Assuming Responsibility toward the Advertiser in Electronic Trade in Jordan Legislations: A Comparative Study

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Abstract

This paper presents limitations, problems and hurdles in e-commerce usage in Jordanian context, paving the way for further e-commerce studies in developing countries generally. Comparisons were made between countries, and the results could be valuable even at international level. Main limitations of e-commerce from the viewpoints of company as service provider and also from the customers are elaborated. This study found six major limitations of e-commerce in Jordanian context as follows: security and trust; internet experience; enjoyment; language; legal issues; and technology acceptance (ease of use and usefulness). Clearly, these limitations are non-technical, and could be attributed to the lack of legislation on e-commerce. Also, the general directives of the Jordanian civil law appear inadequate in regulating the accountability of e-commerce service provider. Also, varied attitudes were found towards who should be accountable for the electronic trade advertiser in the legislations. The study enriches the relevant literature as it presents and discusses the limitations that may justify the viewpoints of customers concerning the advantages and disadvantages of e-commerce.

Key words: E-commerce, Jordan, Customer, Legislations, Assuming responsibility.

1. INTRODUCTION

Considering the current status of the Internet as a marketplace for consumers, e-commerce should be developed in a manner that places the transactions of consumer within certain legal framework, because in a contract, consumers are often the weaker party, and the absence of parties in electronic environment intensifies their weakness further. The issue of consumer protection has thus become an increasing concern among both developing and developed countries. In Europe for instance, there are countless legal systems that deal with customers difficulties in both offline and online. Contrariwise, Jordan is still depending on the common legal fundamentals of Civil Law in managing such matter, and therefore, consumers in Jordan have not been adequately protected.

New tools have emerged following the establishment of the Internet, and through these tools, consumers can go online and easily search for goods and services and then purchase them. Through these tools, consumers could search the goods and services of interest, make comparison of prices and features of the said goods and services, and then select the preferred methods to make payment.[1]Among the products that can be bought via the internet are tangible or actual products like smartphones, skincare and food items, and intangible or downloadable products like antivirus software, e-books, or music. Purchasing activities can also be executed through email or websites. However, today, online purchase activities have to take into account the legal protection of consumers, especially concerning the information requirement, protection against imbalanced Terms and conditions, consumer's reflection opportunity following their will declaration, and confirmation or acknowledgement in the elimination of any legal doubt on the contract conclusion.

ECCC requires consumer protection. However, this does not imply the need for specific new rules in this contract to regulate the issues of consumers in e-commerce (technology specific approach). In the EU on the other hand, there has been extensive advocacy of technology neutrality by national legislators and international

[1] Gary Shelly and Harry J. Rosenblatt, System analysis and design (Shelly Cashman Series, 8th Edition, USA 2010) 10.

organisations, and this positive notion is now part of common insight. [2]Indeed, the basic rules for on-line and off-line transactions should be similar, and legal rules should not be biased against certain technology. Somehow, ensuring high standards of consumer protection under off-line laws implementation on ECCCs, it is necessary for the legislation to concede to the modern law contract in governing the consumer issues on the Internet, rather than depending on the rules of commercial contracts because through the legislative action to rebalance B2C contractual arrangements within the current law of contracts, legislature intervention to rebalance B2C contractual relationships could be performed. Contrariwise, the general rules of commercial contract advocate the freedom of contract principle, and these rules make no distinction between the various contractual relationships, and therefore, unequal bargaining power may exist, putting some contracting parties at a disadvantage.

In e-commerce development, consumer protection is an important element in its legal infrastructure that essentially regulates and governs e-commerce issues, for instance, in contract establishment, e-payment, e-signature, jurisdiction, and contract conclusion. Within the context of international law, the legal infrastructure has been well acknowledged, and it concerns the blend of the necessitated elements in assuring the effective functioning of laws (Connolly).[3]Equally, the legal infrastructure encompasses the e-commerce legal frameworks comprising various law subdivisions that deal with various e-commerce legalities like personal data protection, consumer protection, e-contract law, and e-crime law.

The law of contract essentially prohibits the separation of the ECCC rules from the offline customer agreement rules, especially when moderate neutrality stance is being applied. Nevertheless, to accommodate the B2C transaction, it is necessary that modern, and not classic or commercial general legislative approach is used, considering that in online and offline surroundings, consumer contracts are bound by the rules of modern law, not the conventional commercial contract rules that allow equal bargaining power to the involved parties.

2. E-COMMERCE

E-commerce has no general definition because it is a difficult concept to define. As a form of technology, e-commerce has high flexibility, allowing the execution of various commercial activities.[4] However, essentially, e-commerce has been attributed to activities of business that are electronically performed,[5]and it generally deals with transactions as its key component. There are various forms of e-commerce transactions including B2B or B2C, but the present paper focuses on B2C relationships that relate to consumer protection. Since the involved parties are not physically present in the Internet transactions, a more reliable information disclosure system is needed, and consumer protection can be provided in both offline and online atmospheres. Somehow, in order to achieve a balanced contractual relationship, the legal framework for consumer issues have to be adequately formed.[6]

B2C or Business to Consumer is typically present in off-line and on-line environment, but it has been mostly linked to e-commerce because B2C has been the most frequently discussed contractual relationship type in this arena. B2C encompasses an exchange of products, in the form of goods or services, from businesses to consumers, rather than between businesses. B2C e-commerce thus refers to an Internet-based electronic market that allows consumer communications and transaction in business online.[7]

B2C relationships are significantly distinct from B2B transactions, but their differences vary according to the given field of science. From a technical standpoint for instance, B2C includes countless of buyers that make

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[2] Bert-Jaap Koops, "Should ICT Regulation be Technology-Neutral" in Bert-Jaap Koops, Miriam Lips, Corien Prins & Maurice Schellekens, Starting Points for ICT Regulation: deconstructing prevalent policy one-liners (The Hague: TMC Asser Press 2006) 77, 77-9. Cited in Reed, 'Taking Sides on Technology Neutrality' (n 39) 265.

