

(Buyer Protection Guarantees In The Electronic Contract Formation Stage)

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Abstract:

Electronic contracts are witnessing rapid growth, becoming a significant portion of both international and domestic trade. This is attributed to the ease and speed of their formation and execution, allowing individuals to access a wide range of options by simply pressing the keyboard of their internet-connected devices. This eliminates the need for physical movement and facilitates constant communication and interaction between the contract parties. Such digital transactions ensure complete freedom for negotiation and discussion of contract terms, akin to traditional face-to-face negotiations conducted in a physical contract assembly. This has led to an increased demand for products and services online, consequently expanding the consumer base in the realm of electronic commerce (Al Marzouki, 2019).

The buyer holds a central role in the business process but is in a relatively weaker position compared to the merchant, who is considered the stronger party. Merchants can master the mechanisms of managing electronic business practices professionally on websites, while consumers may approach contracts with only basic familiarity, limited by the technologies available to them. Hence, there arises a need for consumer protection laws designed to shield individuals from deceptive and misleading policies and practices in unfair business transactions (Almehiri, 2015).

Therefore, it is imperative to provide special protection for the buyer in electronic contracts. The idea of buyer protection has garnered significant interest in most civilizations worldwide, as it constitutes a right enjoyed by the consumer. This protection shields the consumer from fraud and deception that may be perpetrated by the seller. Consumer protection witnessed a substantial breakthrough in the twentieth century with the enactment of numerous laws supporting consumer rights. Additionally, both local and international entities have shown interest in educating consumers across various fields to ensure they are aware of their rights and responsibilities, preserving them within the appropriate legal framework (Abdul Samad, 2016).

It is now evident that buyer protection is crucial in electronic contracting. This protection extends beyond the time of contract formation and execution; it is equally essential to safeguard

the buyer from the moment they enter the online sphere to search for an e-commerce store to contract with until the contract's execution. The aspects of this protection manifest in the stage of electronic advertising on the store's website on one hand, on the other hand, ensuring consumer protection during the negotiation phase of the contract is a matter that must be carefully considered by the e-commerce store.

Keywords: forms of expression of will, electronic contracts.

Study Problem

Electronic contracts, including the method of contracting, electronic advertisements, the use of modern communication tools in the formulation and conclusion of contracts, have become a crucial part of individuals' lives. These aspects have become a fundamental means of attracting consumers and influencing their choices. Therefore, electronic contracts and related matters must be characterized by honesty, clarity, be free from any falsehood, ambiguity, or deception. Electronic contracts should include truthful information based on genuine facts and transparency.

The problem of the study lies in answering the following question: "What are the guarantees related to protecting the buyer within the framework of electronic contracts according to Iraqi legislation and comparative analysis?"

- What are the legal requirements for protecting the electronic consumer ?
- What is the legislative plan in both comparative laws and Iraqi legislation to ensure the protection of consumers in the context of the flourishing electronic commerce and its expanding risks?
- Has the Iraqi legislator managed to adapt the necessary legal framework to accommodate the new trends in electronic commerce ?
- What are the substantive and procedural guarantees for protecting the buyer in the stage of concluding electronic contracts ?

Study Methodology:

In this research, we will rely on the following methodologies:

- **Descriptive Methodology:** This approach involves studying the phenomenon as it exists in reality, focusing on describing it accurately and expressing its characteristics. We aim to clarify the guarantees provided by the law to the buyer in electronic contracting at the stage of contract formation. This will be achieved by referencing relevant sources.

- **Analytical Methodology:** This methodology involves defining and evaluating the components that make up the whole of any issue. It serves as a means to acquire rich and new knowledge by analyzing legal texts relevant to the guarantees for the buyer in electronic contracts. This includes an analysis of legal texts and legislation related to the subject.

Chapter One: Protection Of Contractual Will for The Electronic Buyer

It is imperative to reconcile the principles of justice, good faith, contractual freedom. Therefore, there is a presumption that contracts entered into by free and responsible individuals align with justice. However, this presumption requires verification of "excessive imbalance" or evidence that one of the parties was not in a position to assess or defend their interests in a balanced manner. This justifies the intervention of public authorities, transforming the contract from a tool for reconciling conflicting interests of the contracting parties into a means by which one party imposes arbitrary conditions on the other, especially with the presence of the principle of the will's dominance.

This phenomenon is exacerbated with the proliferation of electronic commerce contracts. Individuals may find themselves unable to negotiate with a computer system, leading to an imbalance in contractual power. Therefore, it is essential to restore contractual balance by addressing arbitrary conditions, protecting consumer satisfaction, safeguarding the personal data of electronic consumers during the contracting process. These issues will be addressed as follows:

1- Protection in the Presence of Arbitrary Conditions.

It is acknowledged that contracting parties may include any condition in the contract that satisfies them, as long as this condition is not legally prohibited, whether explicitly in specific provisions or due to its violation of public order or morals. This aligns with the principle of consensus, which is the general principle in contractual relationships. However, within the context of the economic, social, financial disparities between parties that we have previously discussed, one party may impose its conditions on the other without opening the door to negotiation. Often, these conditions tend to be arbitrary, such contracts are referred to as contracts of adhesion.

Traditional legal principles have addressed these contracts, modern legal principles have added new protection for consumers. We will explore this aspect and examine everything related to arbitrary conditions, particularly in the context of adhesion contracts. We will also delve into whether electronic commerce contracts fall under this category. Additionally, we will study strategies for confronting arbitrary conditions (Al-Qaisi, 2006). These discussions will be conducted within the framework of consumer contracts as follows:

1/1- The Concept of Arbitrary Condition.

It is noteworthy that most civil law legislations did not provide a definition for arbitrary conditions; instead, some legislations have addressed this issue (Shaheeda, 2007). For example, the French legislator defined the arbitrary condition in the first paragraph of Article 132/1 of the French Consumer Protection Law. It stated, "In contracts between professionals and non-professionals or consumers, terms that aim to create significant imbalance between the rights and obligations of the parties in the contract to the detriment of the non-professional or the consumer are considered arbitrary" (Ahmed, 2006).

European Directive No. 93/13, issued on 5/4/1993, relating to unfair terms in consumer contracts, defined an arbitrary condition in Article 3 as "a term that, contrary to the requirement of

good faith, causes a significant imbalance between the rights and obligations of the parties to the detriment of the consumer" (Abdullah, 2009).

