

Consumer's Right of Withdrawal in E-Commerce Contracts: A Comparative Study of the Jordanian Civil Law

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Abstract

The right to withdraw from e-commerce agreements is considered a distinct and exclusive right for the consumer, and this uniqueness arises from the conditions imposed by the contract, which can affect the consumer's decision-making process. Many legislations in the Western and Arab regions have recognized the importance of this right and considered it a guarantee for consumers who are less experienced in the field of consumption. However, in the Hashemite Kingdom of Jordan, legislators in Jordan did not address this crucial issue in the era of globalization and technological progress. Instead, they took a pessimistic approach and limited their focus to general rules derived from civil law relating to defects in purchased goods. Therefore, this study focused on civil law, which focuses its attention on providing the consumer with the option of examining and evaluating products and determining their condition, to find the legislative defect that must be taken into consideration and addressed.

Keywords: Right of withdrawal, consumer protection, e-commerce contracts, right of inspection, general rules.

Introduction

The principle of contractual obligation is one of the important factors that governs contractual relationships. It is not allowed for either party to cancel or change the contract on their own, unless it is within the boundaries set by the law. Once a contract is officially approved, it cannot be rescinded unless both parties agree to do so, take legal action, or there is a formal rule that allows it (Obeidat, 2022).

The right to desert from e-commerce agreements is considered a singular right for consumers, distinguished from the other parties involved in the contract. This distinction is caused by the fact that the terms and conditions of the contract can influence the consumer's decision-making process, causing them to enter into contracts based on emotion or the influence of advertising. These factors can affect

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their overall satisfaction or faith in the contract or online purchases. As such, various legal systems in Western and Arab countries have recognized the right to withdraw as a means of protecting consumers who may have limited knowledge or experience regarding consumption. This right is viewed as supplementary to the right to inspection (Mahasneh, 2018).

It is important to mention that lawmakers in Jordan have failed to address this significant issue in the context of globalization and technological development. Instead, they have chosen to take a passive role, relating this issue to more stringent regulations regarding flaws in purchased products, which are governed by civil law (Alzubi, 2023).

In 2011, the European directive on protecting consumer rights addressed this issue with a great degree of precision and comprehension. It introduced a timeframe of fourteen days, within which consumers are entitled to cancel a contract without needing to provide any explanation. This directive also made a distinction between products and services, indicating when exactly this timeframe begins and outlining certain conditions and exceptions. For instance, it mentioned goods with precise specifications and situations where seals are removed (Al-Tahami, 2018).

The research holds great importance in understanding the true nature of the right to withdraw in e-commerce laws and how consumers, who are often at a disadvantage in contractual relationships, make use of this right. The main objective of this study is to delve into the various ways in which this right can be exercised, the outcomes that follow, situations where this right cannot be invoked, and the alternative options available due to gaps in the legislation in Jordan as compared to certain Western and Arab legal systems that have recognized and implemented this right.

Literature Review

During my research, we were unable to locate any specific studies that delve into the consumer's prerogative to withdraw within the framework of trade legislation in Jordan. Nonetheless, the researchers did come across a handful of studies that encompassed this right within the realm of Arab laws:

1. In December 2018, Dr. Nisreen Mahasneh published an article titled "Consumer's Right to Withdraw from E-Commerce Contracts: A Study in Light of Qatari Transactions and E-Commerce Law in Comparison with the European Directive for Consumer Rights" in the Kuwait International College Journal. The article is featured in Volume 6, Issue 4, with Serial Number 24 (Mahasneh, 2018).
2. "Consumer's Option to Withdraw from Electronic Contracts," published in Studies in Sharia and Law Sciences Journal, Volume 44, Issue 4, 2017 by Dr. Omar Fares and Ammar Bak.