[3] The term 'legal infrastructure' includes laws, regulations and codes, registration, licensing and accreditation, regulatory bodies and international standards. This thesis deals with specific aspects of consumer protection law. For the definition and more detail see Chris Connolly and Peter van Dijk, 'An Overview of E-Commerce Legal Infrastructure' (Galaxia 2005) available at Accessed January 2011.

[4] Chris Reed and John Angel, Computer Law: the Law of Regulation of Information Technology (6th, Oxford University Press, Oxford 2007) 198.

[5] Jae Shim and Joel Siegel et al, The International Handbook of Electronic Commerce (1st, Routledge, USA 2000) 1. Cited in Aljaber (n 1) 10.

[6]Alhusban, Ahmad. *The importance of consumer protection for the development of electronic commerce: the need for reform in Jordan.* Vol. 39. University of Portsmouth, 2014.

[7] Cristina Catenae, Cyber Consumer Law and Unfair Trading Practice: Markets and the Law (1st, Ashgate, England 2004) 7.

many different transactions each hour involving somewhat small number of sellers.[8]Meanwhile, from a marketing standpoint, B2B is distinct from B2C particularly through its reliance on the capability of the used campaigns in invoking emotional responses, instead of just displaying value.[9] From a regulatory standpoint, B2C relationships have higher level of sensitivity as opposed to B2B transactions owing to privacy, jurisdiction and protection.[10]Nonetheless, in forming the contract for both B2C and B2B relationships, similar elements are included, but the current laws acknowledge the unequal bargaining power principle, and therefore, there has to be intervention from the legislature to empower consumers through power rebalancing.

3. LEGISLATION IN COUNTRIES ON E-COMMERCE

Consumer laws have been proclaimed in various countries and some e-commerce provisos for safeguarding the consumers have been introduced. Among these laws include Consumer Protection Law in UK (1987), Consumer Protection Act (CPA1999) in Malaysia, Consumer Law (2001) in Australia, Consumer Protection Law 2015 in Syria and Consumer Protection Law 2006 in UAE.

3.1 European legislations of E- commercial

In assuring comprehensive protection to consumers, the European legislation protects consumers in various stages including distribution, production, and consumption of services and goods. In order to assure that consumers are protected from the harms resulting from goods usage, a number of European directives have been announced by the European Union to structure the legal relationships between consumers and traders. Additional legislation has also been imposed the European Union for moral integrity preservation, through consumer satisfaction protection from reckless contracting considering the diverse propaganda and advertising methods.

The 2005 Act is one of the European directives and it covers the issue of misleading advertising, specifically Directive No. 83/2011 dated 25/10/2011m that concerns the subject of consumer rights. Based on the European consumer protection laws, the directive highlights on misleading advertisements in accordance with section (5) of the British Law of 2008 on the protection of consumer from misleading practices which states that a given advertisement is deemed misleading if it carries false or deceptive information that would affect the average consumer and compel him to contract, and without such information, the consumer would not have contracted. An objective standard was thus introduced by the British legislators on the consumer with average level of caution and intelligence, since such consumer is usually easily misled by the deceptive information seen in the advertisement.[11]

In the UK, the Molong Committee was the body responsible in the construction of the framework of advertisement regulation, and as has been stated by the committee, advertisement that accumulates claims that are false and misleading on factual character, should be under the governance of the trade description legislation.[12]In this country, Advertising Standard Authority (ASA) governs such advertisements – ASA is a self-regulatory and an independent body.

In France, misleading commercials are punishable by law, as stipulated by the French Consumption Law 2014 as these are regarded as form of misleading trade practices. The French Consumption Law 2014 law states that commercial practice is deemed misleading, according to allegations, signs or false presentations, concerning one or more of the following:

1. The product or service description;
2. The key characteristics of the product or service;
3. The price, or the method used in price computation, promotional characteristics of the price, and sale and delivery circumstances;
4. After-sales service that may involve spare parts usage, or replacement or maintenance;
5. Advertiser obligations, procedures and objectives underpinning product or the service sale;

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[8] R. Kelly Rainer and Casey G. Cegielski, Introduction to Information Systems: Supporting and Transforming Business (John Wiley & Sons, 3rd Edition, USA, 2009) 206

[9] See for example: Connie Chang, 'Reviewing and Conceptualising Customer-Perceived Value' [2012] MR 253, 274.

[10] Ibid.

[11] Alwan, Abd Al-Kareem Ali . " Commitment to dangerous quality in sales, a comparative study among French, Egyptian and Jordanian Laws" *"PhD dissertation, Amman Arab University"*, (2011).

[12] Molony, Joseph T. "*Final Report of the Committee on Consumer Protection"*. "*HM Stationery Office",* (1962).

6. The product's distinctiveness, characteristics and expiry; and
7. Address consumer demands and rights.

Both French and British legislators are on the same ground in terms of the criterion of average consumer with intelligence of average level, in their assessment of the level of misleading advertisement, and in curbing the illegal trade practices, similar criterion was applied by the European Directive in 2005.[13]

Weak and hopeless consumers are prone to being misled by advertisers, and therefore, they have to be protected. As provided by the French consumption law in its article L. rule 120.01: advertisement directed at certain consumers because of their age, or their mental or physical ability, will be deemed a misleading advertisement based on an average decrease of the intellect enjoyed by the group target in the advertisement.

