

# Consumer without Special Legal Protection: How the Jordanian Legal System Provides Protection to the Consumer

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## Abstract

The consumer protection is one of the most important issues that need to be solved in the countries without special legal system to protect the consumer. This paper discussed how the Jordanian laws protect the consumer. Its major objective was to clarify the Jordanian Civil Law, Competition Law and NSCP on the issue of consumer protection. The paper indicated that Jordan legal system covers the issue of consumer protection in only few laws, which fall short of providing absolute protection to the consumer. The paper adopted a purely doctrinal nature of study that focuses on the primary and secondary sources. The paper concluded that Jordan legal system has insufficient rules to protect the consumer and as such the government needs to enact a special law named the consumer protection law, not unlike other developing countries such as, the United Arab Emirates and Malaysia from which Jordan can adopt their Laws of Consumer Protection.

**Keywords:** consumer protection, civil law, competition law, Jordan

## 1. Introduction

Suppose an agreement between businesses and consumers is a “one-way agreement,” enforceable only against one party and not the other. Then, such an agreement will create commitment from one side to other but not the other way around. This agreement create commitments against the consumer and not against the business and the consumer is unable to escape from any obligation created by the agreement such as; payment for the agreement fees, binding through restrictive legal rule, and commitment to any service done for him/her. In regards to businesses, they will not be responsible to the commitment or promises they have made to the consumer before or during the agreement and consumers would have no legal right to enforce any of their rights that logically exist.<sup>1</sup>

In Jordan, there is no law enacted to protect consumers although such a law has been drawn up twice and sent to the Parliament board in 2006 and in 2013 but unfortunately they missed to view it and the board has been changed four times since the first time the law was submitted to them. Generally, the issue of consumer protection is rather neglected in Jordan. It has been recommended by the Economic Dialogue Committee report in 2011 to enhance consumer protection tools and expedite the issuance of consumer protection law. In addition, the media has been increasingly promoting consumer awareness that appears to be low, and catering to the civil society that shows weak interest and engagement in the area, while the business sector remains indifferent. In the government's viewpoint, more effort has to be exerted for the enactment and enforcement of a consumer protection law. This also holds true for the creation of an autonomous government body that supports consumer protection associations and examines the relationship between competition and the issues of consumer protection in promoting consumer awareness. It is also crucial for companies to take consumer protection dimension into consideration in their ongoing business activities.<sup>2</sup>

Pertaining to consumer agreements, it still subject to the general principles, which govern the ordinary contract under the Jordanian Civil Law 1976 (JCL). For example, any action brought by the plaintiff to the court for any damage caused by defective items or products sold by another party will be primarily premised on the law of tort or contract. It can be considered under the Jordanian legal system and from a legal point of view commercial or civil agreement. However, the JCL still falls short of providing full protection to the consumer.<sup>3</sup> For example, this law provides general provisions to protect the consumer from any potential harm might be caused, but smart businesses will find sophisticated legal maneuvers to avoid the flimsy protection provided by this law to the consumer. Thus, the Jordanian consumers are in dire need of a special law to protect them from any potential harm caused by the businesses or the product itself.

## 2. The Consumer Protection Laws in Jordan

As mentioned earlier, the consumer is protected by the general rule known as the Jordanian Civil Law 1976. In this part, the researcher addresses the legislations such as the mentioned law and the Competition Law since both

<sup>1</sup>Ben-Shahar, Omri, *Consumer Protection Without Law* (2010). Regulation, Vol. 33, No. 2, p. 26. Available at SSRN: <http://ssrn.com/abstract=1632415>

<sup>2</sup>OECD, (2013), OECD Investment Policy Reviews OECD Investment Policy Reviews: Jordan 2013, OECD Publishing, 191.

<sup>3</sup>Alhusban, A. (2014). *The importance of consumer protection for the development of electronic commerce: the need for reform in Jordan* (Doctoral dissertation, University of Portsmouth).

involve the consumer issues in their scope. Furthermore, these laws are addressed to show how they work to protect the consumer.

