

Consumer Protection in Electronic Commerce According to Iraqi Legislations: An overview

حماية المستهلك في التجارة الإلكترونية وفقاً للتشريعات العراقية: نظرة عامة

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Abstract:

Electronic commerce is one of the results of the development in information technology. It provides new opportunities for consumers and business. E-commerce participates in making the world one market and crossing borders that previously was unimaginable. Iraq is one of the examples of developing countries also benefits from the development in e-commerce. However, many factors may obstruct the development and adoption of e-commerce. The existing legal framework of e-commerce, namely the Consumer Protection Act No.1 of 2010 and the Electronic Signature and Transactions Act No. 78 of 2012 does not cover several crucial issues such as data security, dispute resolution mechanisms, misleading advertising or unclear liability in cross-border transactions. Therefore, this study triggers to examine the consumer protection according to Iraqi laws to determine the extent to which these laws are sufficient to provide protection for consumer rights in e-commerce transactions. For this purpose, it adopts the analytical method by analysing the provisions of Iraqi legislations relating to consumer protection. This study found that the current Iraqi legislations are insufficient to provide enough protection for consumers in e-commerce. And there is a necessity to revise these legislations to grant effective protection for consumers in Iraqi in this field.

Keywords: Iraq, Consumer protection, e-commerce, supplier, goods.

الملخص:

إن التجارة الإلكترونية هي إحدى نتائج التطور في تكنولوجيا المعلومات، فهي توفر فرصاً جديدة للمستهلكين ورجال الأعمال، فهي تساهم في جعل العالم سوقاً واحداً وتجاوز الحدود بين الدول التي كان من الصعب تحقيقها سابقاً. أن العراق هو أحد الأمثلة على الدول النامية التي تستفيد من التطور في هذه التجارة. ومع ذلك، فإن العديد من العوامل قد تعيق تطور وتبني هذا النمط من التجارة. فالإطار القانوني الحالي للتجارة الإلكترونية، وهو قانون حماية المستهلك رقم ١ لسنة ٢٠١٠ وقانون التوقيع والمعاملات الإلكترونية رقم ٧٨ لسنة ٢٠١٢، لا يعالج العديد من القضايا المهمة مثل حماية حقوق المستهلك في



معاملات التجارة الإلكترونية. لذلك، فإن هذه الدراسة تهدف إلى معالجة حماية المستهلك في التجارة الإلكترونية وفقاً للقوانين العراقية لتحديد مدى كفاية هذه القوانين لتوفير الحماية للمستهلكين في هذه التجارة. ولتحقيق هذا الغرض، اعتمد الباحث المنهج التحليلي من خلال تحليل أحكام التشريعات العراقية المتعلقة بحماية المستهلك. وقد استنتجت الدراسة أن التشريعات العراقية الحالية غير كافية لتوفير الحماية الكافية للمستهلكين في التجارة الإلكترونية. وهناك ضرورة لمراجعة هذه التشريعات لمنح حماية فعالة للمستهلكين في العراق في هذا المجال.

الكلمات المفتاحية: العراق، حماية المستهلك، التجارة الإلكترونية، المُجهز، البضائع.

1. Introduction

Developments in information and communications technology in the last decade have significantly changed Lives of millions of people around the globe.¹ E-commerce is a result of the development in information technology.² According to (Peter Carey); “E-Commerce is a concept used to denote a commercial contractual transaction that lies between two or more parties using communication infrastructure known as the internet.”³

E-commerce, as a human invention, provided new opportunities for consumers and businesses and even the community. It is easy and convenient because it is brings several benefits. For instance, e-commerce provides easy and quick access to goods and products that in some circumstance and places are not accessible either because of geographical or logistic obstacles.⁴ It also facilitates transaction concluding in short time.⁵ Moreover, e-commerce participates in making the world one market and crossing borders that previously was unimaginable.⁶

On the other hand, it can be said that availability at all times is the main feature of e-commerce as you can access it any time, even on holidays, and anywhere for almost any location in the world. Furthermore, e-commerce transaction provides consumers with more choices on what products they prefer to purchase; also the suppliers from all around the world are offering different products and services. Besides, as products information about prices and quality are available and easily accessible, hence, consumers are able to compare the price from different suppliers before making any decision.⁷