3.2 Malaysian legislations of E-commercial

Several laws associated with product and services advertising and selling via e-commerce can be observed in the Malaysian consumer protection legislation.[14]The Government of Malaysia imposes control on advertisements and regulates advertising usage, so that businesses do not provide misleading information or place billboards in prohibited spots, or engage in illegal actions.[15]Consumers are protected via the regulations and laws that require fair interaction between consumers and providers of services. The promotion of awareness of services and goods, increased transparency, fraud prevention, promotion of marketplace competition, consumer education, and elimination of imbalanced practices in e-commerce, are among the strategies that can be employed to achieve consumer protection.[16]

Consumer protection is for providing support to consumer, and thus, it motivates the industry to respond to consumer's needs, the consumers' faith in the quality, affordability, and availability of the provided service, all of which can be achieved by developing and enforcing the consumer standards and codes, and also by resolving consumer disputes. In Malaysia, several strategies have been launched for protecting the e-commerce consumers. These include national policies and legislations on consumer protection, educational program for students of schools and universities, consumer seminars, conventions and club carried out in schools, compensation structures, provision of grants to joint program, and smart collaborations with consumer organizations. [17]In this study, the Malaysian laws and Jordanian legal provisions are being compared, focusing on e-commerce accountability. Also, the regulatory and legal environments of consumer protection in their e-commerce application between both countries are reviewed.

3.3 Arab legislations of e-commerce

The subject of customer safety within the Arab domain has been overlooked by law makers, making it a subject of interest among scholars. However, the scholarly works in this domain have been mainly focusing on the progress of customer defence regulation in developed states and the universal strategies of Islamic law in the customer defence arena, considering the non-existence of one organised customer protection law in this region of the world.[18]In the Arab region, as reported by Dubai Press Club, the advertisements were worth $4.6B USD in 2009.[19]
The intent to protect consumer has been recently demonstrated in many Arab countries whereby special laws have been introduced for instance, federal Law of UAE No. 24 2006, the Egyptian Law, Syrian consumer protection Law No. 14 2015, and consumer protection No. 67 2006.[20]
Section 94 /2 of Jordan Civil Law (JCL) 1976 provides the following: *"the publication and announcement and the statement of prices being handled by another statement and all related offer or requests addressed to the*

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[13] French consumption Law of 2014. s (5) L 121-2.
[14] Sabri, Mohamad Fazli. "The Development of Consumer Protection Policies in Malaysia." International Journal of Business and Social Research 4, no. 6 (2014): 98-108.
[15] Kadir, Aniss Yusairah Abdul, and Al-Hasan Al-Aidaros. "Factors Influencing Advertising in Malaysia from an Islamic Perspective: Case of Kedah State". "International Review of Management and Business Research 4, no. 1 (2015)": 189.
[16] Ardic, Oya Pinar, Joyce Ibrahim, and Nataliya Mylenko. "Consumer protection laws and regulations in deposit and loan services: A cross-country analysis with a new data set." "Policy Research Working Paper", (2011).
[17] Ardic, Oya Pinar, Joyce Ibrahim, and Nataliya Mylenko. "Consumer protection laws and regulations in deposit and loan services: A cross-country analysis with a new data set." "Policy Research Working Paper", (2011). 98-108
[18] AlGhafri, Abdulla. "The inadequacy of consumer protection in the UAE: the need for reform." PhD diss., (2013).
[19] See Dubai Club Press, "*Advertisement Revenue in the Arab World Reach $4.6 Billion"*, published in 17/04/2010. Available at: http://alrroya.com/node/69818.
[20] AlGhafri, Abdulla. "The inadequacy of consumer protection in the UAE: the need for reform." PhD diss., (2013).

public or individuals is not considered when in doubt, but an invitation to negotiate."[21]The law requires clear display of prices, the intent of the source and its sanctity, in addition to the intent to negotiate.[22]

In protecting consumer, the UAE law specifically in Section 26 precisely prohibits goods advertisements that mislead and deceive consumers. Notably, the Draft Law 2013 and UAE Consumer Protection Law display several elements that signify the requirement for the re-examination and amendment of such laws so that consumers could receive civil protection from misleading commercials.[23]

It has been found that the UAE Law makers had not stated the possibility of considering the omission or concealment of certain data in the advertisement as misleading. Contrariwise, their British counterparts have clearly mentioned that deliberate omission of standard information on the advertised product or services as a misleading and deceptive act. Also, the British Law permits judgment and decision on the level of necessity of concealed information.[24]

As provided by the Egyptian Consumer Protection Law (No. 76) of 2006) Section 6, supplier and advertiser are obliged to furnish consumers with accurate information concerning the product, particularly in terms of its nature and features. This will prevent consumer from being misled, in terms of product information.
In Syria, the Consumer Protection Law 2015 section 1 provides that advertisement is essentially to promote, or sell or market a given a product or service, whether directly or indirectly readable or heard or visible or encoding. The law also provides a clear definition of a misleading advertisement in Section 1 by stating that it encompasses an advertisement on certain good, service, an offer or statement, and includes assertion of a false or established in a manner that directly or indirectly will deceive or mislead the consumer. Within the Arab domain, the Syrian Consumer Protection Law is in fact the only law that directly ascertains misleading advertising. Additionally, the commercials and advertisements displayed at present time are often tarnishedby disinformation, fraud, deception, and other irregularities. These irregularities must be eradicated and consumers must be protected, and thus, there has to be a regulation governing these commercials and advertisements.[25]
The discussion presented above implies the necessity of legislature intervention in order that appropriate level of consumer protection can be achieved. From the economics standpoint, consumers are the weaker party with poor level of experience and legal knowledge. Also, as consumers rely solely on the information furnished by the business in their transactional decision making, they become the defenceless party. This study therefore will attempt to find out to what extent consumers in ECCC are receiving protection from the Jordanian legislation, considering that the Jordanian legislation does not sufficiently protect consumer in ECCC owing to the non-existence of a comprehensive legal framework that deal with consumer issues.

