

Consumer Protection in E-commerce: Synthesis Review of Related Books

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Abstract:

To have a complete and comprehensive understanding of the research subject and to form an integrated legal framework for it, I have sought comprehensively to cover the major written literature on the issue under consideration. I also benefitted from a wide range of research and academic studies pertaining to the same topic, although that literature did not specifically address the issue of consumer rights in electronic contracting in the Saudi e-commerce system. Rather, it addressed only the civil and criminal protection of the consumer in e-commerce.

Keywords:

consumer, protection, Law, E-commerce.

A. Introduction

In the beginning I'll consists of a background and literature review, which is an overview and provides more detail about the current study that will assist the reader to fully understand the study.

1. In “Electronic Commerce and International Private Law: A Study of Electronic Consumer Contracts,” Gillies provided a comprehensive examination of consumer protection in e-commerce. The book was first published in 2008 and presents a breadth of international cases and statutes as well as theoretical approaches pertaining to electronic consumer contracts. Chapter 8 of this book details the rules of personal jurisdiction for electronic consumer contracts in the United States. Finally, the book discusses key recommendations to amend and harmonize international private law rules to improve electronic consumer contracts. Although Gillies’s book does not discuss the implementation of electronic arbitration to settle

e-commerce disputes, it is still a useful addition to my research because it provides a review of current international law, recommendations to resolve disputes and the enforcement of electronic consumer contracts across jurisdictions.

2. In “Research Handbook on Electronic Commerce Law,” Rothchild collects a series of legal articles about e-commerce law. These articles were contributed by legal experts and scholars on topics ranging from online contracting, payments, access to digital assets, intellectual property, jurisdiction over online disputes, regulatory oversight and consumer protection. This collection of articles provides a variety of useful content on consumer protection in e-commerce, and, most importantly, it covers past, current and future implications of consumer protection in cross-border e-commerce transactions. Although the book does not directly discuss the implementation of an online arbitration system for electronic commercial disputes, it does provide an in-depth overview of the e-commerce legal framework in the United States.

3. In “Electronic Consumer Contracts in the Conflict of Law,” Tang provides in-depth research on the conflicts of law challenges inherent in applying standard contract laws to electronic consumer contracts. The first section includes theoretical background to the issue to provide an overview of topics covered in the book. The next section comprises a review and assessment of current jurisdiction in e-commerce

and the standards that are applied to e-commerce in different nations. More importantly, section three of the book provides a comparison of the EU model to the United States model of standards. This section includes an examination of the U.S. model and its strengths and weaknesses in settling electronic commercial contract disputes. Tang then recommends a standard model that would provide the most suitable means of protection in e-commerce contract law.

4. In "Law of Electronic Commercial Transactions: Contemporary Issues in the EU, US and China," Wang compares the e-commerce legal frameworks of the U.S., the EU, and China. The book is comprehensive and includes discussions on electronic contracts, online security and dispute resolution, as well as an examination on what the future holds in the legal realm of e-commerce. Wang's research includes pertinent legal cases, statutes and conventions. This book is important to my research because it not only provides information and discussion on the legal frameworks within the United States, but it also provides analysis of the obstacles and challenges that arise in determining the validity of electronic contracts. Wang also advocates the use of dispute resolution in e-commerce contracts and gives recommendations for implementing mediation methods. Although the book does not specifically discuss the implementation of an online arbitration system, it does discuss the importance of online mediation.

5. In "E-Commerce Law in Europe and the USA," Spindler and Borner present a collection of chapters written by different legal authors and experts. Chapter 10 covers e-commerce law in the United States and includes current legal developments that have been gaining attention, as well as an analysis of contract law and validity, consumer protection and internet-specific provisions. The book covers a wide range of topics and is useful to my research, but it does not discuss how electronic

arbitration systems can be implemented to resolve issues and address the challenges inherent in consumer protection in e-commerce. This book is also useful because it is organized in such a way that the reader can easily find answers to legal questions regarding e-commerce pertaining to the country in question.

6. In "Commitment to Information in Electronic Contracts - Comparative Study," Al-Abadi reveals that, due to the technological developments occurring globally, and the spread of Internet service around the world, a new range of contracts, called electronic contracts or e-contracts, has been introduced through the use of electronic devices. E-commerce helps the parties to the contract conclude their agreements without the need to be in each other's physical presence. All of these developments have contributed to the promulgation of new legislation and laws that are compatible with this type of contract, and the need for consumer protection legislation.

Due to the inadequacy of the legal texts, there is a need for legislative intervention, as in France and other countries, to protect consumers. However, since the Jordanian Electronic Transaction Law did not stipulate this obligation, that law must be amended.