Nevertheless, advertising targeted increasingly and buying experience are typically not without dangers and shortcomes, some of them may restrain the confidence of consumers. Problems with refunds, unanswered complaints mixed up orders and Internet scams are just part of the associated problems in online shopping. A survey of a European Commission found that the confidence of consumer in Internet purchases that cross border within the EU dropped from 2018 to 2022.⁸ Even the basic matter of ‘delivery issues.’ According to a study in the European

Union, consumers reported problems in Romania, Bulgaria, Poland, and the United Kingdom with regard to delivery long times in online shopping from other countries in the European Union. This concern basically figured out in 40% to 50% of the aforementioned above responses.⁹

E-commerce depend on the Internet as a means of displaying, advertising and marketing products and services therefore; the Internet has become the backbone of economic transactions and conclusion of contracts, which has led many people to contract this method.¹⁰ The statistics show an increase in the number of Internet users. The latest statistics indicate that the number of Internet users worldwide reached 5.45 billion as of July 2024. This means that the percentage of users to the world's population reached 67.1%, which is very high, as well as an increasing percentage.¹¹

From a legal perspective, many fields of law intersect e-commerce regulations. These laws include consumer protection legislation, intellectual property law, contract law, data protection legislation, telecommunication or media legislation, criminal law, and tax law.

As e-commerce is one of the manifestations of the information technology development, the function of e-commerce and the role of the supporting information and communication technology are inseparable. Many countries world-widely are working to adopt these technologies and integrate e-commerce into their society, hoping to increase trade efficiency globally.¹² This means that developing countries are capable to utilize e-commerce to compete and participate in the world economy.

E-commerce has remarkably improved in developed countries and then in developing countries as well.¹³ According to the latest statistics, e-commerce global retail sales approached an estimated 5.8 trillion United States' dollars in 2023. In the following years, projections reached a 39% growth in the sales and it is expected to surpass 8 trillion United States' dollars by 2027.¹⁴ In several developing countries, e-commerce is becoming a major economic asset.¹⁵ The rapid increase of internet usage in developing countries means that the impact of e-commerce is increasing in these countries.

Iraq is one of the examples of developing countries also benefit from the advancing technology in information technology and telecommunications especially in e-commerce. Therefore, many economic and legislative reforms were made to help a smooth transition to the market economy which is based on competition and investment and where the private sector has a bigger role. These reformation aim to meet the international standards to join the international organizations which can provide better environment for e-commerce, such as, the World Trade Organization (WTO).¹⁶ In this context, acts were issued such as, the Act of Consumer Protection



No. 1 of 2010 (hereinafter ACP), the Act of Electronic Signature and Transactions No. 78 of 2012 (hereinafter AEST), Act of Competition and Prohibition of Monopoly No. 14 of 2010; Customs Tariff law No. 22 of 2010 and Iraqi Products Protection Law No. 11 of 2010.

However, many factors may obstruct the development and adoption of e-commerce in Iraq. The existing legal framework of e-commerce in Iraq, namely the Act of Consumer Protection of 2010¹⁷ and the Act of Electronic Signature and Transactions of 2012¹⁸ does not cover several crucial issues such as the absence of clear dispute resolution mechanisms, ambiguous liability rules, misleading advertising, or inadequate protection against data breaches which effecting on consumer rights protection in e-commerce transactions.

Hence, a lack of trust could be caused in the general population due to the lack of information or misunderstanding regarding who would be held accountable for any losses that may occurred during e-commerce transactions, and which legal measures could be used to maintain people's rights if e-commerce fraud happens. In addition, the most of e-commerce contracts are between a professional businessman and a consumer. Lack of protection would discourage the consumer to utilize this method of transaction. Hence, the consumer misses many valuable advantage and subsequently would affect negatively the development of this method of business in the country, as confirmed by studies and reports.¹⁹ According to the Organization for Economic Cooperation and Development (OECD): "Consumer laws, practices and policies limit and restrain misleading, fraudulent and unfair commercial conduct. Such kinds of protections are indispensable to build consumer confidence to establish a balanced relationship between consumers and business in commercial transactions."²⁰

This paper seeks to examine the consumer protection legislations in Iraq to identify the extent to which these acts are sufficient to provide protection for consumers in e-commerce. For such a purpose, the methodology of this paper applies the library sources as the most common methodology implemented in legal researches. This paper will provide general concepts about the consumer and e-commerce followed by a discussion on consumer protection in Iraq.