4. JORDANIAN ELECTRONIC TRANSACTION LAW (JETL)

Jordanian Electronic Transaction law 2001 is based primarily on the Model Law of Electronic Commerce (Model Law) that is used by United Nations Commission on International Trade Law (UNCITRAL) 1996. JETL acknowledges electronically created contracts making electronic records also legally effective written records.[26] JETL also acknowledges data messages as messages with legal status. For Jordanian legislators, the Model Law provides some internationally acceptable rules for the eradication of some legal hurdles in e-commerce development and the evaluation of some aspects emerging in the e-commerce domain with the utilization of the up-to-date communication techniques.[27]At international level, the law fosters consistent and standardised legislation.[28]There are two major parts to the law whereby one part specifies the general provisions on e-commerce, while the other provides provision on e-commerce in specific domains of commercial activity.[29]

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[21] JCL 1976,s94.
[22]Rasha Hattab*."* Indeed Legislative civil protection for the consumer of commercial advertising misleading":Study in the federal law on consumer protection and the draft Jordanian Consumer Protection Act. *Sharjah,* 16 May (2016). https://www.sharjah24.ae/ar/studies-and-research/121593. (Accessed in February 2020).
[23]Ibid.
[24] Ibid.
[25] Sarka Nevralova, "Misleading advertisement and customer's behavior", "*Bachelor Thesis, Tomas Bata University in Zlin*,(2010)": 18
[26] UNCITRAL Model Law on Electronic Commerce 1996, s 5.
[27] Barry Sookman, 'Legal Framework for E-commerce Transactions' [2001] CTLR 85, 95
[28] Model Law, s 3. See also Michael Dabit, 'The Protection of Electronic Payments Systems under Jordanian Law' [2004] JIBLR 360.
[29] 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 S

Observing JETL, it is clear that it adopts just the first part that provides no regulations on goods transportation. Meanwhile, the Model Law excludes consumer protection within its scope, and this is in fact its significant limitation. As accordingly mentioned in Guide to Model Law Enactment, the Model Law was formed without taking into account the issues that might emerge in consumer protection.[30]Still, the Model Law does not predominate any consumer protection related law,[31]implying that UNCITRAL's presumption when stating the Model Law as an appropriate legal framework for consumer protection is fully relying on the presence of legislation in each enacting State because the presumption of UNCITRAL is that in those states, national consumer protection legislation is already in place.[32]

Another supposition of UNCITRAL is that special consumer protection laws are being enacted in certain countries, and these laws may impose control on certain aspects of information systems usage. Nonetheless, for some developing countries that have adopted the Model Law like Jordan, their consumer protection legislation is still insufficient, which means that consumer has to seek protection in the general principles of JCL. Somehow, JCL does not distinguish between parties with imbalanced bargaining power, and JCL also does not have a clear set of rules on information onuses.[33]

As the Model Law provides the national legislators an array of internationally acceptable rules, UNCITRAL is therefore associated mainly with the international trade development. Yet, from its commendations, States are expected to favour the use of the Model Law in their enactment or revision of domestic laws. In other words, States should equally take into account their national domestic laws through the inclusion of additional rules, e.g., additional information requirements, in their governance and control of other types of contracts like B2C. As one of the adopters of the Model Law, South Africa[34]also incorporated the supplementary regulations into similar Act. Meanwhile, Canada is among the countries that employed dual approach involving both the federal and state/provincial governments in the introduction of law associated with e-commerce. On the other hand, European Union has its Directives as the primary legal guidance source, as exemplified by Electronic Commerce Directive made effective in UK on 17 January 2002.

JETL attempts to eradicate hurdles in electronic transactions, while promoting confidence, transparency, and treatment equality between media.[35]JETL is in fact a noteworthy legislative step towards the development of e-commerce, but JETL it is far from perfect, as e-commerce needs a definite set of rules to cover various domains.[36]Observing the recommendations of UNCITRAL, Jordan has expanded the applicability of the Model

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Rawson, 'An Emerging Framework for Electronic Commerce: the E.U. Electronic Commerce Directive and Related Developments' [1999] International Company and Commercial Law Review 171, 175. For more details see UNICITRAL Model Law on Electronic Commerce with Guide to Enactment 1996, C. Structure. P 18 at http://www.uncitral.org/pdf/english/texts/electcom/05-89450_Ebook.pdf

[30] Notwithstanding, it is worth mentioning that the views of the Working Group of UNCITRAL on Electronic Commerce were different in relation to consumer transactions on the Internet. They can be summarised into three different views. The first view supported the necessity to introduce two separate instruments to deal separately with consumer and commercial transactions. The second view believes that the future instrument should deal with the issues of consumers in much the same way as Article 1 of the UNCITRAL Model Law on Electronic Commerce did. The third view was that further efforts should be made towards clarifying the notion of "consumer transactions" to better understand whether a distinction based on the consumer or commercial purpose of the transaction was workable in practice. This controversial issue was related to the problem presented in Article 2, subparagraph (a), the United Nations Sales Convention which did not apply to sales "of goods bought for personal, family or household use, unless the seller, at any time before or at the conclusion of the contract, neither knew nor ought to have known that the goods were bought for any such use". See UNCITRAL, 'Report of the Working Group on Electronic Commerce on its thirty-eighth session' [24 April 2001] Thirty-fourth session, A/CN.9/484

[31] UNCITRAL Model Law on Electronic Commerce with Guide to Enactment 1996, New York, 1999, available on < http://www.uncitral.org>.