7. In "Civil Protection of The Consumer From The Defects of Industrial Products," Mashaqab aimed to identify the extent to which legal texts protect the consumer from defects in industrial products. The study began with the rules for protection against hidden defects. These rules identify the protection provided with respect to hidden harm in Jordanian law. The author addressed the issue of consumer access to compensation for these defects under Jordanian law, which does not emphasize the responsibility of the seller. These current rules do not actually differentiate between contracting parties. The study also shed light on the rules of delivery. A pertinent question is whether a buyer who has suffered damage due to defects in the product sold may seek compensation for the damage

caused by the seller's breach of the obligation to deliver goods fit for expected purposes. Does the seller have only an obligation to guarantee protection against hidden defects, or something more? The study also addressed the protection of consumers from defects that may amount to fraud or serious error in the transaction which could lead to damages awards. The study also referred to the legal regulation of protection against industrial product defects in EU countries, with specific reference to the European Directive on Liability arising from Products of the Year 1985, which is characterized by the wide scope of protection afforded to consumers.

8. In “The Extent to Which The Rules of Guaranteeing Hidden Defects in The Civil Law of Jordan Apply to Electronic Contracts - Comparative Study,” Abushanab addressed the issue of protecting consumers against hidden defects in products purchased over the Internet in the absence of specific regulation of this issue. The study examined the appropriateness of the general rules of the Jordanian Civil Code in this context in the event of a dispute.

The current study is consistent with Abushanab's study to the extent that both seek to protect consumers from hidden defects.

9. In “The Law of E-Commerce: E-Contracts, E-Business,” Alghamdi examined the legality of contracts in terms of authentication and validity. Specifically, the book provides an analysis of the legal issues that surround contracts that are formed online. Alghamdi focuses on both U.K. common law, as well as legal standards in the U.S. and the EU. The topics that the book covers include electronic sale of goods contracts and other relevant issues in electronic business. Although the book is comprehensive in its coverage of e-commerce contracts, it does not go into discussion about the implementation of an online contract arbitration system.

10. In “International Commercial Agreements: A Primer on Drafting, Negotiating, and Resolving Disputes,” Fox provided a

comprehensive examination of complex international commercial agreements and disputes. The first few chapters are useful due to their discussion of international legal systems with respect to commercial agreements, as well as the processes employed to conclude commercial contracts. Chapters 6 and 13 of the book will be the most useful sections for this thesis since both of them discuss international e-commerce and online dispute resolution and arbitration. Chapter 14 is also relevant to my research because it examines future trends in commercial agreements, which mostly focuses on online agreements and online dispute systems.

11. In “Electronic Arbitration as a Means of Settling of Electronic Commerce Disputes - Comparative Study,” Aladdassin examined Jordanian legislation, specifically the Jordanian Arbitration Law No. 31 of 2001. He also discussed Egyptian legislation, especially the Egyptian Arbitration Law No. 27 of 1994, and international agreements, in particular the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958, hereinafter referred to as the New York Convention, and the UNCITRAL Laws. The study also discussed the possibility of resorting to electronic arbitration under the existing national laws, especially arbitration law, and under international agreements, in particular the New York Convention. Furthermore, the study defined electronic arbitration and the difference between electronic and traditional arbitration. The study also explained why electronic arbitration is used to resolve e-commerce disputes.

Thus, Aladdassin's study is parallel to my current study, which will treat, in a separate section, electronic arbitration as an option to resolve disputes. Unlike Aladdassin, I will include discussion of the important element of consumer protection in e-commerce.

12. In “Consumer Protection in Islamic Jurisprudence and The Work in The Kurdistan Region of Iraq - Comparative Study,” Medan noted that the subject of consumer protection is one of the topics that currently concern the countries of the Arab world. Several experts, quoted in this book, have suggested that consumer protection means informing the consumer of all relevant data and information pertaining to the transaction to ensure that he understands the key contract terms and risks when purchasing any product locally and internationally. All relevant laws and regulations studied focused on protecting the consumer as the weaker party to the bargain. Medan’s study recommended that the parliament in the Kurdistan region vote on a consumer protection bill to protect the rights of consumers.

The current study will focus on protecting consumers in e-commerce through Saudi law, while Medan’s study focused on consumer protection in general in the Kurdistan region of Iraq.

13. In “Consumer Protection in Electronic Contracting - Comparative Study,” Dheb demonstrated the need for consumer protection from traditional and technical perspectives, especially in the period before the consumer enters into an electronic contract. The study also aimed to clarify the status of legislation in force in Palestine related to consumer protection, to identify consumer rights in all stages of the electronic contract, and to inform the consumer about his legal rights after the electronic contract has been executed. Moreover, Dheb realized that the idea of describing the consumer as a supplier or a trader is inaccurate, because a consumer typically has a weaker bargaining position than a supplier or trader as contemplated in existing laws.

Among the recommendations at the Arab countries level is the promulgation of a special law for consumer protection by the League of Arab States. This law would be comprehensive

and binding on all Arab consumer interests, and would aim to enhance cooperation among Arab countries in the field of consumer protection. It also aims to establish more consumer protection societies in the Arab world and to contribute to raising the level of coordination among these consumer protection societies. At the international level, it is also recommended that the mother tongue of the consumer should be taken into consideration in terms of his or her ability to understand the terms of the contract being presented. That is to say the contract should be conducted in both languages: the internationally agreed language and the mother tongue of the consumer.