As for the legal definition of an arbitrary condition in Islamic jurisprudence, it is a clause inserted into a contract by one of its parties, imposing their will on the other party to achieve an unusual benefit not customary to the rights of the conceding party subjected to the dominance imposed by the contract (Al-Hakim, 1981).

It is also defined as "a condition that results in an imbalanced contractual relationship in favor of the professional or expert against the consumer who lacks technical or economic expertise" (Ibrahim, 2008). This definition seems to emphasize the existence of an arbitrary condition in the relationship between a professional and a consumer only, while the reality suggests a broader scope, as arbitrary conditions may be found in various types of contracts, including consumer contracts.

Another aspect of the legal definition of the arbitrary condition has been provided by Islamic jurisprudence, presenting a concept that varies depending on the perspective through which it is examined. From the perspective of the contractual relationship parties, it is defined as a condition imposed on the consumer by a professional or seller, arbitrarily using their economic power to gain an unfair advantage (Saleh, 1991). In terms of how it is imposed, it is known as a condition that is pre-determined by the economically powerful party, granting them a higher advantage compared to the other party (Al-Hakim, 1981). Similarly, it is defined as any contractual condition aimed at achieving a benefit or advantage for the benefit of the powerful party at the expense of the weaker party (Al-Jamili, 2002). Considering its impact on the contractual relationship, it is defined as a condition that leads to an imbalance in contractual equilibrium in favor of the party imposing it on the other party lacking expertise (Hamdallah, 1997).

The definitions seem to have focused on the advantage gained by the arbitrary contractor, overlooking the reaction of the second party in the contract regarding their right to negotiate the term. Therefore, we can define the arbitrary term as the term that the powerful party imposes in the contract to achieve personal goals without considering the will and interest of the other party, who bears the burden of the term without having the right to negotiate it. We have taken into account the following in our definition:

- The term is outside the scope of the contract, changing its effects.
- It is not enough for one party to seize the conditions to impart them with the arbitrary quality, as unilateral drafting for model contracts has become a necessity, especially in e-commerce contracts. Therefore, we emphasized that appropriation comes from the powerful party.
- The arbitrary term is imposed by the powerful party in the contract, regardless of the nature of this power, whether economic, knowledge-based, or operational.
- The second party in the contract does not have the right to negotiate the term, let alone bear the consequences of this term.

As for the elements of arbitrary terms in consumer contracts, they include:

1\1\1- Arbitrary Use of Economic Influence by the Professional:

The use of arbitrary terms in contract formation entails a defect in consent that affects the will. This kind of arbitrariness can be seen as a form of deceit falling under the general concept of lack of good faith, or what is known as arbitrariness in position. This is distinct from arbitrariness in exercising known rights under general principles, which involves exceeding the social purpose of personal rights. This is particularly evident in e-commerce transactions where there is a clear advantage for the professional in the scientific and economic fields compared to the consumer. In such cases, the professional exploits the consumer's need for goods and services, imposing conditions without the possibility of negotiating them. This significantly undermines the consumer's freedom of choice (Abu Mar'i, 2009).

1\1\2- Substantial Benefit Obtained by The Professional:

The arbitrary nature is not solely related to the financial benefit obtained by the professional or its monetary nature. The assessment of arbitrariness is linked to the significant imbalance between the rights and obligations of the contracting parties due to the existence of a criticized term in terms of its form, style, manner of dealing in the contract.

1/2- Validity of E-Commerce Contracts as Adhesion Contracts.

From a perspective of justice, considering contracts entered into by consumers through electronic means as adhesion contracts (Al-Sanhouri, 2000) is justified, given that the consumer is the weaker party in the contractual relationship. This opens the door for the consumer to obtain legal protection when the professional imposes some arbitrary terms.

The first question that comes to mind is the extent to which the conditions required in an adhesion contract can be applied to e-commerce contracts. Can we assume that the consumer is in the same position as the adhering party in an adhesion contract?

An adhesion contract is a contract in which the offeror delivers the terms to the offeree with conditions pre-imposed. These conditions respond to a necessary good or service that is legally or effectively monopolized, negotiation is not acceptable. Consent exists, but it is imposed, the compulsion in these contracts is not coercion in defects of will but rather coercion resulting from economic factors more than psychological factors (Al-Suhrawi, 1974).

In the context of the Iraqi legislator's treatment, as indicated in paragraph two of Article 167 of the Iraqi Civil Code, considering the wording of the two articles, there is no significant difference between them except in the use of the phrase "allowed for the judge" in the Egyptian law, while the Iraqi legislator used "allowed for the court." It is evident that the Iraqi legislator aims to protect the adhering party against the arbitrariness of the stronger party, who often tends to include non-negotiable arbitrary conditions in the contract. The other party has no choice but to accept because they are dealing with a monopolist of a good or public facility (Al-Suhrawi, 1974). As we explained, the Iraqi legislator intentionally did not define the term "arbitrary conditions" and left it to the discretion of the court dealing with the matter, relying on the circumstances surrounding the contract (Al-Sanhouri, 2000).

However, if we attempt to apply these conditions to an e-commerce contract, we will find that they are not entirely applicable, especially concerning the consumer compared to the adhering party in an adhesion contract. The issue of a necessary good or service for the consumer is inherent in an e-commerce contract. Similarly, regarding the condition of making the offer available to the public as a whole and for an indefinite period, most advertisements issued through the internet are for an indefinite duration and for an unspecified number of online users.

Regarding the monopolization of the seller or professional for the goods or products, here lies the difference. Often, goods and products are available from many virtual companies or stores. Nevertheless, the modern concept of adhesion contracts (Al-Ihwayi, 2001) considers it as a contract prepared in advance by one of the parties, determining its content and specifying the rights and obligations arising from it to achieve its interest, without the second party having the right to negotiate or discuss the content. Therefore, this concept tends not to insist on the literal conditions of adhesion contracts, especially regarding the requirement that the contract be related to necessary goods or services, or that these should be monopolized effectively or legally by the seller or professional. This is particularly relevant since Article 100 of the Egyptian Civil Code did not stipulate monopolization or control, but it is sufficient for the contract to be pre-prepared by one of the contractors, making the negotiation of the terms within it unacceptable (Gomaa, 2011).

