

Online Consumer Protection from the Perspective of Jordanian Law

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Abstract

With the common use of electronic communication tools, electronic commerce became the phenomena of this era. Consumers are able to finalize their transactions online, saving both time and effort. Creating electronic contracts requires mutual assent between both parties to reach agreement. With the different types of electronic contracts, one might ask how much protection is needed to consumers who are being part of this contract. This paper will highlight the issue of consumer protection in Jordan. With the fact of a high number of online users who might indeed get engaged in electronic contracts, how much protection do the current laws in Jordan offer their consumers? In order to answer this question, this paper will define electronic contracts and consumers from the Jordanian perspective and then move on to highlight the common laws and regulations in the UK that protect consumers before answering the main question of this paper. With the high number of consumers conducting contracts electronically in Jordan, most of them are unaware of the legal consequences of their transactions. Having said that, the author believes that boosting confidence in electronic commerce in Jordan requires providing protection for consumers from unfair practices that could be carried online.

Keywords: consumer protection, fairness, e-contracts, e-commerce, contractual terms

1. Introduction

The technological advancement as well as the new developments, especially in the internet world, avail the many possibilities that provide online services to customers, which also enables them to form electronic contracts.¹ The success of using the electronic transactions to form e-contracts using the internet is based on the opportunity for the customer to approach a wide range of products and services without having to worry about business hours.² In addition to the fact of their ability of comparing simultaneously different sites which offer identical or interchangeable goods and services, and then choose what they see as adequate without the need to have direct relations with sales representatives.³

E-commerce has evolved dramatically since 1999. Since then, the world has noticed many benefits of e-commerce, 'including wider choices at competitive prices, as well as easy-to-use and more secure payment options.'⁴ There is a notable development in the Information and Communication Technology (ICT) field in Jordan;⁵ numbers of online users are growing on a daily basis. It was reported that nearly 73.6% of the Jordanian population is connected online these days.⁶ These users could indeed enter into many legal relationships online, therefore there is a call for establishing a legal framework for consumer protection in Jordan.

When talking about consumer protection in the online world, many legal questions could arise, some are related to how much information should the consumer be given, and how accurate such information is. In the online world, the consumer will solely depend on the information given by the supplier of the goods and services; he might also review the feedback given by other consumers before placing his order.

Legislative work regarding consumer protection could be found worldwide, especially in the United Kingdom and European Union. Examining through the Jordanian laws and regulations, one could barely find two acts that are connected to online transactions: mainly the Electronic Transaction Act⁷ on one hand and the Electronic Criminal Act.⁸ Despite these acts, one will have to examine the common contractual rules found in the

1 Valerie, Watnick, J., The Electronic Formation of Contracts and the Common Law 'Mailbox Rule' (Winter 2004). *Baylor Law Review*, Vol. 56, No. 175, 2004.

2 M, Salvatore 'Consumer Protection in E-commerce Transactions: a First Comparison between European Law and Islamic Law' (2007) 2 *Journal of International Commercial Law & Technology*, 1.

3 Mancuso S 'Consumer Protection in E-commerce Transactions: a First Comparison between European Law and Islamic Law' (2007) 2 *Journal of International Commercial Law and Technology*, 1

4 OECD 'Consumer protection in E-commerce' (2016), 3. <<https://www.oecd.org/sti/consumer/ECommerce-Recommendation-2016.pdf>> accessed 22 Jan 2017.

5 Information Communications Technology Association, 'Jordan, Jordan ICT Sector Profile' <<http://inform.gov.jo/Portals/0/Report%20PDFs/6.%20Infrastructure%20&%20Utilities/ii.%20ICT/2012%20INTAJ-ICT%20Sector%20Profile.pdf>> accessed 2/8/2017.

6 Internet World State <<http://www.internetworldstats.com/me/jo.htm>> accessed 25 December 2016

7 The Electronic Transaction Act n 15 for 2015, published in the Official Gazette issue number 5341 page 5292.

8 The Electronic criminal act n. 27 for 2015, published in the official Gazette n. 5343, page 5631, 1/6/2016.

Jordanian Civil Code¹ when considering issues related to consumer protection. Alongside these acts, there is the Competition Act² and the Unfair Competition Act and Commercial Secrets,³ and the a draft of the Consumer Protection Act 2013⁴, which will also be considered throughout this paper.

