

LEGAL REGULATORY FOR THE SETTLEMENT OF DISPUTES IN E-COMMERCE IN JORDAN. ANALYTICAL OVERVIEW

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Abstract: The internet has given birth to e-commerce that changes how people buy, sell, and organize business activities as consumers and traders are virtually connected. Ideally, disputes arising in e-commerce transactions should be resolved online. Rather than filing a litigation, Alternative dispute resolution (ADR) methods should be considered. This study examined the mechanism of dispute settlement in e-commerce in the Jordanian legislative organization. Various academic sources and theoretical and normative elements related to consumer protection issues were referred. ADR, or out-of-court dispute resolution encompasses methods for disputes resolution other than litigation, and as opposed to judicial procedures, ADR is low-cost, faster and more flexible. E-commerce consumers seeking to resolve disputes should find a legislative legal solution that allows reference to online arbitration and mediation if the same is best solution for consumers and expand the concepts of resolve the disputes arising from such contract or those resulting from using the internet, web sites and the like.

Key word: e- Commerce, Dispute settlement, Jordan, online arbitration, mediation.

1. Introduction

Technology advancement has facilitated e-commerce whereby e-commerce has recently increased dramatically in volume. In the global market place, there has been extensive usage of e-commerce involving direct sales between business and consumers. B2C e-commerce occurs virtually and the parties involved in the e-commerce transactions, namely the business operators and the consumers, are often far away from one another, and in many cases, they are in different countries. For consumers, such distance increases risks and uncertainties especially in the contracts that they've entered. The situation is different in the conventional real-life transactions whereby both traders and consumers are within the same jurisdiction.¹

For modern commercial world, the birth of e-commerce is perceived as a great prospect. E-

¹ Green, Michael Z. "Reconsidering Prejudice in Alternative Dispute Resolution for Black Work Matters." *SMUL Rev.* 70 (2017): 639.

commerce has broken the territorial obstacles, allowing businesses to access the global market incurring extremely low costs.² Also, using e-commerce, consumers are presented with countless offers presented by countless businesses globally. In this manner, e-commerce brings countless benefits to consumers, but there are also potential risks. It should be noted that the Internet is an international marketplace without bounds.³ Hence, a straightforward transaction may cause cross-border disputes.⁴

The involved parties could be significantly discouraged by these difficulties and by the costs they have to bear in dealing with cross-border disputes.⁵ In a virtual marketplace made possible by the Internet, participants do not really know one another, and should problems occur, usually in consumer-orientated transactions, seeking remedies could be very difficult. For consumers that have restricted financial and bargaining power,⁶ it would be exhausting to deal with an online dispute with a seller from overseas. Relevantly,⁷ lack of trust has been found to significantly impede online purchases, even when the consumer has access to the internet and is interested to make the purchase.⁸ The availability of efficient dispute resolution system for e-consumer contracts could enrich the development of consumer-orientated e-commerce. Hence, this study proposes an efficient dispute resolution system for e-consumer contracts.

2. Legal regulation of electronic commerce

Modern communication leads to some key issues that exist in electronic relationships such as the sending of ambiguous communications, the use of personal data, and enforcement across long distances and so on, which are difficult to regulate. As many surveys have shown consumers, often lack confidence in B2C e-commerce and are often reluctant to enter into such transactions because of a wide range of questions relating to these crucial matters.⁹ Today, the expansion of B2C e-commerce appears to be restricted as a large number of consumers perceive online transactions as risky and remain very conservative when they shop online, especially in transnational sales.¹⁰ The problems created by new technological tools and distant relationships pose a significant obstacle to the growth of B2C electronic commerce.

² Cortés, Pablo. *Online dispute resolution for consumers in the European Union*. Taylor & Francis, 2010.

³ Haloush, Haitham A., and Bashar H. Malkawi. "Internet Characteristics and Online Alternative Dispute Resolution." *Harv. Negot. L. Rev.* 13 (2008): 327.

⁴ Munketh Ahmed Abdulkarim Alrawashdeh. "Law And Practice Of International Commercial Arbitration With A Special Reference On The Jordanian Law", *International Journal Of Society And Humanities*, Vol-11/2017 No -1/ Issn-2319-2070.(2017)

⁵ Eurobarometer (2004) Issues Relating to Business and Consumer e-Commerce, European Commission, p. 11,

⁶ Alsharu, A.I.M., Alhamed, A.M. and Al-Amaren, E.M., 2022. Assuming Responsibility toward the Advertiser in Electronic Trade in Jordan Legislations: A Comparative Study. *BiLD Law Journal*, 7(1), pp.151-163.

