

خصوصية حماية المستهلك عند تنفيذ عقود التجارة الإلكترونية بموجب قانون التجارة الإلكترونية السعودي 2019 ولوائحه التنفيذية مقارنة بالشرعية الإسلامية

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الملخص

على الرغم من أهمية المعاملات في إطار التجارة الإلكترونية ، إلا أن مثل هذه المعاملات تشكل خطورة على الحقوق التعاقدية للمستهلكين. ويهدف هذا البحث إلى دراسة وتحليل خصوصية حمايته المستهلك عند تنفيذ عقود التجارة الإلكترونية بموجب قانون التجارة الإلكترونية في المملكة العربية السعودية 2019 ولوائحه التنفيذية مقارنة بالشرعية الإسلامية الغراء خصوصا عندما تكون النصوص القانونية غير كافية أو غامضة، مما يؤدي إلى تطبيق أحكام الشريعة الإسلامية. ويسلط هذا البحث الضوء على المستهلكين فيما يتعلق بحقوقهم في المعرفة التعاقدية والحماية عند الدفع الإلكتروني وحقوق الرجوع عن العقد والحماية من الشروط التعسفية. وتتجلى أهمية هذا الموضوع في شقين. أولاً ، ينشأ من الدور الكبير لعقود التجارة الإلكترونية في الوقت الحالي خصوصا أن العديد من المستهلكين يستخدمون هذه العقود بصورة كبيرة ، مما يستدعي حمايتهم وذلك من خلال قانون التجارة الإلكترونية 2019 الجديد ولوائحه التنفيذية مع مقارنة ذلك بالشرعية الإسلامية. ثانياً ، تلعب عقود التجارة الإلكترونية دوراً مهماً في تطوير مجال التجارة الإلكترونية وتعزيز ثقة المستهلكين. وقد جاءت مشكلة البحث من خلال التعرف على الخلل في حماية المستهلكين الإلكترونيين وهو ما تسعى هذه المقالة البحثية إلى معالجتها. وبالرغم من أن

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نقاط الضعف هذه قد حظيت باهتمام المشرع السعودي من خلال إصداره لقانون التجارة الإلكترونية 2019 ، إلا أنه لا يزال هناك غموض في بعض القواعد القانونية المتعلقة بحماية المستهلكين. وفيما يتعلق بالمنهجية المتبعة في هذا البحث، فقد تم الأخذ في المنهج التحليلي وذلك من خلال تحليل نصوص قانون التجارة الإلكترونية لعام 2019 ولوائحه التنفيذية من أجل تحديد خصوصية حماية المستهلكين عند تنفيذ عقود التجارة الإلكترونية بموجب قانون التجارة الإلكترونية لعام 2019. كما تم الأخذ في المنهج الوصفي من خلال وصف أحدث آليات لحماية المستهلك في عقود التجارة الإلكترونية. بالإضافة إلى ذلك ، استخدمت هذه المقالة المنهج المقارن وذلك بإجراء مقارنة بين قانون التجارة الإلكترونية 2019 السعودي والشريعة الإسلامية الغراء. وأخيراً، تم التوصل في نهاية هذا البحث إلى العديد من النتائج والتوصيات المهمة.

الكلمات المفتاحية: قانون التجارة الإلكترونية ، حماية المستهلك ، الشريعة الإسلامية الغراء ، التراجع عن العقد ،

الشروط التعسفية

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PRIVACY AND CONSUMER PROTECTION UPON THE EXECUTION OF THE E-COMMERCE CONTRACTS UNDER SAUDI E- COMMERCE LAW 2019 AND ITS IMPLEMENTING REGULATIONS COMPARED WITH SHARI’AH LAW

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Abstract

Despite the importance of e-commerce, such transactions are risky to the consumers’ contractual rights. The research article’s objective is studying and analysing the consumer’s privacy and protection upon the execution of e-commerce contracts under Saudi Arabia’s E-Commerce Law 2019 and its implementing regulations compared with Shari'ah law especially when the legal texts are insufficient or not found which leads to applying the Shari'ah law rules. This study sheds light on consumers with regards to their right to contractual knowledge, protection upon electronic payment (‘e-payment’), right of retraction from a contract and protection against arbitrary conditions. The significance of this topic is twofold. First, it arises from the large role of e-commerce contracts for the time being and it was used more by consumers, which calls for their protection under the newest E-Commerce Law 2019 and it’s implementing regulations compared with Shari'ah law. Second, e-commerce contracts play an important role in the developing field of e-commerce and enhance consumers’ trust. The research problem came from recognising the defect in protecting electronic consumers; this research article seeks to address it. Although these weaknesses have received attention from Saudi legislators through their issuance of E-Commerce Law 2019, there remains ambiguity in some legal rules related to consumers’ protection. The research methodology used an analytical research on E-Commerce Law 2019 and its implementing regulations to define consumers’ privacy

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protection upon the execution of e-commerce contracts under E-Commerce Law 2019. It also used descriptive research to describe the newest mechanisms of consumers' protection in e-commerce contracts. Additionally, this article used a comparative study between E-Commerce Law 2019 and Shari'ah Law. Finally, this article comes out with several important results and recommendations.