- **Protection under Jordan Civil Law 1976**

The Jordanian Civil Law is deemed to be an old code influenced by Islamic Fiqh and primarily following the French legal system.<sup>1</sup> Moreover, it consists of rules adopted from the Egyptian Civil Code of 1948, which was modelled upon the Napoleon code. However, generally speaking, the Jordanian Civil Law remains an Islamic-centred one. According to section two of the Civil Code, Islamic jurisdiction is the second civil law source followed by Shariah.<sup>2</sup> In relation to this, the Civil Law is deemed to be among the most significant laws in the country as it is the basis of all private law branches. Traditionally, it comprises of various rules and legal doctrines that relates to legal personality as well as patrimonial transactions.<sup>3</sup> Furthermore, this law, as mentioned earlier, is the main law for the all private laws in Jordan and is thus considered to be the applicable law in the absence of any rules,<sup>4</sup> such as the absence of consumer protection law.

Although the primary function of the civil law rules is to organize civil transactions and to compensate for damages caused by wrongful misconduct, such traditional function is created based on the new human life norms. Additionally, civil litigation is dominated by the compensatory dogma with the sole purpose of the compensation from a civil law perspective is to provide remedies to the wronged party and not to decide on punishments for the individual who brought about the damage.<sup>5</sup>

The primary objective of this law is highlighted in Article 256 of the JCL that states that any injurious conduct will make the perpetrator liable for compensation for the harm notwithstanding any fault. The provision's substance shows that the legislator is only concerned with the plaintiff's remedy and not the defendant's conduct or intention as the law holds the defendant liable notwithstanding his/her not being full-age, or whether or not his/her commission/omission does not constitute negligence or intentional harm.<sup>6</sup> Article 266 of the JCL also deals with the compensation scope that is awarded to the plaintiff and in this regard, it provides a narrow damage concept. It provides that the court may award the plaintiff damages to cover the actual damage incurred and the loss of profit in a way that the damage and loss naturally results from the conduct of the defendant.<sup>7</sup> Furthermore, with regards to the rules governing the formation of contractual agreement in the ordinary way, it is covered by Civil law provisions. Few of these rules appear to be consumer protection rules, particularly those related to duress or mistake, while making the contractual agreement.<sup>8</sup>

Pertaining to the relation between the Civil Law and Consumer Protection, it is addressed in various provisions. Starting from Article 89 which concerns the contract in its offer and acceptance - the Civil Law shows how the acceptance is considered by both parties. In regards to the advertisement of the product with price by the seller, the Civil Law considers it as an offer and not an acceptance to commit the seller to sell the product if its meet an acceptance by the consumer although Article 94(1) clearly stipulates that offering products with price is considered an acceptance. But in Article 94(2) stipulates that an advertisement is not considered an acceptance.

Based on the above, the civil law provides insufficient protection to the consumer and does not cover all misleading aspects, which the consumer may fall in. Thus, the consumer has no protection under the Jordanian Civil Law 1976.

- **Protection Under Competition Law**

Jordan enacted the first Competition Law in 2002, and it has been amended in 2004. This law addresses the competition bodies in Jordan by covering several problems pertaining to the competition such as, ensuring fairness of economic transactions. In addition, the aim of this Act is to protect and encourage competition and accept advices and recommendations in regards to competition directors' activities (i.e., helping directors in

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<sup>1</sup>Hayajneh, A. Z. (2015). Theoretical Framework for judicial discretion within Qatari and Jordanian Civil Laws: Indications and Implications.

<sup>2</sup>Olwan, M. (2010). The three most important features of Jordan's legal system. In *a paper presented at IALS Conference "Learning from Each Other: Enriching the Law School Curriculum in an Interrelated World"*, available online at: <http://www.ialsnet.org/meetings/enriching/olwan.pdf>.

<sup>3</sup>Hayajneh, A. Z. (2012). Legal Surgery: The Need to Review Jordanian Civil Law. Available at SSRN 2427172.

<sup>4</sup>Alsarhan, A. (2005), Jordan Civil Code: Sources of Obligations (1st, DarAlthaqafah, Amman) (In Arabic)

<sup>5</sup> Ibid.

<sup>6</sup>Hayajneh, A. Z. (2010). The Awarding of Punitive Damage under the Jordanian Civil Law: Is it Possible?. *European Journal of Social Sciences*, 14(4), 606-612.

<sup>7</sup> Sarhan, Adnan, (1997), "Punitive Damage: Comparative Study" Al Yarmouk University, 13, issue 4, pp 96- 98

<sup>8</sup>Al-Ibraheem, M., and Tahat, H. (2006). Regulating electronic contracting in Jordan. In *Proceedings of the 21st British & Irish Law, Education and Technology Association Conference: Globalisation and Harmonisation in Technology Law* (pp. 1-9).

some uncovered issues and practices to protect the consumer).<sup>1</sup>The purpose of the competition is to ensure that markets work well for consumers and businesses by opening the competitive markets, while protecting the consumer.