Research Objectives

1. To address legislative gaps in Jordan concerning the right of withdrawal.
2. To advocate for the right of withdrawal within e-commerce contracts to be addressed by the Jordanian legislator, either through specific legislation or inclusion in the Jordanian Electronic Transactions Law.
3. To highlight the option of withdrawal in consumer protection laws to effectively safeguard the weaker party, the consumer.

Research Questions

To underscore the research's significance, it is crucial to answer several questions representing the core issues of the right of withdrawal in e-commerce contracts:

1. What is the legal status of the right of withdrawal in Jordanian legislation? What is the difference between this right and its implementation compared to other Arab laws that implemented it?
2. What conditions does the right of withdrawal entail and who possesses the right to exercise it?
3. In the realm of e-commerce contracts, Jordanian law plays a significant role in determining the right of withdrawal. We ponder upon its effective application within Jordan and seek to understand the legal rules that govern this right.
4. In the context of e-commerce contracts, how have comparative laws addressed the right of withdrawal?
5. Exercising the right of withdrawal within the prescribed period, investigate the impact on consumers and determine if this right still applies when exercised outside the specified timeframe.

Methodology

The researcher takes an analytical approach in studying texts from Jordanian civil law, comparing them to texts from other legal systems. This comparison involves examining both Jordanian civil law and foreign laws to gain insight into how different legal systems tackle the research problem. In addition, the researcher delves into judicial precedents to explore how the research topic is practically applied. Moreover, legal commentaries are consulted to gain a comprehensive understanding of various viewpoints on the right of withdrawal and its implications on e-commerce contracts.

The Concept of the Consumer's Right to Withdraw from E-Commerce Contracts

The 2011 European directive has put forth regulations concerning the consumer's ability to cancel e-commerce agreements in Articles 9-16. In a similar vein, various Arab legislations, such as those of Qatar and Syria, have also acknowledged this right. Surprisingly, the Jordanian legislature has chosen to remain silent on this issue, relying instead on general civil law principles to govern it. This approach, which deals with reconsideration options and conditions, hints at a legislative shortcoming considering the worldwide progress in e-commerce contracts.

To grasp this matter and gain a thorough understanding of its significance both on a national and international level, particularly in the absence of specific laws regarding e-commerce and consumer protection in Jordan, it becomes indispensable to delve into the concept of withdrawal, its significance, and the legal grounds on which it stands (First Subtopic). Following that, our study will proceed to examine the conditions under which the right to withdraw can be exercised and the extent of its legal reach (Second Subtopic).

The Legal Definition of the Right to Withdraw within E-Commerce Contracts

To explore the essence of the right to withdraw, we must delve into the very concept of this right and shed light on its legal underpinnings. This aspect will be further broken down into two branches: the initial branch will center on establishing a clear definition of the right to withdraw within contracts about e-commerce, while the subsequent branch will emphasize the legal framework that supports and justifies this right.

A. The Legal Definition of the Right to Withdraw within E-Commerce Contracts

The consumer is granted a "legal mechanism" which they can use to withdraw from a contract within a specified period, without having to provide reasons. This "right to withdraw" is given by the legislator and applies to contracts made through modern communication means, like the Internet. In such cases, the consumer will also bear the return costs (Obeidat, 2022).

The right to withdraw is seen as a special privilege given to the consumer, acknowledging their position as the least powerful party in the contract. This acknowledgment is rooted in the consumer's limited or nonexistent familiarity with modern contracts, which have become easily accessible. Different definitions describe this right as "an inherent right that enables the party entering into a

contract to withdraw, thereby equalizing their position with the other party by readjusting the power dynamics between them" (Belkhnfer, 2016).

It is worth mentioning that the laws in Jordan regarding e-commerce transactions and consumer protection do not specifically discuss the right to withdraw or the cancellation of electronic contracts. Therefore, we must turn to the general principles of civil law to understand what the right to withdraw entails. This absence of specific legislation highlights a shortcoming, particularly considering the rapid advancements in technology.