2. General Concepts

2.1 The Concept of Consumer Protection between the Developed Countries and Arab Countries

In developed countries, consumer protection reflects a general and fixed legislative policy.²¹ The legislations and regulations of consumer protection has been developed and amended for the last fifty years,²² and many organizations for consumption and consumers were established.²³ However, the concepts of

consumption and consumer started to receive attention only after the United States' President, John Kennedy, announced in his Statement in the U.S Congress²⁴ that consumers represent "the largest economic group, affecting and affected by almost every public and private economic decision. Yet they are the only important group... whose views are often not heard."²⁵ In this regard, according to Larsen and Lawson, the jurisprudence on consumer rights traces its root from Kennedy's message to the US Congress in 1962,²⁶ and they affirmed that this was the first concrete step taken in the consumer protection law.²⁷

In 1975, the European Union Council posted a preliminary program regarding with consumer protection and information policy.²⁸ This program was the basis for an introduction of many E.U. directives and regulations in consumer protection field.²⁹ Article III of the program provides that "the consumer is no longer seen merely as a purchaser and user of goods and services for personal, family or group purposes, but also as a person concerned with the various facets of society which might affect him directly or indirectly as a consumer."³⁰ Since then, the concept of consumer protection has entered the legal lexicon,³¹ and a new branch of law called the law of consumption emerged.³²

However, the concept of consumer protection is considered a new term in the field. None of the Arab states initiated to issue consumer protection legislation until Tunisia³³ did it, which is after almost forty years of Kennedy's announcement. Subsequently, the rest of the Arab states started issuing their legislations regarding consumer protection, such as Sultanate of Oman,³⁴ Palestine,³⁵ Lebanon,³⁶ Egypt,³⁷ UAE,³⁸ Yemen,³⁹ Qatar,⁴⁰ Syria,⁴¹ Algeria,⁴² Iraq,⁴³ and Morocco.⁴⁴

2.2 The Concept of 'Consumer Protection'

It is thus clear that consumer protection is one of the most important areas of contemporary legislation that has gained a lot of attention in the developed countries, in contrast to the case in the Arab countries. Consumer protection is a modern economic term emerged with international economic transition to market economies since the late nineteenth century and considering the significance of the consumer in any economic development, the concept of consumer protection was adopted by the civil society associations in developed countries as an aim to achieve.⁴⁵

There is no precise definition of the term (consumer protection). According to Collins dictionary: Consumer protection means "laws and policies designed to protect consumers against unfair trade and credit practices."⁴⁶ As a result, consumer protection is, in general, understood as "the protection of parties of weaker market by methods of obligatory rules to adjust the environment where consumers have the ability to bargain and finally conclude transactions."⁴⁷



At the level of consumer protection legislation in the Arab world, the ACP exclusively provides a specific definition to the concept of consumer protection. It says that consumer protection means “maintaining the rights of consumers and preventing any damage to them.”⁴⁸ It is clear that this definition refers to the ultimate aim of the consumer protection and ignoring the means and ways of the protection, which are the laws and regulations.

Based on this discussion, we can conclude that ‘protection’ term is linked to the assurance of rights. Moreover, this assurance can be achieved by laws. As laws are set of general rules that are issued by the legislative authority to regulate fair relations between individuals in order to preserve their rights. Therefore, the concept of consumer protection, generally speaking, includes all the measures taken by the legislature aiming to protect rights and interests of the consumers.

2.3 The Concept of Consumer in E-commerce

The consumer represents the weak party in consumption contracts. The conflicting interests between the consumer and supplier, and the economic power of the latter from one hand and the inability of the general rules only to protect the consumer rights on the other hand is one of the main reasons for the appearance of the consumer concept.⁴⁹

The significance of providing a specific definition of ‘the consumer’ is in order to avoid any kind of ambiguity in identifying the limits of the protected persons that may be misused of the legal benefits, in which case the real application of the law will be postponed.⁵⁰ Cases often are likely to be more interested to determine if the claimant is under such protection or not, when such cases are more interested in the actual protection of consumer rights.⁵¹ This protection led to the need for issuing suitable legislation to reserve the consumers’ interests.⁵²

The first point to note is that there is no universally agreed definition of the term ‘consumer.’⁵³ Referring to Oxford Dictionary which defines “consumer” as “any person, who buys goods or uses services.”⁵⁴ Technically, this term ‘consumer’ refers to anyone who buys goods and uses services either directly or indirectly, for himself or for others,⁵⁵ on the grounds that consumers do not constitute a certain category of human beings and anyone can be a consumer.⁵⁶