Some argue that monopolistic companies in adhesion contracts share characteristics that make them similar to giant e-commerce companies in their dealings with consumers. Regardless of the preference between goods and services available to consumers, widespread electronic advertising on the Internet, as well as the economic power of these companies, necessitates consumer protection by alleviating aspects of adhesion and relieving consumers of the burdens of arbitrary conditions that may be present in contracts (Hegazy, 2008).

In the same context, some view e-commerce contracts as adhesion contracts for consumers, based on objective facts. These facts include the economic and informational superiority of the obliging professional, the contract's relation to goods or services that the consumer cannot do without as long as they meet personal needs. Additionally, the electronic offer is permanently issued to an unspecified number of the public, formulated with conditions in a standard form that is technically complex and lacks clarity, making it difficult for the average consumer to understand. The consumer has no choice but to either accept the contract as is or reject it (Badr, 2008). This viewpoint finds support in Article 132/1 of the French Consumer Protection Law, which deems any condition that creates an imbalance in contractual equilibrium in favor of the professional against the consumer, either in terms of subject matter or effects, as an arbitrary condition (Hemish, 2003).

There is another similar opinion that considers e-commerce contracts to be close to adhesion contracts, as they are often formulated in a standardized manner. The contract is pre-prepared by one of the parties, including conditions that suit their interest, leaving the other party to either accept or reject these conditions without discussion or modification. This approach closes the door to bargaining and negotiation between the contracting parties (Abu Al-Lail, 2003). An example of this is the terms set by Dell on its website, where the second condition states, "This

Agreement applies to sales or services, any different or additional terms and conditions on any purchase order or other document provided by you are hereby rejected and shall be deemed null and void. By placing an order, you accept this Agreement expressly, we reserve the right to change or modify this Agreement at any time."

It seems that this opinion does not differ significantly from the previous one that excludes e-commerce contracts from the category of adhesion contracts. On the other hand, there is a middle-ground opinion that suggests considering the means used for communication to conclude the electronic contract to determine its nature, whether it is consensual or adhesion. If the contracting is done through email, chat programs, or audiovisual means, where the parties can exchange opinions through conversation or electronic messages, the consumer can freely negotiate the contract terms and choose the best available offers, then these contracts are considered negotiation contracts. However, if the contracting is done through the web using pre-prepared model contracts with fixed terms without providing the opportunity for negotiation and discussion, leading to an imbalance in contractual equilibrium, then the e-commerce contract is deemed an adhesion contract (Ibrahim, 2008).

It seems to us that this last opinion is the most plausible; however, it cannot be taken as an absolute rule. Even in the case of contracting through email or chat, the consumer will face powerful and economically strong companies, in addition to their technological dominance. Moreover, their marketing and advertising capabilities, combined with the online environment, often lead consumers to enter into contracts without thoroughly reviewing the terms or taking sufficient time for negotiation. With just a click of the keyboard, consumers may find themselves acquiescing to all the conditions imposed by the professional.

It is worth noting that linking e-commerce contracts to adhesion contracts often becomes a futile issue when seeking legal mechanisms to protect consumers in these contracts. General rules suggest that the protection cannot be extended to contracts other than adhesion contracts, as this protection is provided as an exception. Therefore, it is difficult for the judge to exercise powers of cancellation, modification, or interpretation of contracts other than adhesion contracts without legislative intervention. Even if some contracts include unfair terms, modern consumer protection laws or e-commerce laws have addressed this guarantee to protect consumers from arbitrary conditions.

We call on the relevant authorities not to be strict in narrowing the concept of adhesion contracts, especially concerning the issue of the monopolization of the adhering party over goods and services. Consumer weakness and contractual imbalance do not always result from legal monopolization of the goods. It may stem from the consumer's weakness in discussing these conditions and a lack of knowledge in economic, legal, technical aspects. Therefore, adopting a broad concept of adhesion contracts, where one party pre-regulates the contract, leaving the door open for the other party to join without discussing its terms, is crucial. This approach benefits the electronic consumer dealing with a pre-regulated computer by the professional with conditions that serve their interests. It ensures legislative protection for the adhering party within carefully crafted contracts that safeguard against adhesion, particularly limiting or exempting from arbitrary

conditions in favor of the consumer. It also allows for the interpretation of vague conditions in a manner consistent with the consumer's interest.

2- Traditional and Modern Protection Against Unfair Terms.

Ignoring a legal situation characterized by inequality between the parties to a contract is not easy, leaving the powerful party alone to determine the conditions based on the principle of freedom of will is not just. Therefore, the law should intervene to establish texts that ensure the protection of the weaker party, where the judiciary alone, without legal support, can provide that protection effectively.

The fundamental principle in general rules is that the contract is the law of the contracting parties. This rule means that "will is the source of the binding force of the contract" (Al-Qaisi, 2006). Human will be free and is restricted only by the will of the person himself. Consequently, individuals are free to enter into contracts and include legitimate conditions they desire. This is because human will can only be directed towards achieving one's interest, therefore, the obligations arising from that will, regardless of their impact, cannot be anything but fair (Amer, 1949).

Researching the modification and cancellation of arbitrary conditions based on general rules may lead us to rely on the theory of arbitrariness in the exercise of rights or to rely on the principle of good faith. Additionally, studying the authority of the judge in interpreting the conditions in the contract will be addressed in detail in the last paragraph, highlighting its crucial role in providing protection for the consumer, as follows:

2/1 Theory of Arbitrary Exercise of Rights.

Consumer protection against unfair terms can be achieved theoretically by granting everyone the right to present various contract models for purchasing goods or obtaining services to the public. Therefore, it is not permissible to arbitrarily exercise this right by including arbitrary conditions in these contracts.

Relying on this theory as a means to protect the consumer is not without difficulties because the connection between the two ideas is impossible. The concept of arbitrary exercise of rights arises in three situations, as indicated by Article 7 of the Iraqi Civil Law and also Article 5 of the Egyptian Civil Law. The exercise is considered unjustified if it aims only to harm others, or if the interests sought by the right holder are of little importance compared to the harm caused to others, or if the interests sought are illegitimate.

Upon examining the texts, some argue that the second situation can be directly applied to the arbitrary condition, especially in consumer contracts, which are often associated with the professional using their economic influence. The unjust advantage resulting from the presence of the arbitrary condition lies in the significant difference between the harm to the consumer and the benefit to the professional (Isawi, 1963).