When it comes to this matter, it is the responsibility of sellers or service providers to communicate to consumers that they possess the freedom to cancel their order even after it has been placed. This crucial piece of information must be made available on the webpage of the online store. Nevertheless, it should be noted that this safeguard does not fully align with the standards set forth by other governing bodies in terms of the right to withdraw. In the researchers' opinion, there is a flaw in Jordanian legislation, which is considered a legislative shortcoming. This flaw has not kept pace with the legislative developments adopted by many Arab countries. These developments were in response to the widespread and easy accessibility of e-commerce. The researcher hopes that the Jordanian legislator will promptly address this issue.

B. The Legal Basis for the Right to Withdraw

The origin of the right to withdraw can be linked to an agreement under Jordanian civil law, which regulates contracts as the legal code of the parties involved in the agreement. Alternatively, the right to withdraw can also find its basis in a legal text. If an agreement is reached, both parties involved in the contract, whether they be a merchant or a consumer, are granted the right to withdraw based on their mutual understanding. In this context, the party that possesses the right to withdraw can unilaterally terminate the contract without having to provide any specific reasons or seek consent from the other party. This action is commonly referred to as optional withdrawal (Abdel Baqi, 2004).

The legislator, considering the positions and strengths of both the consumer and the seller or service provider in contract formation, has bestowed upon the consumer the right to withdraw. This right serves as a shield for the weaker party in the contractual relationship. Now, we must inquire: What is the legal foundation for this right to withdraw?

The Electronic Transactions Law in Jordan does not explicitly mention the right to withdraw, nor does the Unilateral Law regarding the revocation of electronic contracts. Unlike Qatari and Syrian legislations, the Jordanian legislator has chosen not to address this matter directly. As a result, one must turn to the

general rules to grasp the Jordanian legislator's stance on the right to withdraw and identify its legal foundation. Given the ongoing legal disagreement regarding this right, there are various interpretations. Some people believe that it is associated with the capacity to set conditions, while others believe that it is derived from the possibility of reconsideration. Additionally, some people believe it is associated with the theory of contract formation. The following explanations will be provided in brief:

Option of Condition: The significance of the standing position, which is the sole cause of the commitment, cannot be underestimated in this investigation. If the prerequisites are met, the commitment is executed; if they are not met, the commitment remains inactive (Al-Far & Malkawi, 2019). This idea is like the right to withdraw, as it defines a set of rules that determine if you should commit. It is crucial to consider the annulment's condition as well, this may serve as a threshold for exercising the withdrawal right. Advocates of the standing condition believe that these right grants consumers the power to enter into contracts after a set period, the validity of the contract is contingent on the condition being met. If there happens to be a condition for annulment, the consumer has the privilege of retracting their consent during the specified withdrawal period without having to provide any justifications (Jordanian Civil Law, 1976). Put simply, the agreement only becomes valid if the condition is fulfilled. On the other hand, in the second scenario, the agreement becomes valid solely when the annulment condition is satisfied, and it ceases to have any effect retroactively (Obeidat, 2022).

Option of Reconsideration: The Jordanian lawmaker has chosen to incorporate the concept of reconsideration into contracts that permit cancellation, like sales contracts. This privilege is bestowed upon the party who holds the power to make decisions, and it remains applicable until the reconsideration is verified within the designated timeframe or through any act that renounces this privilege, such as openly or subtly accepting the agreed-upon item (Jordanian Civil Law, 1976). Consequently, the prospect of reconsideration does not impede the contract from coming into force; rather, it provides an opportunity for its nullification.

This choice allows for the cancellation of the contract by revisiting the location of commitment if it does not align with the mutually agreed upon terms, safeguarding the consumer and offering them the opportunity to either terminate the contract or find a compromise between both parties (Al-Muhairat, 2018). The option to reconsider the annulment of the electronic contract is established, providing the consumer with the right to cancel the electronic contract or proceed with it once they have received and examined the goods, especially if they have only viewed images of the goods on the online store. However, this is contingent

upon receiving and inspecting the goods to exercise this reconsideration option (Obeidat, 2022).