This definition is consistent with the jurisprudential trend that expanded the consumer concept to include any person acquires goods or uses services for his/her professional or personal purposes.⁵⁷ Thus, the consumer is “any person who contracts for consumption”⁵⁸ or “the person who aims at meeting all his/her personal or professional needs.”⁵⁹ So , according to this trend the consumer is a

person who contracts outside his/her speciality whether for personal or professional purposes. This is because the supplier who contracts outside his/her specialization has no enough experience concerning the business outside his/her speciality and becomes in need of protection which is essential for other consumer.⁶⁰ However, this expansion in defining the consumer contradicts the objective of enactment of special rules to protect the consumer as a weak party in contracting because of lack of experience when he/she contracted with the supplier.⁶¹

As for the another Jurisprudential trend of determining the consumer concept which is the trend prevailing in the jurisprudence. It adopts a narrow concept which indicates that the consumer is the person who acquires goods and uses services to meet his/her own family and personal needs.⁶² Therefore this trend defines the consumer as “the person who becomes party in the contract to be provided with goods and services only for the sake of his/her personal needs”⁶³ or “the person who owns or uses goods and services not for professional purpose.”⁶⁴ This mean that the suppliers who contract for professional purpose will prevent from enjoying the protection stated in laws of consumer protection.⁶⁵

As for the ACP, it defines the 'consumer' as “a natural or legal person provided with commodities or a services in order to be utilized.”⁶⁶ According to this definition, the Iraqi legislator does not confine the concept of consumer to the person who contracts to meet his/her personal needs, but it wants to expand it to include the supplier who contracts outside his/her professional specialization for the purposes relating to his/her profession.⁶⁷ In fact, this trend of Iraqi legislator is different from that of most legislations which confine the protection for the persons who act for familial or personal purposes. This consistent with the purpose of issuing special laws to protect the consumer as the weaker party when contracting with the supplier because he/she is unaware of the adequate and necessary information about the contracted service or good. Therefore, this study recommends amending Article 1 (5) of the ICPA as follows: “a person who acquires or uses goods or services for personal, domestic or household purposes which are outside his trade, business or profession.”

As for the definition of “e-commerce,” the AEST does not give a definition for this concept. However, it is defined as “any transaction with processes conducted digitally through the internet, or commercial actions conducted by international network electronically-connected computers.”⁶⁸ Moreover, e-commerce is defined as “commercial actions when offer and acceptance are exchanged, and the consent



issued online apart from delivery issues which shall be performed offline facilities.”⁶⁹

It is important to point out that the consumer in e-commerce transactions is the same consumer as in the traditional commerce except for the means by which the deal or transaction is concluded.⁷⁰ That means that the ‘e-consumer’ enjoys the same rights as the traditional one. Consequently, the e-consumer should enjoy the same protection as determined by the legislature, taking into account the contract specificity that is concluded by electronic means.⁷¹

3. The Rationale for Protection the Consumer in E-commerce

The challenges facing e-consumers are not much different from traditional transactions. However, they have special needs; such as the privacy issue which poses a great risk in internet.⁷²

In the traditional business environment, the consumer has the opportunity to check purchases prior to any decision that can be made so the customer is able to judge himself the trustworthiness of a seller or supplier. On the other hand, in the online world, it is not possible for a consumer to check and inspect products. The consumer is enforced to proceed on faith, who knows less about the seller to whom the consumer is sharing very serious and critical information such as credit card information.⁷³ According to OECD Guidelines for Consumer Protection in the Context of Electronic Commerce “consumers who participate in e-commerce should be afforded transparent and effective consumer protection that is not less than the level of protection afforded in other forms of commerce.”⁷⁴

The Guidelines include the following protections; fair business, advertising and marketing practices, sufficient disclosure of relevant information, a clear and unambiguous confirmation process, proper means of redress in the case of cross border disputes and clarification of applicable jurisdiction, a secure method of payment, minimizing the risk of financial loss, and reliable system of international alternative dispute resolution to provide a workable alternative to litigation, which may be costly and disproportionate in the case of long distance transactions.⁷⁵