⁷ Al Amaren, E.M., Hamad, A.M., Al Mashhour, O.F. and Al Mashni, M.I., 2020. An introduction to the legal research method: To clear the blurred image on how students understand the method of the legal science research. *International Journal of Multidisciplinary Sciences and Advanced Technology*, 1(9), pp.50-55.

⁸ Eurobarometer (2004) Issues Relating to Business and Consumer e-Commerce, European Commission, p. 11,

⁹ Al-Shogairat, Faisal Mohammad. "The Role of Electronic Commercial Arbitration in the Resolution of Commercial Disputes." 11th PARIS Int'l Conference on Studies in Law, Business, Economics & Interdisciplinary Studies (LBEIS-18) Sept. 17-19, 2018 Paris (France)

¹⁰ Kim, Woojong. "Critical Evaluation of the Online Dispute Resolution for Cross-Border Consumer Transaction Under E-Commerce." *Available at SSRN 2853303* (2016).

Given the continuously evolving electronic market, numerous pieces of legislation have been introduced that are designed for the peculiarities of electronic environment and the key issues concerning consumers' need for protection in the online market. Some examples are those electronic commerce laws relating to the formation and validation of electronic contracts, online data protection, and online dispute resolution. These attempts have expanded to the international level where legal harmonization in the context of consumer protection among different countries has been carried out to support the function and growth of the global e-market.¹¹

The electronic market initially developed without regulation but, following the boom and burst of the dot-com bubble at the beginning of the 2000 decade, it could no longer be denied that some kind of rules or order appeared to be necessary. In response to such views that regulation was necessary came the argument that the existence of the electronic market gives rise to issues that cannot necessarily be managed by the principles established by the rule of law and that only a private system can ensure that market behavior remains within the boundaries of acceptable social standards.¹² This argument does not totally conflict with the conventional regulation of the e-market but rather considers the value of private ordering and the internet's ability to provide some technical solutions for the wide range of consumer problems in B2C e-commerce that enhance consumer confidence. For instance, consumers may be able to avoid rogue traders by consulting with other consumers through a privately implemented review or rating system before engaging in an online transaction. Therefore, the question becomes whether such mechanisms of consumer protection, which do not rest on the creation of conventional rules of law, are more effective in the context of online transactions and have more advantages than the governmental regulatory approach in the online market. In other words, this research aims to identify mechanisms that enhance consumer confidence in B2C e-commerce.

3. The legal system of the Judiciary in Jordan

The Judiciary is autonomous and the courts of law can exercise various forms and levels of judgement, as long as they (the judgments) follow the law and are articulated in the name of the King.¹³ In this regard, Civil courts, Military courts and Religion courts are the three major courts in Jordan and they form the judiciary system in the country. Specifically, Civil courts comprises the Magistrates' Courts, Major Felonies Courts, Courts of Appeal and the Court of Cassation (Supreme Court). The autonomy of judges are assured in Section 97 of the Constitution, as it states that judges are subject to the Law only. Additionally, the appointment and dismissal of the civil and religious (*Shari'ah*) court judges are executed by a Royal

¹¹ Al Amaren, E.M., Ismail, C.T.B.M. and Nor, M.Z.B.M., 2021. The Fraud Rules in the Letter of Credit under Jordanian Legal System. *Sriwijaya Law Review*, 5(2), pp.218-235.

¹² See: American Bar Association, *Jurisdiction in Cyberspace* 83 (1999) and G. P. Calliess and P. Zumbansen, *Rough Consensus and Running Code, A Theory of Transnational Private Law* 153– 80 (2010).

¹³ The Jordanian Constitution 1952. S(27), Amended in 2011.

Decree.¹⁴

Civil Courts of Jordan shall have authority over everyone and all matters associated with individuals, both criminal and civil. These include the matters fetched by or against the government, with the exception of cases exclusively under Special Courts or Religious Courts in line with the current constitution provisions or any other legislation in force.¹⁵ Within the context of e-commerce, speed of transaction and distance between seller and consumer are among its main features.¹⁶ Owing to these features, dispute isn't always resolvable through the traditional redress mechanisms in court, for consumers especially.¹⁷

Consumers usually would seek fast and easy resolution in resolving their disputes. Arguably, the redress right is the prerogative of the consumers considering that the cost of attaining a remedy will be higher than any amount salvageable using the currently available redress method.¹⁸ The low value of consumer transactions has increased the cost of traditional redress, causing the traditional redress method to be less effective.¹⁹