[32] UNCITRAL Model Law on Electronic Commerce with Guide to Enactment 1996, New York, 1999, available on < http://www.uncitral.org>.

[33]Alhusban, Ahmad. *The importance of consumer protection for the development of electronic commerce: the need for reform in Jordan*. Vol. 39. University of Portsmouth, 2014.

[34] Electronic Communications and Transactions Act 2002 of South Africa. Chapter 3 of the Green Paper on e-commerce specifically recognised the Model Law on e-commerce as a source to be used in the development of South African law on e-commerce.

[35]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".

[36] For example, Consumer protection laws including mandatory contractual disclosures, labelling requirements for contents and safety, prohibited unfair terms, rights of rescission and return, warranties, rules on limitation of liability, language of the contract, restrictions on debt collection practices, and special requirements, for example, distance sales, telemarketing, package travel, automobiles, time-share condominiums, medicinal and health products; Consumer credit reporting and credit checking regulations; advertising regulation to govern (e.g. fraudulent or deceptive advertising, disclosure requirements,

Law to all information in data message form with the exception of those stated in Article 6 namely contracts and instruments or documents created based on special legislation, in specific format or those that follow certain measures for instance, will writing and amendment.

JETL has been criticised as follows: Firstly, Jordanian legislature adopted the first section of the Model Law as prescribed by UNCITRAL at both national and international level with no consideration towards other crucial domains like consumer protection, and neither did it impose any obligations or duties like Information requirements – in the e-commerce context, this makes JETL an imperfect legal framework. Also, since JETL is essentially based on the Model Law, some of its stipulations are nothing more than an Arabic translation. This could cause misunderstanding of the technical terms and phrases, which could lead to misinterpretation. Another criticism concerns the definitions in Article 2 which demonstrates failure of the Jordanian legislature in establishing legal certainty as follows: "[t]he following words and expressions, wherever stated in this Law, shall have the meanings assigned thereto hereunder unless the context provides otherwise"[37] The lack of fixed definitions could cause problems in interpretation, in addition to increasing the complexity of the transaction in case of disagreements.

The third criticism relates to the optionality of receipt acknowledgement of an order. In ECCC which involves 'take it-or-leave-it' transaction with pre-formulated/non-negotiated terms and conditions, consumers could not request such acknowledgement, except when mandated by the legislature, as can be exemplified by ECCC in the UK under the Electronic Commerce (EC Directive) Regulations 2002.[38]

Fourthly, Jordanian legislature still upholds the principle of freedom of contract whereby all parties have equal bargaining power albeit the existence of the modern contracting methods in e-commerce. For instance, the generic drafting of the rules on the technical methods of data message handling gives discretion to the involved parties but no distinction is made between the various types of transactions, like B2B and B2C. As such, the rules of governance of commercial contract under JCL, are still pertinent to electronic transactions, and the only merit of JETL is its expressed validation of contract established using the electronic means.[39]

JCL is the civil law legal system in Jordan, and it acknowledges and imposes the principle of good faith as a general clause. Accordingly, article 202 (1) states that a contract is to be executed based on what has been agreed upon, in good faith.[40]Essentially, the contract law is to prevent any significant disparity in the rights and responsibilities of contracting parties to the disadvantage of the consumer. In ECCC context, consumers are obliged to adhere to the agreement established by the freedom of businesses. However, such adherence is partial considering that the principle of good faith can be regarded an indirect limit usable as an instrument for contract interpretation.

Notwithstanding, the principle of good faith espoused by JCL has no clear meaning as JCL does not provide clear description on how to act in a manner that conflicts with that principle. Somehow, article 239 (2)[41]states two elements of good faith between contractual parties, namely loyalty and confidence. As such, in ECCC, the principle of good faith is not viewed as the subjective depiction of justice, because the article becomes applicable only in contract interpretation. Somehow, article 239 (1) mentions that if the contract provisions are clear, the court cannot interpret the contract to find the legal intention of the contractors accountable for the strict meaning of the contract. It can thus be stated that the principle of good faith in JCL does not significantly impact the freedom of contract principle, except for when businesses refute the law, like in public policy, liability exemption, and formation in general. In addition, in contract law, without the recognized normative

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comparative advertising); Privacy and data protection laws; Contract law including mandatory elements of contracts, writing and signature requirements, notarial and other formalities, doctrines of contract interpretation, and concepts of good faith and fair dealing; competition law and fair trade practices laws; Franchise or distributorship laws; Tax laws including transaction taxes; Securities (investment) regulation; Banking, lending and credit regulations.

[37] JETL, s 2 first paragraph.

[38] The Electronic Commerce (EC Directive) Regulations 2002, s 11 (a).

[39]Alhusban, Ahmad. *The importance of consumer protection for the development of electronic commerce: the need for reform in Jordan*. Vol. 39. University of Portsmouth, 2014.

[40] JCL, s 202 (1) "The contract must be performed in accordance with its contents, and in a manner consistent with the requirements of good faith".

[41] JCL, s 239 (2) "If there is scope for an interpretative construction of the contract, an enquiry shall be made into the mutual intentions of the parties beyond the literal meaning of the words, and guidance may be sought in so doing from the nature of the transaction, and the trust and confidence which should exist between the parties in accordance with the custom current in (such) dealings"

foundation in the clarification of what contradicts a good faith, the general meaning of good faith can lead to considerable level of legal uncertainty.