The following section will define electronic contracts in which the consumer is considered as an active role player before moving to defining consumer and how they are protected under the Jordanian laws.

2. Electronic contacts: some basic definition under the Jordanian Law

Electronic communication tools are the platform used by e-commerce. They are also the main tools used when forming e-contracts. When defining electronic communication tools, some individuals might believe that the definition only covers the internet. In fact, the internet involves only one set of these tools, and many other tools are also included in this definition, such as communications made partially or entirely through local networks.⁵

A contract is a legally binding and enforceable agreement, which rise rights and obligations for both parties. The process of contract formation usually includes some space of negotiations between both parties to reach agreement. In the online world, the scenario differs, as with the fact that electronic contracts, are considered as distance contracts there are in some type of contact little or no space of negotiation at all. The main difference between offline contracts and online ones, is the medium used to express the internal *will*. As in the offline contracts, contractual parties are free to choose the suitable medium to express their *will*, while in electronic contract, parties have to express there will electronically. The Jordanian electronic transaction act defines electronic contracts as “agreement firmed by electronic means,⁶ in whole or in part.”⁷ Having said that, the law made it clear that electronic contracts shall produce the same legal consequences resulting from the offline contracts, and therefore, be binding to the parties concerned or in terms of fitness thereof as an evidential weight.⁸ Electronic contracts can be formed through different ways. First, one can order the products or services online through a website following an advertisement by the seller company. Secondly, they can be ordered through exchange of emails and attachments and, thirdly, the parties can use the Electronic Data Interchange (EDI) network exchange. Finally they could be formed with interacting over website, such contracts are known as web-based contracts.

For the contract to be considered as existent there has to be an offer and acceptance between the seller of the service and the customer⁹ with an intention to be bound by the terms of offer. There are some legal dilemma concerning the formation of e-contacts especially in identifying when an offer and acceptance became binding Such cases have made it necessary for the establishment of strong laws to protect both the buyer and the seller who engage in distant transactions¹⁰.

Often, in e-contracts, all the consumers are required to follow a three-step procedure. Particularly, in terms as well as conditions of the e-contracts offering information regarding the service, conditions of the contracts, the location of the hotel by the service providers. Customers usually make offer when they agree with the terms as well as conditions of the contracts.

Having said that, how much does the consumer knows about the terms and conditions which govern the whole transaction, in other word, when reaching mutual assent between the consumer and the provider of the service or goods, there has to be mutual assent on some terms and condition. The mutual assent in such case will

¹ The Civil Code n 43 for 1967 published in the Official Gazette n 2645 page 2.

² The Competition Act n 33 for 2004 published in the official gazette number 4673 page 4157.

³ The Unfair Competition Act and Commercial Secrets n 15 for 2000, published in the Official Gazette issue n 4423 page 1316.

⁴ The draft law of the Consumer Protection Act 2013. Full text of this draft is officially published at the Jordanian house of parliament's website < <http://www.representatives.jo/ar/content/%D9%85%D8%B4%D8%B1%D9%88%D8%B9-%D9%82%D8%A7%D9%86%D9%88%D9%86-%D8%AD%D9%85%D8%A7%D9%8A%D8%A9-%D8%A7%D9%84%D9%85%D8%B3%D8%AA%D9%87%D9%84%D9%83-%D9%84%D8%B3%D9%86%D8%A9-2013>> accessed 30 January 2017.

⁵ Directive 98/34/EC of the European parliament and of the council of 22 June 1998, laying down a procedure for the provision of information in the field of technical standards and regulations and of rules on Information Society services, [1998] OJ 204.37, art 1(2) as amended by Directive 98/48/EC of the European Parliament and of the council of 20 July 1998 amending Directive 98/34/EC laying down a procedure for the provision of information in the field of technical standards and regulations [1998] OJ 1998 L 217/18.

⁶ For the purpose of the law, art 2 of the electronic transaction law defines *electronic* as “The technique of the use of electrical, magnetic, photic or electro-magnetic means or any other similar means in the interchange and storage of information. “

⁷ art. 2.

⁸ art. 7.

⁹ What Is An Electronic Contract? - Inbrief.Co.Uk' (*InBrief.co.uk*, 2016) <<http://www.inbrief.co.uk/contract-law/electronic-contracts/>> accessed 17 December 2016.