In this context, Article 2 (3) of the AEST aims to “promote legal certainty and confidence in respect of electronic transactions.” Electronic commerce transactions success is based on trust between different parties. For instance, the Commission of the European Communities notes that: “The first objective is to build trust and confidence. For ecommerce to develop, both consumers and businesses must be confident that their transaction will not be intercepted or modified, that the sellers

and the buyers are who they say that transaction mechanisms are available, legal and secure. Building such trust and confidence is the prerequisite to win over businesses and consumers to ecommerce".⁷⁶

Based on the above, protection issues are the vital aspect of e-commerce and consumers are usually confronted with the following challenges:

- Lack of information (the consumer is not able to get basic information about the merchant, goods or service therefore he cannot make informed decisions);
- Post-sales difficulties (like failure to deliver the goods or services after payment, unsatisfactory goods or services, and goods or services that present health and safety risks);
- Unethical and fraud conduct (i.e. false advertising, identity deception, and scams by pyramid selling schemes);
- Privacy issues (including: consumer data protection, privacy of the consumers' communication);
- Online payment (i.e. errors, unauthorized transactions and the security of payment details including credit card numbers and bank account details).

Moreover, bearing in mind that e-commerce sometimes crosses borders. However, not all countries apply the same consumer protection standards. Therefore, consumer protection legislation is the best way to harmonize standards.⁷⁷

4. Electronic Commerce in Iraq

Generally, as for the developing countries, including Iraq, there is always a gap between legislations and technology, owing to the rapid evolution of the technological process compared with the slow pace of the legislative process.⁷⁸

Electronic commerce in Iraq emerged in 2007 and was on a limited scale.⁷⁹ Many Iraqis at this stage were unaware of the involved technology in electronic commerce for reasons including: First: Lack of education and public awareness about the benefits of the Internet. Second: the high cost and limited access to the Internet due to poor communication infrastructure. Third: the lack of credit card users due to the weakness of the banking sector. Fourth: the preference for cash dealing because distrust of Iraqi banks and the desire for anonymity for tax evasion purposes.⁸⁰

After that time, in 2014, the telecommunications sector in Iraq witnessed a remarkable development, and the Iraqi people increasingly use the Internet as a means of supporting their daily activities. The Internet has been used in online transactions such as tax payments, application fees payments, employees' salaries and pensions by credit cards, and e-commerce activities (buying and selling goods



and services) through social networking sites such as Facebook, Twitter.⁸¹ There has also been a significant positive growth in the number of Internet users in Iraq. According to a report issued in 2023 by the Iraqi Ministry of Planning, the percentage of individuals using the Internet reached (79%). This report indicate an increase in the percentage of families with an Internet connection at home to (87%).⁸² On the other hand, e-commerce has increased rapidly in Iraq. It has constituted a large percentage of the local and international trade of the country. And it has contributed to employing thousands of Iraqi youth during the past two years in the fields of transportation and air freight.⁸³

Moreover, there have been some encouraging developments in the field of e-banking, including e-payment service. This service can contribute significantly to support the field of e-commerce in Iraq. The largest telecommunications companies operating in Iraq (Iraq Zain and Asiacell) started providing e-payment service. It allows the sellers to use electronic payment mechanism to receive their payments through websites and mobile applications in an easy, fast and secure manner at any time and from anywhere. On the other hand, this service allows individuals to purchase goods and services through the Internet.⁸⁴ For example, Zain Cash Wallet is the largest e-banking service provider in Iraq, offering the Iraqi customer the easiest and most convenient access to financial services across the country.⁸⁵

The number of users, the continuous spread of the Internet, and the activation of e-payment services indicate that the information and communication technology have developed in Iraq reasonably, and the e-commerce activities will grow significantly within the next several years.

5. Legislative Development of Consumer Protection in Iraq

Iraq, like other countries, is affected by the developments that the world has witnessed in consumer protection's field. Whoever traces the legislative development in Iraq can distinguish two main stages. The first phase is a pre- issuance of the Act of Consumer Protection No.1 of 2010 while the second phase is the post-issuance of this act.

5.1 Pre- issuance of the Consumer Protection Act

With the planned economy system,⁸⁶ which was adopted in Iraq, there was no need to enact particular acts and legislations about consumer protect. Consumer protection then was not inclusive in specific legislation or act. Various legislations addressed this issue depends on the context and case. Therefore, the Iraqi legislature protected the consumer according to the general rules of the Civil Code No. 40 of 1951.