However, while it is possible to address unfair terms in contracts through the theory of arbitrary exercise of rights, it is essential not to confuse the concepts. While the arbitrary exercise of rights is a form of negligent error, leading to tort liability and falling outside the contract scope,

even if it is contract-related, the arbitrary condition is within the contract, its provisions revolve around the contract (Al-Ahwai, 2001).

2/2 Relying on the Principle of Good Faith.

The principle of good faith should prevail in the execution of contracts, including consumer contracts. This does not require commitment from only one party but should be adhered to by both parties. Thus, the commitment to honesty and the honor of dealing, as an aspect of good faith, falls on both the creditor and the debtor. Each of them is obliged not to engage in fraud, deceit, or trickery during contracting or contract execution (Abdel Baqi, 2004).

The Iraqi Court of Cassation, in decision No. 777, Civil First/1978, concluded that the condition granting the insurer the right to determine the effective date of the insurance contract is an arbitrary condition as it contradicts the principle of good faith in dealing.

Article 166 of the Iraqi Civil Law states, "Doubt is interpreted in favor of the debtor." Additionally, Article 167 of the same law states, "The interpretation of ambiguous terms in adhesion contracts should not be harmful to the interest of the adhering party, even if they are the creditor."

Moreover, when we compare the two texts, we find that the legislator used the term "doubt" without any restriction in the first text, made the interpretation in favor of the debtor, while the second one restricted the interpretation to ambiguous expressions, ensuring that the interpretation would not be harmful to the interest of the adhering party, whether they are creditors or debtors.

Analyzing these two texts indicates that the interpretation of doubt will be in favor of the debtor. The debtor with the condition is the one burdened with an additional condition on their shoulders. Naturally, the debtor is the consumer, not the professional, because it is inconceivable, given the existence and prevalence of standard contracts and electronic commerce contracts, the professional's exclusive right to set the contract terms, that there would be a clause adding a burden to the professional. Therefore, the consumer is the one intended for protection in this assumption.

In the case of an adhesion contract, the contract must be interpreted in favor of the adhering party, even if they are creditors, when the contract terms are unclear. The powerful party relies on formulating terms that serve its interest, knowing that the other party will accept its conditions in any form (Jamaie, 2011). Thus, the powerful party must bear the impact of the ambiguity in the wording it used to include its conditions (Al-Sadeh, 1974), which it could have avoided so that this ambiguity does not become a means to include conditions that harm the adhering party's interest (Al-Jumaili, 2008). Therefore, "courts always interpret doubt or ambiguity surrounding contract terms in favor of the adhering party" (Abdul Hussein, 1988). It seems that the legislator considered the one setting the ambiguous condition as acting in bad faith and intended to punish them by interpreting the condition in favor of the second party's interest.

In summary, we can say that traditional protection in general rules cannot provide sufficient protection for the consumer due to significant developments in contractual relationships. Today, unfair terms have found their way into negotiation contracts as well, where large companies and virtual stores on the Internet monopolize goods and services, offering them to consumers at prices

and under terms that are non-negotiable. Therefore, the legal treatment of adhesion contracts can be seen as an initial attempt to protect consumers from the danger of unfair terms, but it is insufficient to exert its influence on many consumer transactions, especially in electronic dealings.

2/3 Judicial Authority in Interpreting Terms in the Contract.

The Iraqi legislator has granted the judiciary discretionary authority to cancel or modify unfair terms found in adhesion contracts, as stated in Article (167) of the Iraqi Civil Code. This provision serves as a powerful tool in the hands of the judge, providing protection for the contracting parties against unfair terms. The judge has the authority to determine whether a term is arbitrary, the Court of Cassation has no authority to review this discretion as long as the contract language clearly indicates the intended meaning.

The legislator has not set strict boundaries, leaving it to the judge to evaluate whether a term is arbitrary or not, considering the circumstances surrounding the contract. The Iraqi Court of Cassation has ruled that a contract between the railway and an individual for transporting goods, with an adhesion contract in place, allowing the railway to double storage fees in case of delays in unloading and receiving the goods, is considered an arbitrary term. The court has the power to modify it by reducing storage fees. The contracting parties cannot agree to deprive the judge of this authority, such a provision is not applicable in Lebanese law, where there is no explicit provision for it (Hajazi, 2008).

Moreover, the Iraqi legislator, through Article (167), compelled the judiciary to interpret ambiguity in adhesion contracts in favor of the adherent, whether a debtor or creditor. One of the advantages of not defining the concept of an unfair term is the inclusivity of protection, covering all unfair terms, even those known to the adherent, with the understanding of their content (Al-Qaisi, 2006). Whether the adherent knew or did not know the contract terms has little impact on their willingness to enter into the contract. They contract under the imposition of terms dictated by the stronger party, leaving no room for negotiation. Therefore, for the adherent, all conditions, whether known or unknown, are equal (Al-Jamai, 2011). Notably, the Iraqi Court of Cassation has ruled that "the adherent is not required to object to the condition of the carrier's non-liability because it was not clear and not written in a way that attracts attention." The court seems to rely on the issue of knowledge or lack of knowledge of the condition as a reason to exempt the adherent sender from the condition. This is a matter that lacks a basis, as the adherent party in the adhesion contract is expected to be subject to all conditions, regardless of whether they are aware of these conditions or not.

To ensure robust consumer protection, especially in Arab legislations, there is an emphasis on the necessity of establishing a specific system related to unfair terms. This system should define and outline these terms, provide examples, establish specific criteria. In this regard, the Iraqi Consumer Protection Law does not make any reference to any type of unfair terms, or explicitly grant the judiciary the authority to exclude or modify these terms. The law also does not adopt a system of specified lists for what is considered arbitrary. Many contemporary legislations for consumer protection follow this approach, accompanied by the establishment of committees to

monitor developments and prepare the necessary regulations and proposals. For example, this is what the Lebanese legislator did. Therefore, we suggest that the Iraqi legislator adopt a similar approach to address unfair terms by incorporating provisions regulating these terms within the Iraqi Consumer Protection Law.