Hence, for consumers in Jordan, they should not be depending on such general limitation. Instead, they should rely on the protection stipulated in a contract of adhesion albeit the legal issues facing ECCC, particularly concerning the elements of traditional theory of adhesion and the non-presence of grey and black lists of terms and conditions in the present legal system in Jordan.

In contract law utilizing the medium neutrality approach, the ECCC rules generally cannot be detached from the off-line consumer contract rules. Somehow, to accommodate the nature of B2C transaction, the modern general legislative approach must be applied. In other words, the classic or commercial approach is not suitable, considering that consumer contracts in both on-line and off-line settings are bound by the modern law rules rather than the traditional or commercial contract rules that perceive the involved parties to be equal in their corresponding bargaining power.

In the situation of Jordan, the general rules of JCL are applicable to contracts of all kinds. In fact, in this country, a legal framework to address consumer issues is yet to exist even though consumers have been facing bargaining power inequality. Furthermore, the lack of clear limitations in terms of terms and conditions and the absence of clear information requirements put consumers at a disadvantage. Also, freedom of contract principle that allows businesses to freely enter (or not) into the contract and generate the contract content, is a great advantage to businesses but at the expense of consumers. Moreover, ECCC embraces the take-it-or-leave-it type of undertakings where the terms and conditions formulated by businesses are non-negotiable, while consumers rarely read them.

Considering the above, a pre-emptive intervention by the legislature is necessary. Here, the legislature provides a blacklist of terms and conditions considered as automatically void, in addition to a list of information with which consumers could make an informed transactional decision and must be provided by businesses in a clear manner to prove their good faith. Additionally, the absence of pertinent legislation limiting the freedom of contract principle concerning terms and conditions implies a clear pre-contractual duty of businesses towards providing information to assure the ability of consumer in making an informed transactional decision. Also, the availability of such legislation could empower consumer through imparting to them the right to cancel. However, the lack of such legislation has become a major hurdle in the e-commerce development in Jordan.
Importantly, this principle has to be bound by other rules, in order that high level consumer protection on the Internet could be provided, which in turn will foster B2C relationships, particularly when contractual autonomy principle is being applied as a function of freedom of choice in consumer contracts via the Internet.
Finally, to achieve fairness that is greater than that provided by the general commercial contract rules, the construal of the freedom of contract has to fulfil the following: 1) the contract formation must be governed by the state as long as the weak parties confront the strong parties, 2) legislature intervention is necessary for restricting the freedom of contract considering that a one-sided contract neglects the basic rights of consumer,[42]and 3), clear and inclusive rules that oversee information requirements must be addressed by any future potential legislation that attempts to protect the consumer.

5. ASSUMING RESPONSIBILITY IN E-COMMERCE IN JORDAN WITH A SPECIAL CASE IN MALAYSIA

The strict criminal liability offence has been the common way to deter traders and producers from being involved in some kinds trading manipulation that harms consumers. Governments have been utilizing strict criminal liability to safeguard consumers against the power of producers. Indeed, the imposition of strict criminal liability can shield consumers from hazardous products while upholding the rights of consumer to safe products.[43]

In Malaysia, a legal measure has been taken by the government for shielding the consumers from hazardous products. The legal measure takes a form of different legislations, including the imposition of criminal liability on those contravening the provisions of the laws. For the consumers, such approach benefits them significantly

[42] M Marella, 'The Old and the New Limits to Freedom of Contract in Europe' [2006] ERCL. Vol 2, issue 2 257, 274.
[43]Ismail, Rahmah, Sakina Shaik Ahmad Yusoff, Shamsuddin Suhor, Azimon Azimon Aziz, Muhammad Rizal Razman, and Kartini Aboo Talib. "Consumer Right to Safe Product: The Application of Strict Criminal Liability in Product Safety Legislations in Malaysia." *Journal of Social Sciences & Humanities* 20, no. S (2012).

because the costly and time wasting process of controlling the law breaker is trusted to the Government, who in recent legislation is accountable for the enforcement of its provisions.

Concerning misleading advertising, the Malaysian Consumer Act 1999(CPA 1999) regards anyone violating any of the provisos of Parts II and III section 25 (1) to have committed an offence. As stated by the provisions, the punishment for such offence is classed into two categories of corporate body as offender and non-corporate body as offender. As stated, if the offender is a corporate body, upon conviction, the offender is liable to a fine of two hundred and fifty thousand Ringgit maximum for the first offence, and for the second or subsequent offence, the offender is liable to a fine of five hundred thousand Ringgit maximum. On the other hand, upon conviction, an offender who is a non-corporate body would be liable to a fine of one hundred thousand ringgit maximum or an incarceration for a term of three years maximum or to both, while for a second or following offence, the offender is liable to a fine of two hundred and fifty thousand ringgit maximum or an incarceration of six years maximum or to both.

For continuing offence, the offender shall be liable to a fine of one thousand ringgit maximum for each day or part of a day during which the offence resumes following the conviction, besides the penalties previously mentioned.[44]

In a situation where an offence of deceptive conduct, deceitful presentation and unfair practice and safety of goods or service is caused by an act or default of another person, the person is then considered as an offender and may be charged with and convicted irrespective of whether the proceedings are taken against the first-mentioned person.[45]

In terms of the procedural operations for preventing the misleading advertising from being circulated, by the controller's sanction, the Minister may, by order issued in the Gazette, announce any goods or any class of goods to be banned for causing or having the potential of causing harm to any individual or property, or is else hazardous. The Minister may also halt the supply of, or the offer to supply, of the banned goods and halt their advertisement, and also reveal any information associated with the characteristics of the banned goods (that make the goods harmful) to the public.[46]