¹⁰ *ibid*.

be determined by the fact that the user had clicked on the 'I Accept' icon which these terms and conditions are linked to.

3. Consumer Protection Issues in e-Contracts

Defining consumer in electronic transactions, will not go beyond the traditional definition of consumer in the offline world. A Consumer 'is a natural person, who is acting outside the scope of an economic activity (trade, business, craft, liberal profession).' ¹ The EU Directive 2011/83/on consumer rights defines consumer as 'any natural person who, in contracts covered by this Directive, is acting for purposes which are outside his trade, business, craft or profession'

On the other hand, the Jordanian legislator defines the consumer within the article 2 of draft of the consumer protection act as 'Natural or legal person who gets the good or service paid or free of charge for fulfilling their personal needs or the needs of others, not including the purchase of the item or service for resale or lease'.

The issue of consumer protection is important to be considered especially with the high number of online transactions carried on daily basis. In Jordan, as mentioned earlier, consumers are protected by the traditional rules of contract formation and obligations, mainly is the Civil Code.

As described by the Organization for Economic Cooperation and Development (OECD) 'Consumer laws, policies and practices limit fraudulent, misleading and unfair commercial conduct.'² The following sections will highlight the most important legislative work in the UK, EU and Jordan in relation to consumer protection in the online world.

3.1. Consumer protection in the UK

There are a number of laws in the UK, which are set up to offer solutions to the issues arising from e-contracts³. The Distance Selling (Consumer Protection) Regulations 2000⁴ was passed in 2000 and its main aim was to protect the customers who engage in e-contracts where they are not able to access the employer in person to carry out their transactions face to face. This includes the suppliers who reach their customers through mobile phones, fax, mail and the internet among other means. The law holds that the supplier has to offer the buyer comprehensive and accurate information about the goods and the process of purchasing the goods before the client can make the decision of placing an order⁵. In the case of tourism services, the provider must offer their clients all the information about their services including the location of their facility, the means of transport and the costs to be incurred while using their services. The information has to be confirmed in a durable medium such as the use of a written confirmation.

Under this regulation the consumer is given the right to cancel the contract if done within 7 working days without giving any reasons to the supplier unless voluntarily and with absolutely no penalty for the cancellation. The customer has the right to be refunded their full amount within 30 days cancelling the contract. This law allows the client to ensure they have made the right decisions by giving them a chance to change decisions that might have been erroneously made. The client is able to review the quality of the goods or services offered within the agreed number of days (usually stated on the warranty note from the supplier) after delivery to ensure they are working as per their expectations. Should there be faults or should the client find the product different from what was advertised, they have the right to return the item or cancel the service and receive their money back as per the law⁶.

According to regulation 7 (1) (a) and (b), the seller has to offer the consumer some prior information to the completion of the contract inducing their identity, their location and address, the price of the products or services (including the taxes), inform the buyer about the alternative products or services available in case the requested ones are not available. The consumer protection policy provides for performance with regard to the goods and services delivered. This is provided under regulation 19 (1) stating that unless the parties agree

¹ The library of the European Parliament 'The notion of 'consumer' in EU law' (2013) <[http://www.europarl.europa.eu/RegData/bibliotheque/briefing/2013/130477/LDM_BRI\(2013\)130477_REV1_EN.pdf](http://www.europarl.europa.eu/RegData/bibliotheque/briefing/2013/130477/LDM_BRI(2013)130477_REV1_EN.pdf)> accessed 25 January 2017.

² OECD 'Guidelines for Consumer Protection in the Context of Electronic Commerce (2000),9 <<http://www.oecd.org/sti/consumer/34023811.pdf>>
3Debenham, Lucy. "Understanding UK Distance Selling Rules." Understanding UK Distance Selling Rules. N.p., 26 Dec. 2016. Web. 10 Jan. 2017. <<http://www.onlineshoppingrights.co.uk/understanding-uk-distance-selling-regulations.html>> accessed January 2017.

⁴ The Distance Selling (Consumer Protection) Regulations 2000. <<http://www.legislation.gov.uk/uksi/2000/2334/contents/made>> accessed 16 December 2016.