Chapter Two: Electronic Media and Its Role in Protecting the Buyer Before Contract Formation

Studying the commitment through electronic media before contracting via the Internet provides effective protection for those who collaborate through electronic communication networks, safeguarding them against potential risks. It is also one of the key legal assurances to achieve equality in knowledge between the parties and the safety of their intentions. Contracting occurs between a professional contractor and a buyer or consumer, both in need of legal protection. In this context, the contractual media and its role in protecting the buyer before entering into an electronic contract will be explained. Thus, this section will be divided as follows:

1- The Content of the Electronic Buyer's Right to Contractual Information.

There is often a spatial difference between consumers and professionals, the absence of physical and tangible presence of goods and services directly in front of consumers significantly impacts their ability to accurately judge the quality and attributes of products. False or misleading advertisements, which praise and glorify products, have a substantial influence on consumer choices. Therefore, it becomes imperative for professionals to inform consumers of all necessary details that enable them to engage in electronic commerce with full awareness, given their expertise in the field.

Compliance with informational disclosure is a legal obligation that requires professionals to provide consumers with accurate, clear, sufficient information. This involves disclosing essential details about the product or service, including basic information, usage methods, any information that the consumer might not be aware of, all provided in a timely manner (Hawwa, 2012). The following will delve into understanding this commitment, its content, the mechanisms through which it operates, its limitations, the consequences of its breach.

1/2- Definition of Pre-Contractual Electronic Information Obligation.

Various terms have been used by legal scholars to refer to the obligation of pre-contractual electronic information, their opinions have differed in this regard. Some of these terms include providing data, informing, disclosing, enlightening, disclosure. However, most scholars have used the term "information" (Saad, 2009), which we prefer.

In general, the definition of the obligation of pre-contractual electronic information is associated with examining the purpose of fulfilling this commitment. It is essential to determine whether the goal is to form a free and enlightened consent for the consumer. Thus, its natural scope is the stage preceding contract formation, which is the stage of creating satisfaction and rectifying it. Alternatively, the purpose may not be limited to merely providing information that enlightens the consumer's will. Still, it extends to drawing attention to all potential risks associated with the

product. This requires explaining how to use it and warning about its risks. This means that the execution of this commitment extends to the stage that follows the contract formation (Abdul Baqi, 2004).

And, in fact, the commitment to electronic information exists in both the pre-contractual and post-contractual stages, but what concerns us here is the commitment to electronic information in the pre-contractual stage. Jurisprudence has defined the commitment to pre-contractual electronic information as follows:

"The commitment prior to the contract related to one of the contracting parties obligating themselves to provide the other party, upon the formation of the contract, with the necessary information to create a complete, enlightened consent. This includes detailed knowledge of all aspects of the contract. This obligation arises due to certain conditions and considerations that may be related to the nature of the contract, the qualities of one of the parties, the nature of its subject, or any other consideration that makes it impossible for one of them to comprehend specific information or the conditions that it goes through" (Khatir, 2006).

Consumers now join the contract relying on the honesty and trustworthiness of the other party, bestowed upon them due to their professional status. The majority of civil law scholars agree that the professional status of one of the contracting parties is one of the most prominent factors that impose the obligation to provide necessary information to enlighten the other party's consent and to restore balance in contractual relationships (Jamee, 2011). It is worth noting that the commitment to pre-contractual electronic information is not a contractual obligation, as it precedes the contract. Commitment cannot be conceived in a stage preceding its source (Muntasir, 2009).

In light of the above, we can define the commitment to pre-contractual electronic information as an obligation that covers the stage preceding the contract. Its content involves the professional merchant informing the electronic consumer of all essential information that the consumer is unaware of regarding the product or service and is unable to obtain except through the professional. This ensures that the consumer's willingness to contract is based on free and informed consent.

Regarding the information that requires confirmation, given the importance of some of this information and data, the French legislator did not only require informing the consumer in the pre-contractual stage but also mandated the professional to remind them of it (Abu Amro, 2010). Article 121/19/1/A of the French Consumer Law stipulates that the consumer must receive confirmation of the information provided in the period preceding the contract. This includes the same information mentioned in Article 111/1 and Article 214/1 of the mentioned law. These articles require the professional to provide certain information, including the essential characteristics of the product or service, the price (including taxes), special sales conditions, conditions specifying liability if any, in addition to the information specified by Article 121/18 in its four paragraphs from the Consumer Law. This information includes the name of the seller or service provider, telephone number, address, delivery charges if applicable, payment methods, the delivery method (Federer et al., 2009).

Moreover, the obligation to provide electronic information will not stop at the previously provided information. The professional must also provide the consumer with the following information:

- Terms and conditions for exercising the right of withdrawal.
- Address of the professional's establishment to which the consumer can submit requests.
- Information about after-sales services and commercial guarantees.
- Conditions for terminating the contract if its duration is not specified or exceeds one year (Qasim, 2011).
- This obligation does not apply to all types of contracts; some exceptions are mentioned in the French Consumer Law, including:
 - The professional is not obligated to provide contractual information in distance contracts where ordinary consumer goods are supplied, distributed by distributors who make regular and repeated visits to the consumer's place of residence or workplace, in contracts responding to accommodation or transportation services, as well as restaurant and entertainment services that must be performed at a specific time or during specified periodic periods.
 - The provisions of this obligation do not apply to services provided in a single payment by remote communication technology, with an invoice issued by the person managing this technology, except for the professional's address (Qasim, 2011).

In the same context, Article 1369/5 of the French Civil Code, amended by the Law on Trust in the Digital Economy, stipulates that a contract is only concluded after the professional confirms the previously mentioned data in the case of contracts concluded through websites, known as "web contracts" (Al-Tahami, 2008). This confirmation can be practically achieved when the consumer clicks the acceptance icon again, indicating the confirmation of the data he was aware of before clicking for the first time. In the case of professionals contracting via email, they are obligated to confirm the information that must be disclosed, through an email prepared for this purpose (Abu Amro, 2010).

1/2 Justifications for The Emergence of The Commitment to Electronic Information Before Contracting

The pioneering developments in the provisions of this commitment are attributed to the French judiciary, which presented bold rulings in response to disputes in this regard. It was supported by advanced jurisprudence, relying on realistic justifications. Therefore, one of the most important justifications for the emergence of the commitment to electronic information before contracting includes:

1/2/1- Achieving Equality of Knowledge between the Parties:

The disparity and inequality in knowledge between the contracting parties can be considered a fundamental basis for the commitment to pre-contractual electronic information. This disparity has increased due to scientific advancements, technological progress, the emergence of goods with high and modern technologies. It has become impossible for the consumer to comprehend the details and nuances of the offered products (Ali, 2006).