Notably, section 29 of CPA 1999 offers consumer additional relief, whereby the Court can order that the money be refunded, or the bought goods be returned or the amount of the loss or damage be compensated. The Court may also instruct the seller to mend or furnish the parts for the supplied goods. Also, at the seller's expense, the seller may source certain services to those suffering or to those who are likely to suffer from the loss or damage caused by the goods. [47]

Examining the case of ***Ong Siew Hwa v Umv Toyota***, the High Court permitted the claim made by 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."[48]

Along with the CPA 1999, the Malaysian Trade Description Law 2011(TDA 2011) encompasses a regulation of illegal application. Essentially, the Act delivers a mechanism of implementation by the communal powers attesting no party options to incorrect trade imageries on any goods, industrial, provided or vended. The act brings penal permission whereby criminals will be penalized - imprisonment or price or both - for any crime committed under the Act.[49]

In Jordan, JCL 1976 has been regarded as the primary law for all private laws. JCL 1976 is thus applicable when other pertinent rules are absent, as can be exemplified by consumer protection law, which has been absent in this

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[44] CPA, s 25(2).
[45] CPA.s 26.
[46] CPA, s 23.
[47] CPA.s 29.
[48]High Court. Ong Siew Hwa v UMW Toyota Motor Sdn Bhd . Suit Number: Rayuan Sivil No. 02(f)-18-02/2015(A) Date of Judgment: 15 May 2018. Available at : http://judgments.my/fc/ong-siew-hwa-v-umw-toyota-motor-sdn-bhd/10294. (Accessed on July 2019).
[49]Hassan, Kamal Halili. "E-commerce and Consumer Protection in Malaysia: Advertisement and False Description." In *2012 International Conference on Economics and Finance Research IPEDR Vol*, vol. 32. 2012.

country. In Jordan, the absence of consumer definition is the cause of the absence of rules to oversee consumer issues in this country, impacting negatively the feelings and opinion of consumers towards the protection that the law provides. JCL 1976 generally provides protection to consumer against misleading advertisements.[50]Somehow, remedy provision is not provided in JCL 1976 – it does not have any provisions on refund or replacement of goods or services from the provider or seller, especially in the context of e-commerce. Meanwhile, the consumer agreements remain bound to the general principles governing the ordinary contract under JCL 1976. As an example, any action presented to the court by the plaintiff for any damage from faulty items or products sold by another party will be judged principally on the tort or contract law. Equally, the Jordanian legal system is applicable for this case. It can also be judged based on commercial or civil agreement. Still, JCL 1976 does not give consumer comprehensive protection.[51]

Additionally, JCL 1976 provides that consumer shoulders the task of proving that the deception has caused fraud. In this regard, a consumer who finds him- or herself deceived by a misleading advertisement is in no position to end the contract without proving that the deception has led to a fraud. According to Article (145) of JCL 1976:"if either party deludes the other party, and the latter discovers that the contract has been made upon fraud, then, the latter may terminate the contract."[52]

Another issue concerns the lack of provision on the punishment for the advertiser or provider who misleads consumer by the advertisement.[53]In fact, the Jordan Penal Code 1960 only deals with cases of sale or offer that involves fraud as a type of deception and punishable crimes. However, there is no punishment for misleading advertisement. Article 386 of the Code provides that whoever offers products that would cause fraud or put up for sale or sold a product, which is a world in view of its use, the person shall be punished by custody for one month to one year, and by a fine of five dinars (5) to fifty dinars (50).[54]

In terms of penalty; a consumer filing a deception case generally will come across a number of hurdles and incur loads of efforts and expenses. There are also hurdles associated with the procedures when dealing with professional advertiser. Also, the sought-after outcome from contract termination is not isolated. In fact, relieving the damage suffered by a consumer from misleading advertisement is inadequate, and contract termination does not correspond with the consumer's actual desire.[55]

It is difficult to prove the damage to a consumer, and the burden of proof is the responsibility of the consumer, while an advertiser is obliged to compensate a consumer. The commercials, especially the misleading ones, have techniques that make it difficult to prove such deceit, while the general rules established in JCL 1976 do not fulfil the required level. In this regard, there should be special rules that protect a consumer from commercials.[56] As provided in Section (143), deception employed by either party to persuade the other to make the contract, whether verbal or nonverbal, needs to be proved. In commercials, the burning question is: Does the lie or deception in the commercial weaken satisfaction? In the Jordanian Law, there is no clarification as to whether lying is a form of deception (or not), and there are no court decisions concerning whether lying could be deemed as deception.[57]

Conversely, Jordan Penal Code 1960 covers mainly issues related to deception in advertising with the purpose of dealing with fraud and related cases. Based on this code, those misleading the contracting party concerning the goods in terms of their nature, major attributes, composition or quantity or the source of the goods in terms of the description of the type and the source, taking into account the agreement or customs the main motive for

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[50] Wahdan, Reda Metwali, " Advertising deception and its effect in fraud criterion", *"Dar Feker and Qanoun"*, (2008).

[51]Alhusban, Ahmad. "The importance of consumer protection for the development of electronic commerce: the need for reform in Jordan." PhD diss., University of Portsmouth, 2014.

[52]JCL 1976. s 145

[53]Obaid,Mohamed. "Criminal liability in commercial advertising A comparative study", *Law and Economics Library – Riyadh*, (1 edition) ,(2016).(In Arabic). Available at: https://books.google.com.my(Accessed in Jan 2017).

[54] Jordan Penal Code1960.s(386).

[55]Zaqard, Ahmad, "Toward a general theory on contract drafting, a comparative study on the binding power in the contracting documents", *"Rights Jouranal",* issue 3, vol. 25, (2001).