Consumers in Jordan could obtain compensation only through the use of the traditional method, and thus, the traditional method would be referred for any problem faced relating to commercial advertisement. The sole usage of the traditional method in Jordan is caused by the lack of the rule and regulation that covers consumer problems especially the Internet related problems. For instance, the traditional method is used in the regular civil litigation method for pay off groups unfavourably influences by illegal manner. However, the traditional method is not only complex, but also time consuming and costly, and this could discourage consumers from seeking recompense or protection as the cost of using the traditional method often outweighs the benefit.²⁰

Furthermore, individual lawsuits have been viewed as ineffective in halting the deceitful commercial practices and also in attaining recompense for the harm caused by such practices²¹ that consumers often would resort to abandoning their claim as the cost of litigation would often overshadow the amount of recompense sought.²²

In the United Kingdom for instance, the court-based/judicial redress mechanism is often

¹⁴ The Jordanian Constitution 1952. s (98).

¹⁵ The Constitution in Jordan 1952. s (102).

¹⁶ Al-Amaren, E.M., Aletein, S.I. and Tejomurti, K., "The Mock Application of the Insolvency Law by the Jordanian Courts: Lessons Learnt from Indonesia." *Hasanuddin Law Review* 8 no. 1 (2022): 30-45. DOI: 10.20956/halrev.v8i1.3330.

¹⁷ Øren, Joakim ST. "International jurisdiction over consumer contracts in e-Europe." *International and comparative law quarterly* (2003): 665-695.

¹⁸ See Daryl Gawith. "Model Laws Relevant to Preparation for the International Regulation of International Consumer Transactions", *Journal of Business Law*, (2010). JBL 474, 501.

¹⁹ See Daryl Gawith. "Model Laws Relevant to Preparation for the International Regulation of International Consumer Transactions", *Journal of Business Law*, (2010). JBL 474, 501.

²⁰ Alhusban, Ahmad. "The Importance of Consumer Protection for the Development of Electronic Commerce: The Need for Reform in Jordan." *PhD diss., University of Portsmouth*, (2014)".

²¹ European Commission, 'Towards a Coherent European Approach to Collective Redress' (Public Consultation SEC(2011)0173 2011) Para 4

²² The European Consumer Centres' Network, "The European Online Marketplace Consumer Complaints 2010-2011" [September 2012]. available on <http://ec.europa.eu/consumers/ecc/docs/e-commerce-report-2012>.

regarded to be the last option when a consumer is seeking remedy.²³ For consumers, there are countless of methods and processes for them to choose from in seeking redress from a business including in-house complaints procedures or any kind of alternative dispute resolution (ADR). In relation to this, businesses in certain sectors are required by the law to provide an in-house complaints mechanism to consumers.²⁴

4. Alternative dispute resolution

Alternative dispute resolution (ADR) or also referred as out-of-court dispute resolution, comprises methods used for disputes resolution as alternative to litigation. The use of ADR in resolving disputes is faster, more flexible, and less costly, as opposed to using judicial procedure. ADR typically involves the use of negotiation, mediation, and arbitration, but in the context of e-commerce, ADR is not executed in a traditional manner, rather, the mechanisms of ADR are executed online, to a great extent. Notably, some of these online mechanisms of ADR are merely traditional ADR mechanisms delivered online, to serve the needs of Internet users, specifically, to facilitate them in resolving disputes,²⁵ and these online ADR mechanisms are majorly for providing fast and effective services in dealing with e-consumer contracts. Contractual parties generally prefer using online ADR mechanisms. Some of the common online ADR mechanisms are as discussed in the following subsections.

4.1 Online arbitration

The procedure of online arbitration is comparable to that of the traditional arbitration, and therefore in consumer contracts, issues affecting the application of online arbitration are identical to those affecting the traditional counterpart. Arbitration Commendations have accordingly been issued by the European Commission in 1998.²⁶ Somehow, the critical principles within the commendations such as the principles of transparency, independence, effectiveness, adversary, liberty, legality, and representation seemed inadequate in increasing the confidence of consumers. Arbitration is more stringent compared to mediation, and in arbitration, the conditions are established by rulings as to the accord of the involved parties to arbitration, the procedure, and the binding nature of the award. As the awards given by arbitrators are replacements of judicial decisions, arbitration has been regarded as resembling a quasi-judicial procedure,²⁷ significantly distinguishing arbitration from other methods of ADR.