Therefore, both jurisprudence and the judiciary have sought a means to restore the lost balance of knowledge between the contracting parties, especially in the pre-contractual stage (Jamei, 2011). When the consumer decides to enter into a contract, they lack accurate information about the details of the contract, its suitability for their desires, its adequacy to satisfy their needs. Hence, it became necessary to impose an obligation on the party possessing this information—the professional—to inform the consumer about it, enlightening them with all the necessary details about the product or service. It should be noted that this commitment is determined by information that the consumer cannot obtain through their own means, there is no way for them to be aware of it except through the professional merchant. The importance of this element becomes evident in preventing the circumvention of the scope of this commitment and its unregulated dimensions (Abdul-Baqi, 2004).

1/2/2- Restoring Balance to the Contract:

Providing the consumer with essential and fundamental information in the pre-contractual stage plays a crucial role in protecting the consumers will when entering into a contract. Some jurists view this protection as an application of the safeguards established for the consenting party in adhesion contracts (Hassan, 1999).

1/2/3- Limitations of the Theory of Will Defects in Achieving Protection:

While the protection of will in the pre-contractual stage was traditionally accomplished through the theory of defects of will, practical application revealed shortcomings in achieving the desired protection for the consumer in some cases. This is due to the stringent conditions necessary for the application of this theory (Hasan, 1999).

In fact, it cannot be said that there is a general positive commitment to pre-contractual disclosure in all types of contracts without a legal text (Abdel-Baqi, 2004). As a general rule in contracts, each contractor is obligated to inquire on their own about all the necessary data to form their sound consent when concluding a contract (Al-Mahdi, 2004).

However, a certain consideration may prevent the awareness of this contractor, either due to the nature of the contract, imbalance in contractual positions, inequality in knowledge between the contractors, or for any other reason that makes this knowledge impossible. In such cases, it becomes necessary to obligate the professional merchant to disclose contractual data to ensure the completeness of the necessary satisfaction for contract formation. In the context of non-compliance, if there is no imbalance in the level of knowledge between the contracting parties, there is no urgent need for pre-contractual commitment through disclosure in this case (Hassan, 1999).

It is also important to define the boundary between the commitment to disclosure and the duty to inquire. For this reason, jurisprudence and the judiciary have sought to outline the conditions of this commitment, which are determined by two conditions: 1- The consumer's ignorance of the information, 2- The professional's knowledge of the information. It is not sufficient for the commitment to pre-contractual disclosure to be based on the consumer's

ignorance of this information; the professional must be aware of it and enlighten the consumer's will by providing this information when entering into the contract. Consumer protection requirements dictate the necessity of emphasizing the standard of the professional's knowledge of contractual data as a condition for the commitment to pre-contractual disclosure, even if it leads to obligating the professional to inquire about such information in order to disclose it to the consumer.

It is worth mentioning that the duty to inquire for disclosure or notification, in principle, is an obligation through a means. However, this rule is limited to cases where there is a balance in contractual positions and actual equality in knowledge and awareness between the parties (Al-Mahdi, 2004). Violation of the professional's commitment to disclosure exposes them to penalties derived from general rules. Additionally, there is a specific penalty that can be imposed in case of non-compliance with this commitment.

As for the penalties derived from general rules, it is noteworthy that the mentioned European directive and decree did not establish a civil penalty that could be imposed on the professional. Instead, it granted the employees of the General Directorate for Competition, Consumer Affairs, Fraud Control (DGCCRE) the task of monitoring its implementation. In case of non-compliance or delay in implementation, consumers retain their right to terminate the contract under general rules, considering that the professional has breached their contractual commitment, or to claim compensation for damages suffered by the consumer by invoking contractual liability (Qasim, 2011).

The "special penalty is an extension of the period during which the consumer can exercise the right to withdraw from the contract" (Qasim, 2011). It serves as a specific type of civil penalty stipulated in the decree on distance contracts. If the professional fails to fulfill their commitment to contractual disclosure, the timeframe within which the consumer can exercise the right to withdraw extends from seven days to three months. If the professional fulfills their commitment to contractual disclosure within the three-month period, calculated from the date of receipt for funds or acceptance of the offer for services, the seven-day deadline remains applicable (Fidrekar et al., 2009).

1/3- Place Of Commitment to Electronic Information Before Contracting.

The requirements for the commitment to electronic information before contracting necessitate that the professional trader, who is about to enter into a contract, informs the consumer about the essential details of the intended contract. This ensures that the consumer is well-informed and aware when entering into the contract.

Certainly, determining the place of commitment to electronic information before contracting with important information presented in advance imposes on the professional trader the precise identification of information relevant to the consumer. However, the professional trader's assessment of the importance of this information should not be based on personal standards. Instead, it should adhere to an objective criterion. This criterion is defined as information being significant when it influences the consumer's decision to enter into the contract

or to enter into it under specific conditions (Al-Jamili, 2008). It is evident that the information provided by the professional trader must be comprehensive, accurate, useful, as this commitment loses its purpose if the information is inadequate, incomplete, or not beneficial (Hussein, 2010).

If it is possible to determine what is considered important from the consumer's perspective according to the objective criterion, comparative laws related to electronic commerce contracts did not rely solely on the objective criterion to determine the place of commitment to information for the consumer. Instead, they preferred to precisely specify what the professional trader must provide, emphasizing consumer protection and addressing disputes based on the importance or lack of importance of information. The most important information that laws agree should be provided to the consumer includes identifying the professional trader and information related to stating the essential characteristics of the goods or services. This is because both parties in the electronic distant contract are physically separated, the consumer cannot physically inspect the goods offered online to ensure their safety and suitability for personal needs.

Based on the above, we find that the purpose of the commitment to electronic information before contracting via the internet is to achieve equality between the contract parties in terms of knowledge, thereby establishing contractual balance between them. This is because theories such as the theory of defects in consent, the theory of hidden defects warranty, as well as the theory of exposure and entitlement warranty, may not provide sufficient protection for the consumer. Hence, the place of commitment to electronic information before contracting lies in the following matters:

1/3/1- Informing the Consumer About the Seller's or Supplier's Identity.