⁵ 'The Consumer Protection (Distance Selling) Regulations 2000' (*legislation.gov.uk*, 2000) <http://www.legislation.gov.uk/uksi/2000/2334/pdfs/uksi_20002334_en.pdf> accessed 17 December 2016.
⁶ibid.

differently, the supplier has to perform the contract within 30 days after the buyer has returned the acceptance back to the supplier. The law has also given the supplier the option in 19 (2) (a) and (c) that in case they are not able to deliver the products or services within the agreed time, then they shall inform the buyer and advise on how to reimburse the total sum paid to them within the time provided by the law¹. The same article (7) (a) and (b) gives the supplier the option that in case they are not able to deliver the goods or services agreed with the client, then they can offer them alternative deliverables as agreed on the acceptance form that was developed during the process of contract development as guided by the law. Furthermore, the regulations give the buyer the right to cancel a transaction. The above regulations 10-13, consumers are clearly protected under this particular regulation.

Moving to the Electronic Commerce (EC Directive) Regulation; it formulated in 2002 to regulate the businesses that majorly advertise and sell their goods and services through the email, internet or the interactive digital systems such the televisions and the mobile phones including the use of text messages. The main aim of this provision was to offer a comprehensive explanation of the rules as regards to online businesses in the country thus enhancing the confidence of the consumers in the online businesses. This regulation was also aimed at protecting the rights of the consumers. Under regulation 3 the 'Information society services' is defined as any kind of service offering the exchange of cash from a given distance through the use of electronic systems for digital processing and storage following a request from one of the two parties engaged in the transactions. Regulation 6(1) and (2) allows for some information on general issues to be provided by an information service provider including the relevant bodies in a manner that the other party can easily access². Such information as the name and location of the service provider has to be made clear to the party requesting for the services. The regulation further notes, in regulation 8 – 11, other issues regarding the communications include placing an order and the kind of information to be made available by the parties involved in developing the contract. The regulations hold that all the information provided should be clear enough to make sure both parties fully understand the requirements before sealing the deal.

This particular regulation holds that all the technical steps that are necessary for concluding the contract must to be followed to the latter. The word 'technical' is used in this context to imply the identification of complex issues as well as any form of error in the agreement before accepting to conclude the contract.

However, this regulation does not cover where the consumer can sue or where the seller can be sued, although the law does apply in the event of disputes in some circumstances. It also only applies to Acts of parliament passed before the date in which the E-commerce regulations were made. With this law, the United Kingdom providers can in fact take measures against service providers within European Economic Area (EEA) as well as elsewhere in order to protect consumers.

The Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013³ is divided into different sections including the Pre-contract information, the obligation to pay, the cancellation rights, the return policy, reimbursement by the trader after cancellation and passing the risk. The pre contract information is provided under regulation 13. This law gives the buyer rights to access all the information they need before accessing the goods or services from the seller. The main issues that have to be made clear are the main characteristics of the products, services or content being offered as well as the channels of communication available for the parties. This will enable the buyer to make a decision before deciding on whether to proceed with the purchase or not. The identity of the trader has to be well known before the two parties can transact. This includes the name and the physical address of the service provider. The price of the products or services must be made available together with the taxes applicable. A clear arrangement through which the payments will be made has to be identified by the seller in order to guide the buyer in deciding on whether the method of payment is favorable to them.

Under regulation 6, it directs the seller to provide information in a timely manner than will not lead to unnecessary inconveniences to both parties. Such penalties as exempting the consumer from payment after some requirements fail to be met can be enforced by the law enforcers. Regulation 14 offers more details about the obligation to pay whereby the buyer has to acknowledge the obligation to pay. The cancellation rights have also been stated under regulation 30⁴. In this regulation, several changes have been made to the right to cancel a contract. First, the time period was moved from 7 days to 14 days. After this period, the goods shall be considered to be in the hands of the consumer thus obliging them to make payments for them. In case multiple goods are delivered to the client on separate days, the client shall be given the cancellation period within 14 days after the last delivery of the goods. In case the trader had failed to provide pre-contract information at the

1 ibid

2 'The Electronic Commerce (EC Directive) Regulations 2002' (*Legislation.gov.uk*, 2016) <<http://www.legislation.gov.uk/ukxi/2002/2013/contents/made>> accessed 17 December 2016.

3'The Consumer Contracts (Information, Cancellation And Additional Charges) Regulations 2013' (*Legislation.gov.uk*, 2013) <<http://www.legislation.gov.uk/ukxi/2013/3134/contents/made>> accessed 17 December 2016.