²³ Fairgrieve, Duncan, and Geraint Howells. "Collective Redress Procedures—European Debates." *International and Comparative Law Quarterly* 58, no. 2 (2009): 379-409

²⁴ See: Hodges, Christopher. "Mass Collective Redress: Consumer ADR and Regulatory Techniques." *European Review of Private Law* 23, no. 5 (2015): 829-873.

²⁵ T. Schultz, G. Kaufmann-Kohler, D. Langer, V. Bonnet, "Online Dispute Resolution: The State of the Art and the Issues", <http://www.online-adr.org/reports/TheBlueBook-2001.pdf>, (07/09/2006), p. 1.

²⁶ T. Schultz, "Connecting complaint filing processes to online resolution systems" [2003] 10(11) *Commercial Law Practitioner* 307, p. 313.

²⁷ Green Paper on alternative dispute resolution in civil and commercial law, COM(2002) 196 final, footnote 2.

4.1.1 Definition of online Arbitration

Arbitration is a distinctive judicial approach, and the involved parties have the freedom to appoint their judges, and bound by a written agreement, these judges are to settle the disputes that have emerged or may emerge between these parties in terms of the their contractual legal relationship or a non-contractual relationship as provided by the law, and ultimately present a judicial ruling to bind them (the parties).²⁸

Concerning the subject of arbitration, Jordanian Law²⁹ does not provide a definition on it, but in Article 2 of the law, the definition of ‘arbitration panel’ is presented as follows: “The panel composed of an arbitrator or more to settle the dispute referred to arbitration in accordance with the provisions of this law.” In this regard, online arbitration is similar to the standard arbitration in terms of definition, except that online arbitration is carried out electronically, while the subject of disputes is one that involves e-commerce contracts. Accordingly, online arbitration can be understood as a distinct electronic judicial system to settle a dispute that electronically emerges from or that may electronically emerge between parties partaking in e-commerce, bound by an agreement between them.

Clearly, the above definition seems to restrict the online arbitration to the emerging disputes from the contracts of e-commerce. This is because there is nothing that impedes the choice of online arbitration for dealing with the traditional commercial and civil disputes, considering the procedural difference is just in how the disputes are heard by the arbitrator. Still, this type of arbitration appears to be more fitting for more important disputes than for the e-commerce disputes because online arbitration is generally to be referred for dispute solution involving the title to a disputed trademark. Meanwhile, online arbitration can be fully used without issues, using electronic and or traditional means in certain stages, as arbitration parties can be physically present in both forms of arbitration.

Briefly put, online arbitration and traditional arbitration are similar³⁰ because they are both alternative means of dispute settlement, that is, arbitration is used as replacement to litigation. Both types of arbitration (traditional and online) are an approach used in disputes settlement. Arbitration follows the wish of litigants because it can only take effect when all involved parties agree to use it as a means to resolving the dispute in question.³¹

4.1.2 Discuss the definition of arbitration online

The outcomes obtained from the traditional arbitration and the online arbitration do not significantly differ. In fact, the only different is just in the process of arbitration itself. In traditional arbitration, the process occurs in traditional manner involving physical presence of involved parties while in online arbitration, the process occurs online with no papers and

²⁸ Al Ateyat, Mostafa, and Ahmad Kh Al Dhahir. "Overview on Online Arbitration and Procedures (Jordan as an Example)." *Canadian Social Science* 9, no. 2 (2013): 82-91.

²⁹ New Jordanian Law on Arbitration of 2001 that came into force on 15/08/2001 and was published in the Official Gazette Issue 4496; this Law replaced the old Law No. 18 of 1953.

³⁰ Ismaeel, Mohammad Saeed, Legal Protection for Electronic Online Arbitration, Ph.D Thesis, Ein Shams University, 2005, p. 372

³¹ Yuthayotin, Sutatip. *Access to justice in transnational B2C e-commerce*. Springer, 2015.

physical presence of the involved parties.³² In online arbitration, the awards are electronically signed and accessed. Hence, one may ponder if online arbitration is actually an advancement or a substitute to the traditional arbitration. This study perceives online arbitration as a blend of rules and circumstances to resolve a dispute established based on the traditional arbitrational environment, but this new form of arbitration has led to the formation of new customs and norms, turning itself into an independent type of arbitration. Nonetheless, online arbitration is essentially an arbitration that is executed through modern means of communication involving the information and communication technology, via the Internet.