One of the most crucial pieces of information that must be disclosed to the consumer is related to identifying the merchant with whom they intend to contract. The lack of knowledge or incomplete knowledge about this matter may cause concern for the consumer and may limit their willingness to contract, as providing such information contributes to ensuring a sense of security for them (Al-Roumi, 2006). Moreover, the personal consideration of the professional trader may be a fundamental reason driving the decision to contract (Ibrahim, 2008). Additionally, specifying the legal status of the professional trader, clarifying their obligations, the feasibility of fulfilling these obligations are essential aspects.

Among the most important pieces of information related to identifying the merchant, which laws commonly require to be provided to the consumer, are disclosing the merchant's name, address, contact information, registration number in the commercial registry or the license number if their activity is subject to licensing or regulated by a specific professional entity, such as a guild (Al-Awadn, 2005).

For legal entities such as commercial companies, it is essential to provide information about their foreign headquarters, legal form, main administrative center, registration number in the country where their headquarters are located (Al-Oudan, 2005). Many laws, such as the French Consumer Protection Law issued on 26/7/1993 and the European Directive of 2000, emphasize the strict obligation of the merchant to inform the consumer in a timely manner, before entering into a contract, about the identity of the merchant. Article 121-18/1 of the French Consumer

Protection Law requires disclosure to the consumer of the following information: "The name of the seller of the goods or provider of the service, his phone number, address. If it concerns a legal person: its business center and the name of the entity responsible for the offer if different."

The French legislator, in Article 121-18 of the Consumer Protection Law, goes beyond the general obligation of information stipulated in Article 111-1 of the same law for professionals or service providers contracting with the consumer. It adds additional information that must be provided in the case of distance contracts (Qasim, 2011).

1/3/2- Describing the Product or Service at The Contract Location by The Professional Merchant Is Crucial.

A precise description should be provided, allowing the consumer to have sufficient and negating information, dispelling any ignorance. This requires a commitment to the principle of good faith, which comprises two axes:

First Axis: Commitment to Not Concealing the Truth from the Consumer.

The commitment involves not concealing the truth from the consumer. Concealment occurs when the professional merchant adopts a negative stance by not disclosing to the consumer the truth about the goods or services and their characteristics, while it was necessary to do so. Both Egyptian and French jurisprudence agree that concealment is a form of deception. Deception, whether through passive concealment or active deception through fraudulent methods, impugns the consent of the contracting party. Some jurists argue that the commitment to information disclosure is fundamental in considering concealment as deception. Concealing information unknown to the consumer, which, if known, would have affected their decision to contract or led to different contract terms, is considered a deceitful practice and forms the material aspect of deception that impairs consent (Jamii, 2011).

However, mere silence is not considered deception unless there is a duty to inform. If this duty is absent, silence does not constitute deception. Each contracting party must ensure the protection of its own interests and acquire all necessary information that makes them fully aware of their situation when entering into a contract. If the contract assumes a conflict of interests, we cannot expect the professional merchant to spontaneously disclose information without recognizing this commitment. If there is an obligation to inform, even if it is ethical, to prevent the professional from taking advantage of the consumer, when the contract presupposes mutual trust between the parties, the commitment to informing the consumer becomes a legal obligation. Failure to disclose becomes a reason for the nullity of the contract (Hussein, 2010).

Second Axis: Commitment to Informing about Essential Information Regarding the Goods or Services:

The professional merchant is committed to informing the consumer about the data related to the condition of the goods or services at the contract location and understanding the fundamental characteristics of the goods or services. If the contract involves physical goods, their description

should include presenting them on the internet and providing a complete specification of features such as size, weight, quality. A sufficient description may also include a visual representation of the goods at the contract location. In the case of non-material goods like downloadable computer programs, the description should entail details such as the program's size, operating system compatibility, the necessary equipment for accurate operation.

The execution of this commitment necessitates disclosing the price of the goods or services, along with stating the associated costs like taxes and shipping fees. Additionally, the offer should clarify how the contract will be executed, specifying payment methods, the currency used for payment, whether the contract includes after-sales services. The consumer's right to withdraw from the offer and the duration within which they can exercise this right should also be outlined in the offer (Al-Mahdi, 2004).

2- Commitment to Contractual Disclosure in Iraqi Legislation.

Article 6/b of the Iraqi Consumer Protection Law has addressed the commitment to contractual disclosure and obligated the professional merchant to provide information related to goods or services. It affirmed the consumer's right to obtain comprehensive information about the specifications of the goods, proper methods of use, how to receive the service. Furthermore, the consumer has the right to receive proof of their purchase, such as a receipt or purchase list indicating the price of the goods or the cost of the service and the agreed-upon date with the professional merchant. Importantly, no additional expenses should be borne by the consumer. This was explicitly stated in Article 6/j.

However, there are three points of criticism regarding the wording of Article 6/b. Firstly, it did not directly obligate the professional merchant to provide information but rather included it within the clauses of consumer rights. It would have been more appropriate to incorporate it into the clauses specifically addressing the commitment of the professional merchant to prevent evasion of this obligation. Secondly, the text limited the consumer's right to information to the specifications of the goods, the method of use, how to receive the service, excluding other essential details such as payment methods, delivery methods, associated costs, warranty, warnings, information about the professional merchant, such as their name, contact number, address. Thirdly, the text did not specify the maximum time limit for providing the information and data required at this stage, which is crucial.

Therefore, it is suggested that the Iraqi legislator categorize this commitment as part of the obligations of the professional merchant and amend the wording of the mentioned article to grant the consumer the right to obtain information or data about goods and services, especially concerning their prices and usage methods. Additionally, all details related to the identity of the contracting party, including their address in the official language, should be provided within a maximum period up to the delivery date.

In the absence of specific laws addressing contractual disclosure in Iraqi consumer protection legislation, we can refer to general rules and some specific legislations for guidance.

2/1- Law Regulating the Pharmacy Profession, Law No. 40 of 1970.