4ibid.

required time, then the period for the cancellation shall be extended. In case this information arrives within 12 months, then the buyer will be given 14 days grace period, for the cancellation, after the information was offered¹. In case the trader fails to share the information within 12 months or never shares the information at all, the buyer will have their cancellation period extended by 12 months plus 14 days, after the information is availed. On the other hand, regulation 28 states that the consumer has no right to cancel an order that involved customized goods or those that are made as per their specific requirements. Regulation 28 recognizes such products as sealed goods that cannot be returned due to health concerns as those goods that are not eligible to be returned under the law². Regulation 13 has allowed for a specific procedure to cancel the contract. The law states that the customer must make the seller aware of their cancellation plans through the form provided in a clear statement noting the reason for the decision. As such, the law requires the trader to offer the buyer a cancellation form in a timely manner following the required format. It remains the responsibility of the buyer to prove that the order was cancelled successfully should there arise a dispute.

In addition to the cancellation rights, the buyer has the right to return the goods to the producers. Regulation 35 puts the responsibility of returning the products on the buyer unless the seller has offered to come and collect the products by themselves. In case the buyer decides to return the goods, they must ensure they have returned them to the trader or an authorized representative. While returning the product, they must use the right address. The goods must be returned within the 14 days failure to which they shall be considered as the client's possessions³. The client has to account for the costs involved while returning the products to the seller unless the seller has agreed to offer the transport costs. They buyer is also advised to use the correct packaging material while returning the item. After the return or cancellation of the contact, the buyer deserves their money back without any extra fees being imposed on it. The refund should use the same means the buyer used to pay for the goods. Regulation 34 states that the money should be returned on the day the buyer returns the product and if earlier, then it should be the time the buyer is able to offer evidence that the products have been returned. Regulation 42 under this provision notes that in case the delivery date has been agreed, then the parties should deliver the products on the exact time as agreed⁴. In case there is no established date for the delivery, the regulations allow for 30 days after the completion of the contract. The buyer can choose to end the contact and request for a refund in case the buyer fails to deliver the goods or serviced as requested. Lastly, the law had provided steps on how to transfer risks. The law states that the seller bears the risk while the products are under their custody. Once the goods reach the hands of the customer, then the risks are in the hands of the customer. In case the customer decides to hire a carrier to deliver their goods from the seller, then the carrier transports the goods at the customer's risk.

3.2 Consumer Protection in the EU⁵

The Directive 97/7/EC Consumer Protection and Distance Contracts⁶ was set up in 1997 to be applied in a number of contracts where the customer and the supplier are engaging in well-organized distant transactions, which do not require face-to-face interaction at any stage of the transaction. This policy was to ensure that the buyer is protected against the violation of their basic rights as regards to online transactions throughout the EU.⁷ This legislation also directed the duties and the rights on both the suppliers and the buyers on the distant transactions including the responsibility to offer information in advance including the identity and location of the supplier and the means of communication between the two parties has to be done in good faith. According to Article 4 (1) – (3) of this law, the client must access information on the prices of the goods, the services as well as the expected taxes and the other details such as the contact details. The right to withdrawal is also covered under this law in Article 6 (1) – (3). Duty on performance is mentioned on Article 7(1) and (2). This reiterates that that the maximum amount of time for performance is 30 days⁸. Information on failure to deliver the products

1 ibid

2 ibid

3 Ibid

4 'The Consumer Contracts (Information, Cancellation And Additional Charges) Regulations 2013' (*Legislation.gov.uk*, 2013) <<http://www.legislation.gov.uk/ukxi/2013/3134/contents/made>> accessed 17 December 2016.

⁵ In a document published by the European Parliament it was said that 'The notion of 'consumer' is a key concept delimiting the application of consumer-protection rules. However, not only is there no consistent and uniform definition in EU law, there are also divergences amongst the Member States.'
<[http://www.europarl.europa.eu/RegData/bibliotheque/briefing/2013/130477/LDM_BRI\(2013\)130477_REV1_EN.pdf](http://www.europarl.europa.eu/RegData/bibliotheque/briefing/2013/130477/LDM_BRI(2013)130477_REV1_EN.pdf)>

accessed 25 January 2017.

⁶ Directive 97/7/EC Consumer Protection and Distance Contracts <<http://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX:31997L0007>> accessed 18 December 2017.

