contract limits the will of the weaker party to the contract, especially when the contract is presented on a take-it-or-leave-it basis. Contract adhesion in France is grounded upon just one element, that is, the element of standard dictation, which means the transformation of a contract in general through a new method that offers protection that differentiates between contracts invoices and contracts non-negotiates (negotiable and nonnegotiable contracts; Al Sarhan & Khatir, 2000).

In 1804, when the French Civil Law was enacted, there were no provisions or exemption clauses regarding unfair T&Cs, as the law (French Civil Law) is grounded upon two principles of freedom of contract and equal treatment of contracting parties irrespective of the parties' level of bargaining or economic power. In other words, the law of contract was equally the law of the contracting parties and, therefore, the adage (if it is fair, then it is contractual; Vigner, 2006). The party is imposing the T&Cs. That is the business benefits from this ground. Meanwhile, the other party, that is, the consumer, can only accept or reject the proposed terms.

3.3. Indonesia

In Indonesia, Law 8 of 1999 on Consumer Protection (UUPK) focuses on refunding and replacing goods in online trade. It assures legal certainty for consumers (Alauddin *et al.*, 2022) by assuring protection to consumers from losses resulting from goods and services transactions, as stipulated in articles 19 to 28 of this law. Specifically, article 19 of the law governs the accountability for the mistakes made by business actors for manufactured or traded goods through the provision of compensation for

damage, pollution, and loss faced by consumers. Law No. 8 of 1999 on Consumer Protection laid down Civil Sanctions for business actors. These sanctions include compensation in the form of refunds or replacement of goods, health care, and/or compensation given within a 7-day grace period following the transaction date ([Anggriawan et al., 2022](#)).

Within the context of Indonesia, consumer rights are highlighted in Article 4 of UUPK. In particular, the article allows consumers the right to attain compensation, compensation, or replacement should the received goods and/or services fail to meet the requirements (partially or fully) stipulated in the agreement. The Implementation of Electronic Systems and Transactions (PP PSTE) is detailed in Government Regulation Number 71 of 2019, and Article 48 paragraph (3) PP PSTE mentions that an electronic transaction must include (at minimum) identity data of the involved parties, objects and specifications, electronic transaction requirements, prices and fees, procedures to follow when a party wishes to cancel, provisions for the injured party in returning the goods and/or in requesting a replacement of the product should the product be found defective, and choice of law for settlement of electronic transaction. The PP PSTE instrument is usable to legally resolve problems occurring in electronic transactions ([Kusumo & Rosyadhi, 2022](#)).

Law Number 8 of 1999 provides guidelines for Consumer Protection, and if there is proof that a business actor has indeed caused harm to consumers, then the government's administrative actions can be proof for the harmed consumers, and the consumers could use such proof in filing a lawsuit. In addition, article 26 of Law Number 8 of 1999 on Consumer Protection states the following: "Business actors who trade in services are obliged to fulfill the agreed and/or agreed guarantees and/or guarantees."

Clearly, consumers are often the weaker party in comparison to the sellers of goods or services. Accordingly, Indonesian Law Number 8 of 1999, in Articles 19 through 21, and in Articles 24 through Article 27 on Consumer Protection, states the usability of business actor accountability, providing that consumer rights violation is done by business actors. In electronic transactions, the consumer is protected by business actors being required to compensate the consumers who suffer losses from both intentional and unintentional acts ([Kusumo & Rosyadhi, 2022](#)).

3.4. Malaysia

Malaysia has introduced the Malaysian Consumer Protection Act 1999 (Malaysian Consumer Protection Act, 1999) to safeguard consumers. Specifically, the courts can nullify or alter the offending contract in Part IV of the act. The courts also have the power (as provided by the act) to provide consumers with ancillary relief by, among other things, ordering refund (in the form of money or property), compensation of the loss amount, expenses incurred, or of the cost repair of the defective goods ([Al Sharu et al., 2019a](#)). In addition, section 29 of CPA 1999 provides ancillary relief for consumers through the court-ordering refund or return of goods or property or payment of the amount of loss or damage. The Court may also order the seller to repair the defective goods or provide the consumer with parts of goods required for the repair. Another remedy option is for the seller (at his own expense) to provide certain services to the grieving or potentially grieving consumer.