4.2 Online mediation

A recommendation on the principle of mediation/conciliation was issued by the European Commission 2001³³ and it invites the active third party to aid the contractual parties in coming to an agreement without the need for formal articulation of an opinion or potential solution to the dispute. Notably, the focus of the mediation is to create the confidence of consumers, particularly through providing assurance of ease of access to practical, effective and low-cost redress method, including the electronic access.³⁴ The Commission accepts the online mediation/ conciliation providing that it fulfils the four principles of impartiality, transparency, effectiveness, and fairness as provided by the Recommendation.

The principle of impartiality, which was included in the European Code of Conduct for Mediators³⁵ provides assurance to all parties that the online mediation is fair. Somehow, the concern is that, usually, the online mediation establishment is one-sidedly chosen by the business, and perhaps funded by the business, and hence, suppliers of online mediation might lean towards favouring the business to secure their future incomes. However, consumer may still feel sceptical even when the supplier of online mediation is fair. Somehow, considering that the focus of mediators is merely to assist the contracting parties in reaching agreement based on their own will – no solution is imposed or proposed - the possible bias usually will not impact the usage of mediation in consumer disputes.

The Jordanian Law on Mediation in Civil Disputes³⁶ provides stipulations for the formation of the Mediation Department at the sites of courts of first instance. This department handles disputes as per requested by the litigants or subsequent to the cordial settlement of the dispute. In this regard, the procedures were outlined by the law before the mediation judge and also the principles of dispute settlement. Meanwhile, online mediation is executed electronically in regards to preceding agreement and the mediation procedure until an agreeable settlement is reached.

³² See: Al Ateyat, Mostafa, and Ahmad Kh Al Dhahir. "Overview on Online Arbitration and Procedures (Jordan as an Example)." *Canadian Social Science* 9, no. 2 (2013): 82-91.

³³ Commission Recommendation of 4 April 2001 on the principles for out-of-court bodies involved in the consensual resolution of consumer disputes, OJ L109, 19/04/2001, pp. 0056–0061

³⁴ Ibid, recital (2).

³⁵ : Al Ateyat, Mostafa, and Ahmad Kh Al Dhahir. "Overview on Online Arbitration and Procedures (Jordan as an Example)." *Canadian Social Science* 9, no. 2 (2013): 82-91

³⁶ Law No. 12 of 2006

Online mediation and arbitration differs in terms of authority. In this regard, the arbitrator has the authority to give awards and decisions that bind the involved parties.³⁷ On the other hand, the mediator only could suggest solutions to the parties. In addition, in arbitration, the involved parties are bound to remain in the process until the agreement is reached, while in mediation, the involved parties could withdraw themselves at any stage of mediation. Based on these comparisons, it can be said that arbitration has compulsory nature, while mediation has non-compulsory nature.³⁸

In describing mediation, UNCITRAL Law in clause 3 of Article 1³⁹ describes the international commercial reconciliation as a process in which the contractual parties request a third party (the mediator) to provide assistance to them in their effort of reaching an amicable settlement towards the dispute that has occurred between them or assistance on a contract or other legal dealings. In settling the dispute, the mediator does not have power to impose anything on the parties.

5. Conclusion

An effective system of dispute resolution is a multifaceted and dynamic one, involving various mechanisms of dispute resolution, online and offline, judicial or extrajudicial, third party intervened or non-third party involved. All these cooperate in providing services of various types to meet various needs. Flexibility in dispute resolution system is important because contractual parties seek freedom in choosing the mechanism that best fit them with flexibility in altering their choices. Additionally, there has to be regulation to assure that the standards of basic justice and fairness are practiced. Furthermore, the chosen mechanism must be flexible for changes and updates, that it will not be impaired by modern technology. Also, without compromising the power of justice principle, the mechanism should encourage the contracting parties to impose the “reasonable solution” proposed. Equally, the mechanism should be cost effective; it should ideally be charge-free for consumers - with the exception of judicial proceedings – but if there are charges incurred, they should be judiciously proportional to the claim value.

Somehow, it is important that the success of private ordering does not exclusively rely on its accessibility, simplicity, speed and low-cost, because social force, consumers’ awareness, traders’ participation and the system’s transparency especially, impart a significant impact as well. Appositely, the paper looks into how private ordering as the mechanism with the potential in assuring justice for consumers could be developed. This paper specifically proposes the implementation of private ordering in maximizing its effectiveness for consumer protection in increasing consumer’s access to justice and confidence towards B2C e-commerce.

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³⁹ UNCITRAL Model Law on International Commercial Conciliation.

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