Conditions for Exercising the Right of Withdrawal and its Legal Scope.

The Electronic Transactions Law in Jordan did not thoroughly address the option of withdrawal. This missed opportunity resulted in the absence of regulations regarding provisions related to this right, which would have helped in achieving a balance between the interests of consumers and merchants as outlined in the Consumer Protection Law. Unlike many Arab and Western legislations that extensively regulate this right, Jordanian legislation falls short in this regard (Alsheyab, 2023). As a result, we will be dividing this topic into two sub-parts for further examination. The first sub-part will focus on the conditions for exercising the right of withdrawal, while the second sub-part will explore the legal scope of applying this right.

Conditions for Exercising the Right of Withdrawal

The practice of withdrawing from contracts involving electronic commerce is not common, this behavior is considered an anomalous situation, departing from the typical rules. Its objective is to protect the consumer's interests, as they are considered the party with less power in the contract, due to factors that influence their decision-making process. These components include the lack of direct communication, the exposure of advertisements for products, and other components that are influential (Obeidat, 2022). It is crucial to recognize that the right of withdrawal does not affect the legal association between the parties involved; instead, it only concerns a contract that has already been formalized and concluded. Through this right, consumers can forgo the contract without having to provide any justification within a specific timeframe (Rashidi, 2008). In Jordanian consumer protection law, the legislature did not want to provide for a formal right of withdrawal. Instead, they require retailers to return goods or compensate consumers for defects, but only if the goods are indeed defective. In instances where it is not possible to return the goods, it is necessary to compensate for the damage, following the principles of general compensation. Unlike laws that recognized the withdrawal right, this legislation did not define a specific period during which the product could be returned (Jordanian Consumer Protection, 2017).

Additionally, the item must be defective to be eligible for return. If the goods are not damaged, they cannot be returned. This is in sharp contrast to the right of withdrawal, which does not include any conditions or explanations for return. The legislators who recognized the right of revocation took a concrete approach that put the priorities of consumers at the center. They offer consumers the opportunity to

return the product within 14 days, provided the product is not defective or does not require a declaration. This specific right concerns data concerning the most important decisions or arises from the concept of breach of contract or improper performance. EU countries can even extend this by 30 days if temperatures are unacceptable or if retailers wish to manipulate consumer decisions (Jordanian Consumer Protection, 2017).

To exercise this right, consumers must be protected from any inappropriate treatment by businesses regarding their obligations to meet consumer needs. Retailers are obliged to explain all contract conditions to consumers and grant consumers the right to withdraw before the contract is concluded. In addition, the French legislature also allows consumers to withdraw from the contract statement within 14 days without giving a reason. This period is determined by the day the service contract is initiated, as well as the day the goods are received in the case of sales contracts (Nordhausen, & Howells, 2016). The consumer is required to promptly return the purchased goods to the merchant within fourteen days, starting from the moment the merchant is notified of the decision to withdraw. There should be no unnecessary delay in this process (Bouix, 2016).

After analyzing the information provided, it becomes clear that the Jordanian legislator failed to address the provisions related to the right of withdrawal. Instead, they only imposed an obligation on the merchant to reimburse the consumer if the goods were defective or if the defect became evident after usage. Additionally, the law specified that the merchant must provide compensation equal to the actual damage caused by this defect (Samhadana & Al-Rifaya, 2022). In practice, many laws granting consumers the right of withdrawal did not permit any prior waiver or restriction, considering such attempts as null and void (French Consumer Protection Law, 2019).