An example case is the case of [Ong Siew Hwa V Umv Toyota Motor \(2015\)](#), in which the High Court allowed the claim of the plaintiff against the second defendant by stating the following:

"Where a vehicle which was the subject matter of hire purchase agreement has been declared to be unacceptable quality [sic], the plaintiff is entitled to reject and return the goods which the plaintiff, in my judgment, has properly done in accordance with the provisions of the CPA 1999. The plaintiff is therefore entitled to the return of all sums paid to the second Defendant and damages of RM30,300."

Another example is the case of [Yong Shir Ley V Slimming Centre \(2008\)](#). Ms. Yong, as the plaintiff, demanded a refund for an exercise machine she had bought because the machine had injured her back, and she also did not slim down after using it. The claim was that the machine would help improve blood circulation and cure muscle pain, but after 9 days of use, Ms. Yong felt pain. In order to ease the pain, Ms. Yong had to spend over RM1,000 to pay for medicines and traveling costs. According to Mr. Rahazlan, the then president of the Consumer Claims Tribunal, Ms. Yong was entitled to a refund of RM3,450 but to be exchanged for another product of similar value ([Alsharu, 2020](#)).

The Tribunal for Consumer Claims (TCC) was established on 15 November 1999 under Part XII of the CPA to provide grieving consumers with informal redress at a lower cost and within a short period. In other words, TCC is a fast and cheap way for grieving consumers to resolve their issues. TCC and CPA were enforced simultaneously ([Amin & Abu Bakar, 2010](#)). TCC usually will proceed to the hearing and decide on the claim whether or not all the involved parties are present during the proceedings as long as the absent party has been duly notified. TCC may require the respondent to compensate the claimant for the damages incurred and may also require the respondent to supply or resupply the goods, fix or replace the goods, or refund the price or other amount that the consumer has

previously paid. In addition, the respondent may be required by the CPA to adhere to the expressed or implied guarantees regarding the supply of goods or services (Amin & Roshazlizawati, 2013).

4. JORDANIAN LEGAL PROVISIONS OF REFUND AND REPLACEMENT

In Jordan, online trade contracts are still a new domain, yet special laws on online consumer protection have been established, even though they are still rather rudimentary. The effectiveness of these laws requires cooperation from all stakeholders, including the consumers. It is worth noting that a specific law on e-commerce is yet to exist in Jordan; rather, provisions on e-commerce can be found in parts of different laws, for instance, in the Jordan Civil Law 1976 (Jordanian Civil Law 1976), in Consumer Protection Law 2017 and Electronic Transactions Law 2015.

Jordan needs to address several crucial issues, including those concerning the sources of information and the content of items of the contract of online trade. At present, traders in Jordan are not required to revise the contracts with consumers using comprehensible language, and the contracts often use small font sizes (Alsharu, 2020). However, vague phrases or sentences can impact consumers' understanding of the contract stipulations. Furthermore, Jordanian laws like JCL 1976 and Consumer Protection Law 2017 provide no remedy on this matter; there is no mention of the consumer's right to obtain a refund or goods or services replacement from the provider or seller.

Jordanian Civil Law 1976, Jordan Consumer Protection 2017, and Electronic Transactions Law 2015 provide some important stipulations on refund and replacement. As much as possible, these stipulations are applied to the contract of online trade. Details are provided in the following subsections.

4.1. Jordan Civil Law 1976 (JCL 1976)

In Jordan, the JCL 1976 is considered the main law for all private laws, and so is applicable when specific rules are unavailable, just like in the case of e-commerce, which still has no specific governing law in this country (Alsarhan, 2005). Advertisements must be truthful and presented so consumers can make correct choices. However, in online trade, some advertisements may appear vague and misleading by displaying untrue data or non-display of some data, causing consumers to be deceived, which consequently affects their freedom of choice. It is, therefore, important to impose some sort of protection mechanism to consumers against such advertisements.