The Competition and Consumer Protection Commission (CCPC) main mission is to have markets work towards the betterment of consumers and businesses. Its vision is to protect and empower consumers in open and competitive markets where businesses are in active competition. Thus, it will be fair for the two parties to get benefits from the competition. For instance, if the consumer is not satisfied with the item or the price, he/she has a right to search for and deal with other offering the same item with different price or quality.

The consumers generally aim to get the item with good quality with the least price. However, two items should be considered, price and quality. In Jordan, there are two bodies, which hold this responsibility namely, the Competition Directors and Quality and Market Control Directors, where the former follows the Competition Law 2004, and the latter follows the Industry and Trade Law 1998.

These two bodies work under the Ministry of Industry and Trade. The Director of Quality and Market Control works to enable the private sector, both industry and trade, to implement the policy of the Ministry which aims to free the goods and services markets and arrange the procedures of the markets to avoid abuse made by private sector of this freedom. Hence, it would be meaningless for the consumer to make use of this policy.<sup>2</sup>

Consumer protection activities that the above mentioned bodies are responsible to handle are classified as:

- Identify the main goods as imposed by the Prime Minister;
- Selling goods based on the advertised prices by the Prime Minister;
- Keeping check on the stocks with wholesalers;
- Controlling the concealment of or refusal to sale main goods;
- Monitoring sales, promotional prices and liquidation;
- Investigating the practices that might be contrary to the principle of competition.

Article 17 of the Competition Law 2004 allows the harmed consumers from a product to bring an action, but the number of such harmed consumers from the same product should be at least 5. Thus, less than 5 consumers have no right to get any remedy or bring an action to the competent court.

As illustrated above, it can be summarised that the Competition Law 2004 has no sufficient protection to protect the consumer from any harm. The duties given to these boards are great. However, the implementation of these duties seems hard and insufficient to control the market, which makes it easy for any potential consumer to be harmed.

- **Protection Under National Society of Consumer Protection (NSCP)**

Owing to the lack of government agency that provides consumer protection, the (NSCP) was established in 1989. This association aims to develop the public's awareness of the consumer issues, to collaborate with the government in combating and handling monopolistic practices, higher prices and market fraud and abuse in the Jordanian market. Moreover, NSCP is a representative of the consumers in the National Codex Committee (NCC) within the administrative council of the Jordanian Institute for Standards and Metrology (JISM) and within the entire committees that are responsible for food standards. More recently, the NSCP has aimed to directly reach consumers in a timely manner via text messaging (SMS) to assist them in carrying out effective, economical and timely decision making concerning their day-to-day purchases.

In action, the NSCP has contributed to the new draft of the consumer protection law, which has not been enacted due to the neglect of the government - in particular, the Board of Parliament that it was submitted to twice in 2006 and 2012.

In regards to the aims of the NSCP, it represents the consumer in front of the competent court. This is totally wrong as no law has recognized NSCP as having the authority to do so as it is a non-government agency, which has no right to represent the consumer in the competent court.

### 3. Conclusion

It can be concluded that the general rules provided by the Civil Law 1976 and Competition Law 2004 are not sufficient to cover all aspects of consumer issues in the Jordanian market. Moreover, these laws do not provide any remedy for the consumer harmed by goods. In addition, the NSCP is also curtailed in its protection as its main duty is to promote consumer awareness of goods and prices and also because it is a non-government agency and therefore, unable to represent the consumer front of the ordinary courts. Hence, it is pertinent for the

<sup>1</sup>Malhas, F. (2009) Economic Concentration – Jordanian Competition Law, Mondaq Connection Knowledge & People. It can be seen in <http://www.mondaq.com/x/75568/Antitrust+Competition/Economic+Concentration+Jordanian+Competition+Law>

<sup>2</sup>The Interface Between Competition and Consumer Policies Contribution from Jordan, Global Forum on Competition, 2008, It can be seen in <http://www.oecd.org/daf/competition/prosecutionandlawenforcement/39792264.pdf>

Jordanian government to enact an independent consumer protection law as soon as possible and empower the NSCP legally to represent the consumer in the competent courts. Furthermore, it also needs to establish a government agency to be in direct contact with the society to control and monitor the market as well as warn the nations from these actions..

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