This law imposes regulations on pharmacists, particularly in Article 23, where it mandates the creation of a printed card by the pharmacist. This card should contain information related to each pharmaceutical product prepared by the pharmacist. The required information includes the name and address of the pharmacy, the name of the person preparing the medicine, the name of the prescribing doctor, the date of preparation, instructions on how to use the medicine as specified in the medical prescription. However, can this be applied to a pharmacist fulfilling an order through the internet? In reality, adherence to contractual information can be implemented by displaying an image of the pharmaceutical product with the required instructions. This information should be stored electronically to facilitate the proof process, especially considering that Iraqi legislation grants the same legal validity to electronic and paper writing. Furthermore, Articles 50-55 of the law include administrative penalties and sanctions for those who violate its provisions.

2/2- Law of the Central Organization for Standardization and Quality Control, Law No. 54 of 1979.

This law aims to protect consumers, producers, as well as the environment, health, public safety (Article 2/4). Accordingly, Article 11/8 stipulates that all industrial projects must affix their names on their products. Additionally, they are required to display the content and components of the products they manufacture, along with the specification number used in production, on the packaging, cover, or on an information card attached to the product, all in the Arabic language. In the case of Iraqi specifications specifying the expiry date of trading or using these products, manufacturers must withdraw or retrieve them from sellers at the product's expense after the specified date has passed. These provisions apply to institutions and entities importing goods as well. Articles 12-13-15-16 include administrative and punitive penalties for violating the provisions of this law.

It is worth mentioning that violating the instructions and rules of these laws results in administrative and punitive penalties without specifying civil penalties for compensating individuals affected by such violations. The Iraqi legislator seems to have avoided delving into these details and left the matter to general principles. These principles, as we mentioned earlier, cannot guarantee full compensation, especially for damages to a person's body or property.

Referring to the general principles in the Iraqi Civil Law, the basis for the commitment to contractual information is found in Article 150. Its first paragraph obliges the execution of the contract according to what it entails, in a manner consistent with good faith. The legal paragraph of the article then confirms that the contract is not limited to obliging the contractor to what is stated in it but covers all its requirements according to law, custom, justice, the nature of the commitment.

Indeed, good faith and considerations of justice require the seller or professional to enable the consumer to achieve their legitimate purposes from the product or service in a trustworthy manner, shielding them from all its risks.

Thus, it can be stated that the commitment to information is a legal obligation, in essence, imposed by the legislator on the product manufacturer, service provider, or anyone connected to them, to provide the consumer with all necessary information that ensures their reassurance and benefits from the contracted item, avoiding any potential harm. This commitment is not limited to a specific type of goods or products but extends to various kinds of commodities. Nevertheless, it holds greater significance in the realm of products closely associated with the human body and its physical well-being, such as pharmaceutical and medical products. simultaneously, the document's severity becomes more pronounced (Al-Mahdi, 2004).

In conclusion, the calls for protecting the buyer have escalated in the face of the significant rise in electronic consumption. With the consumer situated in one country and the product or seller in another country, often thousands of miles away, buyer protection has become a precarious concern due to the ease of fraud and deception facilitated by the Internet. A buyer might purchase a product through an online platform only to discover upon its arrival that it falls short of the specifications advertised online. Therefore, the protection mandated for the buyer before entering into a contract is no less critical than the stage of contract execution. In light of this, it is imperative for us to identify the guarantees that provide the necessary protection for the online buyer before entering into a contract. Our exploration has led us to a set of conclusions and recommendations, which are:

Results:

1. Through reviewing the legislation concerned with protecting electronic consumers, it is evident that there is nothing preventing the application of general rules to extract elements that can assist in providing protection. However, it is noticeable that modern technological techniques used in online contracting, while solving several problems and opening new shopping possibilities for consumers, also introduce challenges not present in traditional contracts, such as issues related to online advertisements, pressure, the inability to engage in real discussion about contract terms, the absence of an opportunity to inspect the product before commitment. This reinforces the need to create guarantees specific to electronic consumers, encouraging trust in electronic commerce and requiring legislative action.
2. With the emergence and widespread use of electronic contracts, new problems have surfaced, including issues like electronic advertisements and the associated pressure, the inability to engage in genuine discussions about contract terms, the lack of an opportunity to inspect the product. This emphasizes the need to create guarantees for electronic consumers to encourage trust in electronic commerce, the legislator has a role to play in this regard.
3. While it is agreed upon to count commercial advertisements that contain false data as deceptive, it is also agreed upon not to apply this judgment if the falsehood occurs within certain conditions that legitimize it. This legitimacy is related to essential and fundamental data for the consumer. If

the falsehood is within the limits of how the data is presented rather than the data itself, if it does not go beyond the advertiser exaggerating the qualities of their product when praising it as the best, without creating an unreal impression for the average consumer, the advertisement is misleading but not necessarily false.

4. Regarding the procedural protection for electronic consumers in contracting, we found that the Iraqi legislator's stance was negative. There is a lack of adaptation to the developments in determining the applicable law to consumer contracts. The absence of a specific conflict rule addressing consumer protection in contracting in general imposes a positive role on the Iraqi judge in pursuing the developments in disputes where one party, particularly the consumer, is weak. In the absence of a text addressing the applicable law in electronic commerce contracts, the judge can apply the most common private international law where no specific law is provided.

5. The consumer buyer is often the weaker party and falls victim to deception and fraud committed by the seller. This phenomenon has affected the consumer in various aspects of life, including food, drink, clothing, most essential and luxury items.

Recommendations

1. There is a need to take the initiative in promoting consumer awareness and legal culture, which is lacking among Arab consumers in general and Iraqi consumers in particular. This role should be carried out through consumer protection associations and civil society organizations. It is a crucial step in saving consumers from falling into the traps of online merchants and professionals who exploit opportunities to steal money and compromise personal data on the Internet.

2. It is essential for the electronic store to explicitly state that its online display is an invitation to negotiate, not an acceptance. This clarification is crucial to avoid legal complications.

3. Despite the fact that the Iraqi legislator has chosen an opt-in approach in civil law, it may not provide sufficient protection for consumers in distance contracting, as it only applies to contracts that are subject to cancellation and does not address specific matters. However, consumers need protection in all contracts, regardless of the nature of the contracted item. This necessitates amending the Electronic Transactions Law and the Jordanian Consumer Protection Law to include the consumer's right to withdraw from the contract and equal treatment between products and services. This should follow the approach adopted by the French and Egyptian legislators in regulating the right to withdraw in a detailed manner from all perspectives.

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