Scope of Applying the Right of Withdrawal

For consumers to enjoy the advantages of the right of withdrawal, they must fulfill various conditions. These conditions determine the extent of the right of withdrawal and can be categorized into personal and objective scopes. It is important to note that this right is specifically allocated to the consumer by law. In this context, the consumer is an individual who enters a contract for their requirements, without any intention of gaining monetary benefits (Zrouk, 2013). Hence, it is important to note that the right mentioned does not extend to merchants who make electronic purchases. The European perspective makes this distinction clear by defining a consumer as "an individual who engages in transactions that fall outside the realm of trade, business, craft, or profession" (Steannot, 2013).

When it comes to transactions, consumers are only able to exercise their right of withdrawal in electronic commerce contracts. This applies whether the withdrawal is complete or partial if it is done through electronic means. Let us say, for instance, that an offer is made traditionally but the acceptance is sent electronically. In this case, the contract is concluded through electronic means and the same rules apply as they would for a fully electronic contract. According to Article 16 of the European approach, there are certain contracts where the right of withdrawal cannot be applied. These include immediately performed service contracts with consumer consent and a waiver decision, as well as goods and services that are subject to price fluctuations. Additionally, goods that are made specifically to meet the consumer's specifications, perishable goods, and goods that have been unsealed by the consumer are also exempt from the right of withdrawal (Mahasneh, 2018).

Consequences of Exercising the Right of Withdrawal

As we mentioned before, it is important to note that consumers have the exclusive right to withdraw from a contract without providing any reasons within a specific timeframe. If this right is not exercised within the given period, consumers will be unable to benefit from withdrawal and will be expected to fulfill their contractual obligations. On the other hand, if consumers do exercise this right within the specified timeframe, it brings about certain responsibilities for both parties involved: the consumer and the merchant. Consequently, we have divided this section into two parts to explore the consequences separately for both the consumer and the merchant.

Consequences of Exercising the Right of Withdrawal for the Consumer

If the consumer desires to utilize their right of withdrawal and terminate the contract, as stated in Article 14/3 of the European Directive for the year 2011, they are required to remunerate a proportion of funds comparable to the worth of the rendered services from the moment the contract was established until the act of withdrawal is executed. The magnitude of this proportion is determined based on the value of the contract. In cases where the value of the contract is deemed exorbitant, the market value is employed as a point of (Arcarazo, 2011).

The return of goods and payment of delivery expenses are some of the most prominent consequences resulting from exercising the consumer's right of withdrawal which will be discussed as follows:

1. **Return of Goods:** By exercising the consumer's right of withdrawal, the contract is terminated, as if it never existed in the first place. As a result, the consumer must return the goods to the merchant, to restore the situation to its pre-contract state. If the consumer returns the goods within the specified

time frame and in their original condition, the merchant is obligated to accept the return. However, if there are any changes to the condition of the goods that prevent them from being returned to their original state, or if the consumer has used them for personal purposes, then their right of withdrawal is forfeited. In this case, the merchant must accept them in their current state (Le Bideau, 2015)

2. **Bearing the Expenses of Returning Goods:** When a consumer decides to exercise their right of withdrawal, they are required to cover the expenses of returning the goods to the merchant, if any costs are incurred. It is considered illogical for the seller to bear these expenses, and it is possible for the parties involved to come to an agreement that places these expenses on the consumer (Al-Tahami, 2018). Many legislations emphasize that it is the consumer's responsibility to cover the expenses that arise when they choose to withdraw. Some examples of this can be seen in Article (L.121-21-3) of the French Consumer Protection Law, Article 20/b of the Syrian Electronic Transactions Law, and Article 56 of the Lebanese Consumer Protection Law.