[56]Hayari, Ahmad Ibrahim, " deviation of consumer from a contract concluded online, a comparative study between Jordanian and French laws", *"Jordan Journal". (*2009).

[57] Khasawneh and Hattab. (2012) .

sale, may face imprisonment for the duration of between one month to one year, in addition to a fine amounting to five dinars to fifty dinars, or one of these penalties.[58]

Thus, the Jordanian legislation does not provide the appropriate legal provisions in relation to the punishment. Worded another way, direct punishment to the advertiser or the provider is not specifically mentioned. Besides that, the stipulated punishment seems insufficient. Contrariwise, the Malaysian law provides strict liability offence.

It appears that in Jordan, a law that directly punishes the advertiser or the provider who misleads the consumer in e-commerce is yet to be established. There is a sporadic provision on punishment, however, it is not sufficient. Even the Penal Code1960 is insufficient to protect the victim or the consumer.[59] Arguably, a Jordanian Law that directly penalises the advertiser or the provider is non-existent, and if there is one, it is inadequate.[60]

Another challenging issue in Jordan is in proving the damage suffered by the consumers. The burden of proof lies on the affected consumer, whereby the consumer is the party to prove that he/she suffered damage caused by the mislead. The burden to prove is more difficult in cases of misleading advertisement. This is because the general rules of the JCL 1976 do not support consumer against misleading advertisements.[61]
On other hand, the CPA1999 delivers assumption of obligation for commercializing under section 18. Here, the manner or representation associated with any services or goods is made or issued in advertisements, and the commercial shall be believed to have been formed by the individual with indirect or direct rights to supply the services or goods; or the person on whose behalf the commercial is made; or both of them, as the case may need, unless the opposing is verified. The assumption of responsibility and liability provision will enable the consumer to direct the damage to the misleading advertisement.

6. DISCUSSION AND RECOMMENDATIONS OF THE JORDANIAN LEGISLATIVE REGULATION OF RESPONSIBILITY IN E-COMMERCE

The Jordanian legislation needs to be modified and harsher penalties on misleading advertisement on the supplier and advertisers need to be added. It has been suggested that the Jordanian legislation should benefit from Malaysian laws, especially the CPA 1999 law that provides harsher legal provisions on the advertiser or provider concerning misleading advertisements on e-commerce.

The researcher also recommends adding legal provisions related to penalties as below:
"Contravention of misleading advertisement, Offence caused by act or default of another person".
"(I) Contravention of misleading advertisement:
(1) Any person who contravenes any of the provisions of Part commits an offence and shall on conviction be liable—
(a) if such person is a body corporate, to a fine not more than ....., and for a second or subsequent offence, to a fine not more than .....;
(b) if such person is not a body corporate, to a fine not more than .....or to imprisonment for a term not more than ..... or to both, and for a second or subsequent offence, to a fine not more than ..... or to imprisonment for a term not more than ..... or to both".
"(2) In the case of a continuing offence, the offender shall, in addition to the penalties under subsection (1), be liable to a fine not more than one ..... for each day or part of a day during which the offence continues after conviction."

"(II) Offence caused by act or default of another person"

> "*Where an offence under Part or is due to the act or default of another person, that other person shall be deemed to have committed of the offence and may be charged with and convicted of the offence whether or not proceedings are taken against the first-mentioned person."*

[58]Jordan Panel Code 1960 .s(433).
[59] See: Jordan Penal Code 1960 .s (386). See also the discussion in a Penal Code in chapter 3.
[60] See: Jordan Penal Code 1960 .s (433).
[61] See JCL 1976. S 512- 513-514.

The researcher further suggests that the Jordanian legislation emulates section 18 of CPA 1999 on presumption of advertisement of liability. Hence, the researcher recommends that the Jordanian legislation should add a provision explaining the presumption of liability for advertisement as:
"Presumption of liability for advertisement"
"Where the conduct or representation in relation to any goods or services is made or published in an advertisement, the advertisement shall be deemed to have been made by—
(a) the person who directly or indirectly claims to supply the goods or services;
(b) the person on whose behalf the advertisement is made; or
(c) both of them, as the case may require, unless the contrary is proved."

7. CONCLUSION

For building effective defence against unfair contracts in e-commerce, tighter controls must be imposed on the providers or sellers. In view of this, there are several Regulations and Laws that prohibit misleading and false advertisements in e-commerce. These regulations and laws have been ratified to protect the consumers from various forms of exploitation. This study has analysed the laws and Legal provisions in Jordan and other countries to find out the similarities and differences in terms of legal provisions on the imposition of responsibility in e-commerce. The analyses were mainly covering the subjects of punishment and presumption of liability.

Jordanian Electronic Transaction Law offers no fixed definitions, making interpretation difficult while increasing the complexity of the transaction, in case of divergences. In addition, the law does not require receipt acknowledgement among the involved parties. Accordingly in contract law, the ECCC rules are generally inseparable from the off-line consumer contract rules, especially when medium neutrality approach is applied.
Hence, to achieve high level consumer protection on the Internet to indorse B2C relationships and to implement the principle of contractual autonomy as a function of freedom of choice in consumer contracts, on the Internet especially, other rules must be present alongside this principle to govern it.

Accordingly, the study has learned laws of other countries concerning the protection of consumers against the providers or sellers in e- commerce, especially the laws that address Consumer Protection in Malaysia. It was found that the Malaysian laws have covered almost all legal aspects in the imposition of responsibility, making the Malaysian laws superior to those of Jordan. Advertiser or provider should be obliged to include information of the product such as prices and other information as a way to protect the consumers. Based on the findings of the study and the recommendations put forth, it is hoped that consumers in Jordan will have better protection in e-commerce.

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