7EUR-Lex - 32011L0083 - EN - EUR-Lex' (*Eur-lex.europa.eu*, 2011)

8 'EUR-Lex - 31997L0007 - EN - EUR-Lex' (*Eur-lex.europa.eu*, 2016) <<http://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:31997L0007>> accessed 17 December 2016.

or services must also be communicated within the given time as stipulated by the law; therefore, a core component in protecting the rights of the consumers.

This law is designed in efforts to improve the protection of consumers. According to this law, Article 4 of the Directive provides the provisions for comprehensive information by the supplier prior to any particular purchase. This Directive especially aims at ensuring a high level of consumer protection within the European Union through providing certain rights as well as obligations between consumers as well as suppliers whenever transacting. In Article 8 of this Directive, it provides protection of consumers against fraudulent use of payment.

On the other hand, Directive 2000/31/EC on Certain as of (Information Society Services) on Electronic Commerce¹ aims at protecting the consumers against fraud or poor service provisions. This provision is applicable in several issues including access to certain information, the contracts that are processed through electronic means, the commercial codes and principles, as well as the intermediary service providers. Article 1 of the provisions considered the kind of information that has to be made available to the customer before accepting the deal and placing the order. It warns against unclear and ambiguous information that usually misleads the buyers to fall for the seller's trap. The technical errors have also been addressed under the provisions of the article to ensure the parties conduct genuine business without any unnecessary losses to any of the two parties.

This directive clearly offers protection of consumers from suppliers. Article 11 (1) of this Directive provides the qualities the recipient of a given service has to possess². Section (a) states that the service provider must acknowledge receipt of the order placed before they can proceed to solve it in a timely fashion. Section (b) states the order and the receipt of acknowledgement are only considered received when the recipient has been able to access them. For instance, if the service provider sends corrupt file that cannot be accessed by the client, then the acknowledgment cannot be considered received.

Article 5 (1) (a) – (c) of this Directive also gives similar terms on the general information that has to be made available to the buyer including the name and the location of the seller³. Buyers of distance products and services have the right to withdraw, cancel, request for refund and rescind the contract as provided by the law. However, there are certain limitations that are allowed considering that the rights do not always apply to all goods or services.

The European Commission introduced the Directive 2011/83/EU on Consumer Rights in 2011⁴ even though it started to be enforced in 2014. Its main aim was to seal the gaps that had been created due to the ever expanding and transforming online businesses. It served to achieve balance among the business to consumer (B2C) operations. The directive replaced the Directive 97/7/EC (Consumer protection on distant contracts), the Directive 85/577/EEC (Consumer protection on businesses negotiated far from the business premises) and the Directive 93/13/EEC (Unfair terms in consumer contracts)⁵. The directive particularly enhances the experiences of customer and protects them in many ways. First, it eliminates the hidden costs and charges on the internet. Sites tricking customers about free products and services and later on asking them to pay were covered under this, which actually seeks to achieve more transparency on the online prices. Pre-ticked boxes that lead the customers to pay for extra goods or services have been condemned under the law, which gives the customer 14 days to change their mind on the contract as opposed to the previous 7 days allowed.

This Directive also offers the clients more comprehensive and favorable refund rights with a restructured wide model withdrawal form that creates balance between the client and the supplier interactions. This law offers more details on the party to take responsibility in case of returned goods or services in a manner that does not bring losses to any of the two parties⁶. The law recognizes that the consumer is vulnerable, hence, the focus is made on how they can be protected from poor service providers and online fraudsters. The law set up common rules for the businesses in order to enable them trade effectively within Europe.

What is more, this Directive include creating a level playing ground that reduces the costs associated with purchasing of products from the businesses. Under this provision therefore, the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 was applied particularly in the UK

¹, Directive 2000/31/EC on Certain as of (Information Society Services) on Electronic Commerce < <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex:32000L0031>> accessed 18 December 2017.

² *ibid.*

³ *Ibid*

⁴ Directive 2011/83/EU Of The European Parliament And Of The Council Of 25 October 2011 On Consumer Rights, Amending Council Directive 93/13/EEC And Directive 1999/44/EC Of the European Parliament and of the Council And Repealing Council Directive 85/577/EEC And Directive 97/7/EC Of The European Parliament And Of The Council <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:304:0064:0088:en:PDF>>

⁵ 'EUR-Lex - 32011L0083 - EN - EUR-Lex' (*Eur-lex.europa.eu*, 2011) <<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32011L0083>> accessed 17 December 2016.