In JCL 1976, the consumer has no right to cancel the contract, and should the need arise, the contracting parties shall revoke the contract in certain conditions, like when there is a mistake, misrepresentation, deception, options of defects, conditionality, and inspection, and when there is a breach of contract, especially when non-performance occurs (Civil Law of Jordan, s 145, 148, 153, 177, 513). In other words, based on JCL 1976, contracts can only be altered when all the involved parties mutually agree (Alhusban, 2014). Somehow, section 13 of JCL 1976, through 'option of defect,' states that consumers could return an item and obtain a refund if the goods bought were defective. Somehow, from the beginning, consumers may be misled or pressured into buying the goods, especially in the electronic setting, and the consumer often has to prove loss.

Despite the availability of laws on consumer protection, it is not easy to prove deception and fraud, and it is the consumer who has to prove that there is deception in the contracting. Also, consumers should not have entered into a contract or entered into a contract under other contractual conditions if deception exists (Al Sharu *et al.*, 2019b). Essentially, JCL 1976 does not consider the defendant's conduct or intent but will find the defendant responsible if his/her commission or omission contains negligence or intentional harm (Lasasmeh, 2006).

4.2. Jordanian Consumer Protection Law 2017

Specifically, Section 7 of Jordanian Consumer Protection Law 2017 gives consumers the right to obtain a refund or replacement of goods or services from a provider or seller as a remedy for misleading advertisement. Additionally, consumers could return the purchased product if it was found defective or if the transaction was concluded via a defective contract. Also, the consumer may be re-compensated for the price paid at the request of the consumer or of others. Section 7 of Jordanian Consumer Protection Law 2017 follows the general principles of JCL 1976 (Al Sharu *et al.*, 2019a), sections 135 through 156 (Alhusban, 2014). As such, in dealing with mistakes and fraud, Articles 135-156 of JCL 1976 on defects of consent will not redress the imbalance of knowledge between contracting parties; it will not facilitate the consumer in making informed decisions. Rather, it only allows the consumer to seek consent redress if there is a mistake or deception.

4.3. Jordanian Electronic Transactions Law 2015

Jordan Electronic Transactions Law (JETL) was introduced in 2001. JETL was mostly adapted from the Model Law of Electronic Commerce (Model Law) adopted by the United Nations Commission on International Trade Law (UNCITRAL, 1996) in 1996. JETL acknowledges contracts established through electronic means, and so electronic records are also legally effective like their written counterparts (UNCITRAL, 1998, p. 5) and give legal recognition to data messages. In 2015, JETL became a permanent law—it was initially a temporary law—following the approval of His Majesty the King.

It is worth noting that the Model Law is not a convention, but it could facilitate and guide Jordanian legislators through its set of globally acceptable rules on how to eradicate some legal hurdles in e-commerce development, aside from allowing the evaluation of some aspects of e-commerce domain, utilizing techniques of modern communication (Sookman, 2001). Furthermore, the main objective of the Model Law is to achieve coherent and uniform legislation at the international level (Dabit, 2004). There are two key parts to the Model Law. The first part lays down the general provisions on e-commerce, while the other part provides provisions on specific e-commerce activity. Part II of the present draft of the Model Law is limited to provisions regarding the carriage of goods, i.e., EDI as a substitute for conventional transport documents). The intention is for these provisions to become Chapter 1 of the second part, with additional chapters being added over time to address other sector-specific requirements (For more discussion, see Rawson, 1999; for more details, see UNCITRAL, 1998).

It should be noted that the Model Law does not cover consumer protection, and this is a major shortcoming of this law (Alhusban, 2014). JETL adopts only the first part of the Model Law, so JETL does not have any regulations pertaining to the carriage of goods.