Consumer protection is also included in many legislations related to the economic or social aspects that protect people as consumers such as Iraqi Penal Code, as amended, No. 111 of 1969, in addition to other related acts, such as Law No. 21 of 1957, as amended, on Trademarks and Trade Names, The Law of Regulation the Agricultural Materials Trading No. 34 of 1970, The Law of Pharmacy Profession Practicing No. 40 of 1970, Law No. 42 of 1978, as amended, for marking weights, measures and commercial weights, the Public Health Law No. 89 of 1981, Food Regulation with its Amendments No.29 of 1982, Customs Law, as amended, No. 23 of 1984, Tourism Board Law, as amended, No. 14 of 1996, Law of the Protection and Improvement of Environment No. 27 of 2009, Trade Regulation Law (Internal and external Trade Regulatory Law Formerly) No. 20 of 1997 and The Associations Law No. 13 of 2000, which aims at organizing the work of associations in Iraq.

Based on the above, there was no specific law addressing consumer protection in general. This means there was no specific legal provisions providing specific remedies for the consumer in case of violation of his/her rights. So, there was an urgent need to issue a special law to protect the consumer rights due to the inadequacy other laws to achieve this protection.

5.2 Post-issuance of the Consumer Protection Act

The most prominent development in Iraq after 2003 is the shift of the economic system from the centralized economy to the market economy, which opened the Iraqi market to the global markets. The progress made in the field of information and telecommunication technology, all these developments led to the need for appropriate legislations for that stage. Therefore, the Iraqi legislator enacted the Act of Consumer Protection No. 1 of 2010 and the Act of Electronic Signature and Transactions No. 78 of 2012. Both acts, in addition to the provisions of the Iraqi Civil Code No. 40 of 1951, form the legal framework for consumer protection in Iraq.

6. Legal Framework for E-commerce Transactions in Iraq

6.1 E-consumer Protection under the Act of Consumer Protection

The Act of Consumer Protection (ACP) No. 1 of 2010 is deemed as the first special law regulating of the provisions of the consumer protection in Iraq. This law did not gather all the legal texts relating to consumer protection, there are still a lot of them scattered among the provisions of other laws. The main aim of the enactment of this law, as stated in the Objectives is to “ensure basic consumer rights and protect them from illegal practices that lead to harm it; prevent any act violates the rules of importation, production and marketing of commodities, or weaken their benefits or



lead to mislead the consumer.”⁸⁷ It is clear that the Iraqi legislator aimed to ensure the basic rights of the consumer in getting a good specification of commodities through the provision of proper procedures in which production, importation and marketing of commodities take place and then consume them.

The ACP mentioned about the formation of the Council for Consumer Protection consisting of a President and members with experience and competence in matters relating to consumer protection. The mission of this council is to put policies and programs of action to regulate and ensure consumer protection and his rights, in addition to raising the level of consumer awareness.⁸⁸ This law also provides for consumer’s rights, including his right to obtain all the information relating to the protection of his legitimate rights and interests, and the right to get full information on the specifications of commodities and how to use them and the Warranties for commodities that their nature are required to such warranty.⁸⁹

The consumer has the right to claim compensation in the civil courts for the damage that may cause by a lack of access to that information for commodities.⁹⁰ The ACP included a statement of the duties of the supplier and the advertiser in the affixing of the full specifications and components of the product, and a commitment to standard specifications to determine the quality of the commodities.⁹¹

The ACP also included some of prohibitions that should be avoided by the supplier and the advertiser, such as the practice of misleading, fraudulent, deception and hiding the reality of ingredients of commodities or preventing inspection committees to carry out their duties.⁹² Finally, this law has identified the sanctions against anyone who violates the provisions of the law.⁹³

Based on the above, it is clear that the ACP provides the formation of specialized institutions related to consumer protection namely “Consumer Protection Council.” However, this council is not activated as it is not formed yet, thus Iraqi consumers do not enjoy a real protection of their rights. For this reason, the Iraqi government is required to enter into force this law. It should also form the “Consumer Protection Council” and the committees related to this council. Moreover, there must be support and encouragement of associations of consumer protection. This is because the Prime Minister has the right to add a representative of these associations to “Consumer Protection Council.” Consumer protection associations play a fundamental role to inform consumers about the goods and services which are not conform with required qualifications, and raising the level of consumers awareness in a way that ensures the real protection of Iraqi consumers. Most importantly, there is no any provisions in the ACP address the e-commerce in the context of consumers’ transactions by a digital platform. Therefore, this law

should include a separate chapter to tackle e-commerce practices and the protection of consumers in the digital market.