⁶*ibid*

3.3. Consumer protection under the Jordanian law

Unlike the UK, Jordan does not have any laws, which are specially designed to deal with consumer protection issues in the electronic world. Due to the differences between offline and online transactions, many legislative works were introduced. As has been examined earlier, electronic contracts come in different types; web-based contracts could be considered as adhesion contracts; in such contracts the consumer is the weakest party, there is no space of negotiations. The typical consumer will look for the desired goods or service on the internet, trying to find the most convenient offer possible. Once his target is found, he will place his order and wait for the goods or services to be delivered to him. It is possible to consider the web-based contracts formed between the consumer and the supplier of the goods and services as adhesion contracts since the consumer will have a place to negotiate. The contractual terms and conditions that govern the online transaction are usually hidden behind a working hyperlink. This hyperlink might the online consumer be unaware of, especially if he has no legal background. Having said that, the online consumer has to accept these terms in order to proceed with the steps required for his order. The typical online user usually clicks on the 'I Accept' icon without even reading the terms or condition that govern the transaction. From a legal point of view, once this icon is clicked and the consumer proceeds to the check out safely, a binding contract has been formed.

The Competition Act applies to all production, commerce, service activities carried within Jordan, or outside it but will have effect within it. This act is not specially designed to deal with consumer protection, it has some guidelines for how to compete legally and fairly in the market. It includes some forbidden acts, which should be avoided while competing or the supplier / dealer of the goods and services will be subject to some sanctions. Although this act is not mainly concerned with electronic transactions it could be helpful in understanding how does Jordanian law define lawful competition.

On the other hand, the Industrial and Commercial Act¹ gives the Jordanian Ministry of industry, Trade and Supply² the right to monitor the internal Jordanian market to ensure that consumers will have the highest level of protection.

The *Electronic Transaction Act* and the *Electronic Criminal Act* does not provide the maximum protection to online consumers. The *Electronic Transaction Act* aims '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.'³ Therefore, it is expected that this act does not have specific articles that covers consumer protection. What could be found are general rules regarding electronic contacts, electronic signature, the evidential value of electronic papers, transferring money electronically. However, although this Act will grantee that electronic contracts will be considered as valid contract this article will assist the consumer when forming electronic contracts, but they do not grantee that this consumer will be protected from unfair acts carried by the supplier /seller. It does not for example introduce rules that could protect the consumer in the pre-contractual stage. It does not also introduce rules that cover the enforceability of electronic contracts. This will however, guide us to the general rules of contracts found in the Jordanian Civil Code.

On the other hand, although electronic criminal act, does provide some practical steps that could be taken in order to protect the online user in general from criminal acts. The act covers many issues such as hacking,⁴, stealing electronic payments details, and anything that could interpret the electronic payments system or procedures,⁵ Pornography.⁶ The act does not help in protecting online consumers at the early stage of their choice to create a binding contract. Therefore, this act is not helpful when considering the issue of consumer protection against unfair actions from the service or goods provider.

The legislator in the Unfair Completion Act And Commercial Secret number 15 for 2000 had noticed that the current legislations does not provide the protection for consumers, therefore, the draft of Consumer Protection Act came to light. The draft was meant to cover the gap found in the current legislations. The legislator admits that there is a need to determine the rights of the consumers in a straight forward and clear, in a manner that work alongside the United Nations work and worldwide polices. It also aims to oblige the supplier to provide after sale services to the consumer. In addition, the draft aims to protect the consumers from incorrect information and advertise and from any misleading information given to the consumer. It also aims to give the courts the right to amend the contractual terms that could be found in adhesion contracts formed with the consumers, and even cancel them if necessary.⁷

The draft clearly states that the consumer has the right to be informed in advance of all the information

¹ The Industrial and commercial Act n 18 for 1998, published in the official Gazette n. 4304, page 3782, 1/10/1998.

² art 4.

³ art 3 of the Electronic Transaction Act.

⁴ art 3- 5.