Consequences of Using the Right of Withdrawal for the Merchant

When a seller grants the right of withdrawal, they are obligated to fulfill certain responsibilities. These include reimbursing the price paid by the buyer and canceling any contracts associated with the electronic agreement, whether they were made at the start or later. Let us delve into these repercussions in more detail:

1. **Refund to the Consumer:** When the consumer decides to withdraw from the electronic contract, it is the duty of the seller or online merchant to reimburse the price within a specific timeframe. The French Consumer Protection Law has established that this timeframe shall span fourteen days, commencing from the day the consumer informs the seller about their intention to withdraw. If, however, the seller procrastinates in issuing the refund, they may face legal repercussions in the form of penalties as determined by law (Al-Bayk, 2014).
2. **Cancellation of Contracts Related to the Withdrawn Contract:** Sometimes, when a consumer buys goods, they might take out a loan to cover the cost. But what happens if the consumer decides to cancel the purchase? Does the loan still need to be repaid? Interestingly, while the Jordanian legislator hasn't specifically tackled this question, unlike other situations involving cancellations, the Tunisian legislator has explicitly addressed it in Law No. 83 of 2000 on Exchanges and Electronic Commerce. According to Article 33, if a consumer withdraws from an

electronic commercial contract, the loan contract that was granted by the seller or a third party is canceled. The consumer does not have to pay any compensation for this cancellation. This shows that in Tunisia, the legislator sees both contracts as one unit and when the original contract expires, the attached contract also expires (Al-Bayk, 2014).

Results

- The Jordanian lawmaker did not specifically discuss the right to withdraw in the law on electronic transactions. As a result, consumer protection rules are invoked, which, in turn, do not have specific provisions governing this right. This leads to reliance on civil law, which mainly provides consumers with the choices of reconsideration and conditional agreements. It is necessary to rectify this legislative gap by developing dedicated regulations.
- Special rules and regulations apply to the cancellation of electronic contracts, as this is a special right that deviates from general principles. This right is implemented to protect consumers who are considered vulnerable and inexperienced in e-commerce transactions.
- The laws regarding the right of revocation vary from place to place. Some places, such as European directives and Syrian, Tunisian, and Qatari laws, have very strict regulations on this right. Jordanian legislation, on the other hand, does not provide for this. Furthermore, some laws apply this right only to contracts entered online, while other laws cover all electronic contracts, although some exceptions may exist to protect the rights of sellers or service providers.
- If a consumer decides to withdraw their purchase, the seller must refund the payment within a specific timeframe beginning from when they received the goods. Interestingly, most Arab legislations tend to overlook the notion of late payment interest, which is thoroughly explained in French law.

Conclusion

In this study, we delved into the important topic of a consumer's right to withdraw from electronic commercial contracts. We explored this issue within the framework of Jordanian law and compared it with laws from other countries. After

conducting a thorough analysis, we reached several noteworthy findings and recommendations that are worth mentioning at the end of this study:

Recommendations

- It is recommended that the Jordanian legislator puts forth a proposal to create distinct regulations for the right of withdrawal in a dedicated law. This approach would prevent the dependence on conventional general principles that fail to address the changing requirements of electronic commerce transactions.
- It is suggested to propose the establishment of a designated timeframe for withdrawing from a contract, which is believed should be comparable to existing laws that grant a fourteen-day window for exercising this right. It is essential to clearly outline the consequences for failing to adhere to this withdrawal period and establish an appropriate compensation amount for any delays that may occur, regardless of whether the responsibility lies with the seller or the consumer, based on their respective obligations.
- It is preferable to examine the matter of loans and contracts that arise from electronic commercial contracts. Please explore the approach followed by French and Tunisian legislation in dealing with this issue. Additionally, it is essential to analyze the consequences of withdrawal on these contracts, ensuring that they are dissolved without any negative impacts when a consumer exercises their right to withdraw.
- It is believed that it is important to support the idea of granting consumers a wider scope for exercising their right to withdraw from transactions. This should not be limited only to service contracts or the purchase of goods but should extend to all electronic commercial contracts, regardless of whether they involve services or the supply of goods, and regardless of whether they are partially or entirely related to these contracts.
- Withdrawal from the consumer should prompt sellers to propose an obligation for a refund, including late payment interest and adequate guarantees.

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