JETL removes the difficulties in electronic transactions while also assuring clear, certain, and fair treatment between media (JETL, s 3 (a) “The aim of this Law is to facilitate the use of electronic means in transactions’ procedures, with due regard to all other Laws and without amending or deleting any of these provisions”). Hence, in Jordan’s development of e-commerce, the introduction of JETL is an important legislative step. Still, from a legal standpoint, e-commerce has to have a defined set of rules to cover some domains. In other words, the presence of JETL will not resolve all matters. For instance, JETL does not cover consumer protection laws such as compulsory contractual disclosures, proscribed one-sided terms, requirements of labeling for contents and safety, rights of cancellation and return, warranties, rules on liability limitation, language to be used in the contract, limitations on practices of debt collection, and special requirements (Alhusban, 2014).

Notably, there are some issues with JETL, the first of which is the fact that JETL adopts the first section of the Model Law as presented in UNCITRAL at both national and international levels while neglecting other crucial issues, for instance, the issue of consumer protection. JETL also does not impose any obligations or duties (e.g., information requirements), and so, within the context of e-commerce, JETL is not adequate as a framework. Another issue with JETL is the definitions in Article 2, whereby there is no establishment of legal certainty, as it mentions: “[t]he following words and expressions, wherever stated in this Law, shall have the meanings assigned thereto hereunder unless the context provides otherwise” (JETL, s 2 first paragraph). The lack of fixed definitions in JETL could lead to interpretation problems and difficulties when there is discord between parties.

The third problem with JETL is that receipt acknowledgment is optional for the parties. Comparatively, ECCC does not allow consumers to request such an acknowledgment unless mandated by the legislature (The Electronic Commerce (EC Directive) Regulations 2002, s 11 (a)). Last but not least, the Jordanian legislature still upholds the freedom of contract principle, whereby all parties are presumed to have similar bargaining power, even though it is not always so in e-commerce. As evidence, the rules on the technical methods of handling data messages perceive all transactions as similar (i.e., B2B and B2C). Hence, the governance rules of commercial contracts under the JCL are also applicable to electronic transactions. The only strength of JETL is its expressed validation of the electronically concluded contracts, similar to ECCC in the UK under the Electronic Commerce (EC Directive) Regulations 2002 (Alhusban, 2014).

5. CONCLUSION AND RECOMMENDATIONS

In an online trade contract, if the products or services are not the same as advertised, the consumer could seek a refund or replacement from the provider or seller as a remedy. Consumer disputes often surpass the faulty goods issue as they often expand to the issue of the lack of conformity, vague technical information in the T&Cs, or tangible goods or software of low quality. Consumers need a more flexible, less formal, easier, and faster route outside the court when seeking a refund or replacement of the goods in online trade.

Through the ‘option of defect,’ the Jordan Civil Law gives the right to consumers to return an item and obtain a refund if the item purchased is faulty, but this situation becomes blurry for consumers if they are being misled or pressured to buy the given item. Furthermore, consumers often have to provide evidence of loss. JCL 1976 provides general stipulations on consumer protection, especially when seeking a refund or replacement of goods. However, JCL 1976 has no provisions on the remedy for the context of online trade to allow consumers to obtain a refund or replacement of goods when the item was purchased online. Section 7 of Jordan’s Consumer Protection Law 2017 adopts the general principles in JCL 1976 concerning the defects of consent theories in addressing the issues of mistake and fraud. However, the stipulations in this section do not remedy the knowledge imbalance between contracting parties. Instead, the stipulations remedy the consent if it was deceived or mistaken. In other words, the stipulations do not help consumers make informed decisions.

In discussing the subject of a refund or goods replacement, this study compared related laws in several countries, namely the UK, France, Indonesia, and Malaysia, with the laws in Jordan, namely Civil law, Consumer protection law, and Jordanian Electronic Transactions Law. Such a comparison was used to identify certain texts on refunds or replacement of goods in online trade contracts.

CONFLICT OF INTEREST

The author declares that there is no conflict of interest.

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