14. In “Legal Protection of The Consumer From Defective Products Within The Scope of The French-Egyptian-Jordanian Civil Law,” Al-Sharae addressed the importance of protecting consumers from damage caused by products under the general rules of products liability. However, he did not separately address the rights of the consumer at the point of contract formation. The study concluded that special legislation should be developed to protect consumers in general and to protect them from particularly harmful products.

Al-Shara’s study differs from my study in that my work addresses all stages of e-contracting.

15. In “Legal Regulation of Electronic Commerce - Comparative Study,” Bashkani analyzed the legal rules that govern various aspects of e-commerce and e-commerce transactions within the scope of private law through laws specifically designed to regulate e-commerce. The study also found that e-commerce is very similar in its general rules to traditional commerce, but it differs from traditional commerce with respect to particular provisions regarding the nature and transactions of e-commerce. E-commerce has also facilitated locally and internationally trading.

Bashkani's study differs from my current study, in which the focus will be on consumer protection in e-commerce.

16. In "Legal Regulation of Electronic Contracts," Hassan studied electronic contracts that are transboundary international contracts that do not fall within the borders of a particular country. For an electronic contract to be valid, asset to contract must be clear, which means that all essential terms must be clearly understood between the parties. The image of a product displayed on the computer screen should reflect the true nature of the goods in question without any ambiguity or deficiency. Electronic acceptance must be clear and explicitly communicated, and silence should not be deemed acceptance in electronic contracting. The study also stated that the law to be applied to electronic contracts should be the law of will, i.e., the law chosen by the parties. In the absence of an agreement between the parties on the law to be applied, the judge will determine their implicit will based on the evidence.

17. In "The Criminal Protection of The Consumer in Egyptian, French and Islamic Sharia Law - Comparative Study," Khalef dealt with the consumer protection legislation in Egyptian law, French law and Shari'a law. The study examined how these countries are doing everything they can to protect consumers from crime and to prevent the exploitation of consumers. Khalef's study did not address consumer protection in general, nor the emergence of consumer protection in term of Islamic economy.

Khalef's study differs from my study, because I will discuss consumer protection as it applies to e-commerce in accordance with Saudi law.

18. In "Consensus in The Formation of The Contract Over The Internet - Comparative Study," Al-Sharifat aimed to research the electronic environment of the Internet on the issue of consent between the parties to conclude the contract, since consent is the most important element of the contract. The study examined the Internet and its stages of development, as well as the most important services provided through it. The study also considered the concept of the electronic expression of will, the legitimacy of that expression and the position of Jordanian law in this context. It also examined the problems that may arise as the result of the expression of will electronically. Al-Sharifat in this study concluded that Jordanian law allows the expression of will through the Internet. The researcher concluded that the ability to express the will electronically and the importance of the obligation to provide information in the pre-contract stage will raise some legal problems. Al-Sharifat also tried to determine the time and place of conclusion of the contract by focusing on the provisions of the Model Law (UNC) and the Jordanian Electronic Transactions Law in addition to other legislation. He noted that the legislation regarding electronic transactions does not address the issue of time and place.

19. In "Analytical Study of the Impact of Consumer Awareness on Consumer Protection," Al-Shuaibi and Al-Mallah aimed to study and analyze the relationship between consumer awareness and consumer protection. They demonstrated the relationship between consumer awareness and some economic and social characteristics of consumers in the Al-Ahsa region in Saudi Arabia. They utilized a questionnaire which was completed by a random sample of consumers within the Al-Ahsa region. A statistical analysis was used to study the relationship between consumer awareness and some economic and social characteristics of consumers. The results of the study demonstrated

a significant statistical relationship between the level of consumer awareness and the levels of income and education of the head of a household. The study concluded that consumer protection policies should be directed towards the development and education of consumers with a focus on lower-income and lower-educated members of society and on the importance of enforcing existing consumer protection laws where the findings indicate that existing laws are not being properly or fully applied.

20. In “Consumer Protection - an Analytical Study of Jordanian Reality,” Al-Hajjar sought to identify the reality of protecting Jordanian consumers by identifying the Jordanian experience in this field, determining the problems that Jordanian consumers encounter, and trying to resolve them. He distributed two questionnaires: the first to 260 consumers, and the second to workers in a sample of twenty-two industry and mining organizations.

Conclusion:

The most important results were:

a. Despite the multiplicity of governmental bodies concerned with consumer protection, Al-Hajjar noted that there is no specialized department within any governmental body that focuses on consumer problems and responds to consumer complaints and suggestions.

b. Consumers emphasized the need to provide appropriate and sufficient information to enable them to make purchasing decisions on appropriate grounds. Consumers have made it clear that they have experienced misleading advertising that is problematic in relation to the purchasing process.

Al-Hajjar’s study deals theoretically with economics and has no relation to law.

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