⁵ art 6-7

⁶ art 9-10

⁷ art 22.

and details of the goods and services in advance,¹ in addition to all obligations that might rise accordingly.² The draft also made it clear that the consumer has the right to resort to courts in any disputes that might rise in the future.³ in addition to his right to get all contact information and details of the provider.⁴

On the other hand, the draft has listed some general obligations on the provider such as confirming the quality of the goods and services provided by him, delivering goods and services within the period agreed upon or reasonable time.⁵ The draft also covers the rights of the consumers and the obligations of the provider after the delivery of goods and services.⁶

The reader of this draft finds that it gives the consumer the right to proceed with complains against the provider in case the later does not comply with the provisions of that draft, in addition to his right to proceed with a lawsuit against the provider. The consumer according to the draft has the choice for asking for compensations if he was affected by the acts of the provider.⁷

Since the above is only a draft, the current legal approach towards the protection of online consumers will only focus on the general rules that could be found in the Civil Code, namely rules which are related to contract formation, fairness, and good faith. Going back to the different types of electronic contracts mentioned earlier, it could be said that most contracts formed by online consumers are web-based contracts. Typical consumer will place his order, walk through the different steps and pay for their order to finally wait for the goods and services be delivered to him. Typical web-based contracts are considered as adhesion contracts. Consumers does not have any power to bargain their terms and conditions. Having said that, the supplier of the goods and services are obliged by to comply with article 202 of the civil when drafting such terms. Article 202 made it clear that :

1. The contract shall be performed according to its provisions and in a manner consistent with the requirement of good faith.
2. The contract shall also include what the law ,custom and the nature of the disposition attach thereto.

Since a typical web-based contract is considered as adhesion contract. According to article 104 of the civil law 'acceptance in adhesion contracts shall be limited to mere acceptance of predetermined conditions made by the offeror who does not agree to a discussion thereof.'⁸

Since it is expected that some terms might be oppressive terms from the point of view of the consumer, the Civil Code gives the right o courts to amend such terms or exempt the adhering party from them in accordance with the prescription of equity, and every agreement to a contrary shall be void.⁹

Except these general rules of that are related to adhesion, the Civil Code does not have much to say when comes to the protection of online consumer. It should be noted that the general rules that covers the defects affecting consent and mutual in contract formation will indeed be applied in the case pf online contracts. They are also found in the Civil Code in chapter one and include duress, deceit and damage and mistake.

4. Conclusion

In essence, the study informs that e-contracts follow a certain procedure in order to have the goods or services provided to the consumer. Such steps require relevant parties to adhere to all these procedures in order to avoid any shortcomings results. Although there is a high number of online transactions in Jordan, there seems to be little action taken when considering the issue of consumer protection for online transactions. In order to establish a safe harbor for online consumers in Jordan, real legislative actions should be taken in the near future in by the Jordanian legislator.

The current acts that deal with electronic transactions does not provide the protection required for online consumers. Consumers are in need for guidance throughout the online contracting process. The draft of consumer protection act, is from 2013 is only a draft which is not passed the legislative procedures yet. , Until real legislative steps are taken, courts will have to apply the traditional contract provisions found in the Jordanian Civil Code. Such provisions does not give the maximum protection for online users as expected to. They were designed for offline transactions in the 1976 .it is recommended that the Jordanian legislator take steps similar to the ones that could be found in the UK for example.

Although the online transactions and contracts are somehow similar to offline ones, but yet the special characteristic of the online transactions require special laws and regulations that tackle the online transactions

¹ art 3(a)(2).

² art 3(a)(3)

³ art 3(a)(7).

⁴ art 3(a)(8)

⁵ art 4.

⁶ art 6-7.

⁷art 20.

⁸ art 104 of the Civil Code.

⁹ art 204 of the Civil Code. This approach could also be found in article 22 of the Draft of consumer protection act.

from the first step taken by the online customers. If the draft is passed by the legislator in Jordan, further steps has to be taken in order to rise the legal awareness of the online customers in terms of their rights and obligations. In addition, to have other legislative instrument that will aid in their protection.

Until the moment the Jordanian Parliament passes the draft examined in this paper, courts will have to apply the contract rules found in the Civil code, therefore, the non-governmental organizations in Jordan will have to work on rising the legal awareness of consumers. Judges need to follow the steps in foreign jurisdictions when considering issues related to consumer protection and fairness. At the same time, and incase the draft of Consumer Protection Act was not passed and enacted, the current legislations and acts in Jordan need to be revised to include provision that could help both courts and consumers will contracting electronically.

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