6.2 Act of Electronic Signature and Transactions (AEST) No. 78 of 2012

In Iraq, the main legislation that governs the e-commerce transactions is the Act of Electronic Signature and Transactions (AEST) No. 78 of 2012. This law is under the jurisdiction of the General Company for the internet services in the Ministry of Communications. It aims to facilitate using the electronic means to conduct electronic transactions, granting it the authoritative and organizing its provisions.⁹⁴

The AEST is in line with the development in the field of information and telecommunications technology and internet activities. However, this law contains no provisions on how electronic transactions could be done in a safe and secured environment which is crucial for e-consumer protection. Moreover, the AEST does not include any method to build confidence in e-commerce, nor does it involve any protections against misleading advertisings, unfair contractual terms, consumer privacy disclosure, and other marketing practices that may confuse or take advantage of the consumer.

Additionally, the AEST enacting to address e-transactions, but it has paid little attention to conclusion of e-contracts. This law includes rules to determine the time when an electronic acceptance is sent, and received, but it has no direct rules to determine the conclusion time of the electronic contract. As far as consumer contracts in e-commerce, the AEST must be contain more rules on when exactly such contracts are concluded, and this will ascertain that consumers are fully informed about the exact time as they enter into a binding contract. on the other hand, according to the AEST, there are no grounds for declaring that a particular website's terms and conditions are enforceable because this law merely ascertains the legal validity of electronic contracts and documents. It doesn't contains any provisions to address the enforceability of the contracting conditions and terms on websites, and there are no provisions that prohibits such enforceability in Iraqi law. The researcher thinks that this enforceability would be procedure-based rather than substantive law-based. Therefore, the AEST should address this issue by inserting criteria for the Iraqi courts to interpret and apply accordingly. Also, this law must be amended to include specific provisions concerning the validity of website conditions and terms. This is because it do not include any relevant provision about this matter, so it do not overcome most of the problematic aspects of electronic contracting.

Based on the above, it can be said that failure of the Iraqi legislature to address consumer protection in e-commerce issues in the AEST means that the legislature wanted them to be governed under the general rules of civil code. This is the most



serious legal risk that the Iraqi consumer may face as the general rules; if they may suit the contracts concluded by traditional means, it does not correspond with the privacy of e-commerce contracts that need distinct provisions and special protection. Therefore, a governing framework to guarantee e-consumers protection is crucial and necessary as the adequate protection of e-consumer rights will have a constructive effect on the progress of e-commerce itself.

7. Conclusion

Electronic commerce generates many legal challenges especially regarding the fit between law and technology. As the direct aim of consumer protection laws is providing consumers with adequate protection and guarantee their rights against suppliers of defective goods and services, these laws must be developed to meet the challenges of this new business environment in order to emphasize the confidence among consumers.

In Iraq, there are special laws to protect the consumer in general namely the Act of Consumer Protection (ACP) No. 1 of 2010 and the Act of Electronic Signature and Transactions (AEST) No. 78 of 2012. However, the Iraqi government is required to enter into force the ACP. It should also form the “Consumer Protection Council” and the committees related to this council to provide the real protection for Iraqi consumers. Most importantly, there is no any provisions in the ACP address the e-commerce in the context of consumers’ transactions by a digital platform. Therefore, this law should include a separate chapter to tackle e-commerce practices and the protection of consumers in the digital market.

As for as the AEST, it does not provide any protections against misleading advertisings, unfair contractual terms, consumer privacy disclosure, and other marketing practices that may confuse or take advantage of the consumer. This law does not have any direct rules for determining the conclusion time of the electronic contract. As far as consumer contracts in e-commerce, the AEST, must include more specific rules on when exactly such contracts are concluded, and this will ensure that consumers are informed of the exact time they enter into a binding agreement. It also doesn't contains any provisions to address the enforceability of the contracting conditions and terms on websites. Moreover, the AEST, must be amended to include specific provisions concerning the validity of website conditions and terms. This is because it do not include any relevant provision about this matter, so it do not overcome most of the problematic aspects of electronic contracting. Reforming current acts is highly demanded to provide a ground for consumer protection in e-commerce in Iraq and reinforce consumer confidence as well as to confirm suitable protection for the e-consumers.

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