Keywords: E-Commerce Law, consumer protection, Shari'ah law, retraction from contract, arbitrary conditions

I. Introduction

With the spread of a globalised culture in various areas of the economy, electronic tools became a vital element of contemporary life. E-commerce presents a great opportunity for service providers to market their goods and services. Electronic commerce ('e-commerce') has gained global importance recently. Consumers' protection in e-commerce contracts satisfies consumers, which tracks internet retail⁽²⁾. The electronic satisfaction of consumers is not only a significant performance outcome but also a key indicator of consumers' online purchases.

The Kingdom of Saudi Arabia ('KSA') has approved a new law – E-Commerce Law 2019 (Royal Decree No M/126 dated 07/11/1440H, 10 July 2019) ('E-Commerce Law 2019') and its implementing regulations – that encourages and increases e-commerce activities in the KS³A. The new law enhances the reliability of e-commerce and augments its contribution to the national economy. It also attempts to protect merchants and

⁽²⁾ See in details, Michel, S, Baum and Henry, H, Perritt, Electronic Contracting, Publishing and EDI Law, (USA, New Jersey: Wiley Law Publications John Wiley and Sons, 1991), 66; see also, Samir Dundon, Electronic Contracts within the framework of the regulation of electronic commerce, (Lebanon : Al-Haditha lil Kitab, 1st edition, 2012), 119

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consumers from fraudulent⁽⁴⁾, deceptive and misleading practices in e-commerce transactions⁽⁵⁾.

In this context, the provisions of Shari'ah law in Saudi Arabia are general rules that are applicable when there is no or insufficient legal provisions on the issues raised. Although there are no direct provisions in Islamic law regarding electronic commerce contracts as they are a new contracts, this does not mean the inability of applying the provisions of Islamic law because they are valid in application at all times and places, especially that they contain basic rules and principles for all issues without exception.

Moreover, e-commerce, as a new global pattern⁽⁶⁾ of trade, is witnessing a great turnout from Saudis as the KSA is one of the leaders in e-commerce growth in the world. E-commerce is considered to be an open market that operates around the clock and saves time and effort in electronic shopping. Access to all goods and services with easy and diverse options⁽⁷⁾ in a transparent and highly competitive environment has led to gains in consumer confidence. However, e-commerce poses risks to consumers and their rights because of fears about fraud and deception in electronic contracts. Consumers do not the ability to preview merchant's goods and services except on their computer or mobile screens⁽⁸⁾. Even though consumers need legal protection before the conclusion of the

⁽⁴⁾ See in more details, Smith Russell and Urbas Gregor, Controlling Fraud on the Internet: A CAPA Perspective, A Report for the Confederation of Asian and Pacific Accountants, Confederation of Asian and Pacific Accountants, (Malaysia :Australian Institute of Criminology, Research and Public Policy Series, No: 39, , 2001), 63 and next.

⁽⁵⁾ Abdullah Deeb Abdullah Mahmoud, "Consumer protection in electronic contracting Comparative study", (Master thesis, An-Najah National University, 2009), 8.

⁽⁶⁾ Khaled Mamdouh Ibrahim, Conclusion of the Electronic Contract, a comparative study, (Egypt: Dar Elfker Egamie, 2nd edition, 2011), 7

⁽⁷⁾ See in the same sense, Osama Ahmed Badr, Consumer Protection in the Electronic Contracting, (Alexandria : Dar Elgamaa Elgadida, 2005), 20

⁽⁸⁾ Ahmed Al-Saeed Al-Zaqrdad, "Buyer's Right to Reconsider Sales Contracts by Television", Journal

contract, such protection should cover consumers upon execution of e-commerce transactions as well⁽⁹⁾.

Additionally, the provisions of Shari'ah law include twofold mechanisms to protect the consumers generally and in particularly E-commerce contracts. Firstly, the preventive method such as pricing, prohibition of monopoly prohibition of false advertising. Secondly, the treatment method such as lesion option, condition option, fraud option, viewing option and defect option.

In this research article, by analysing the provisions of the E-Commerce Law 2019 and Shari'ah law, we explain how to protect consumers from fraud and deception in electronic contracts as well as the adequacy of the provisions of this law to protect consumers. In this regard, we only address the newest mechanism of consumer protection upon the execution of e-commerce contracts rather than the traditional methods of protection⁽¹⁰⁾. In so doing, this research article seeks to clarify consumers' privacy and protection upon the execution of e-commerce contracts under E-Commerce Law 2019 and its implementing regulations compared with Shari'ah law rules.

The article is organised as follows: section 1 introduces the research topic, objectives and significance, and problems to be resolved. Section 2 discusses (1) consumers' right to contractual knowledge and consumers' protection upon e-payment and (2) consumers' right of retraction from the contract and consumers' protection against arbitrary conditions. Section 3 concludes the paper by discussing the results and providing recommendations.

of Law, Kuwait University, Year 19, Third Issue (1995) 19; see also in the same sense, Bashartal T. Momani, Problems of Contracting Online, (Jordan: Modern Book's World, First Edition, 2004), 10; see also, Mamdouh Muhammad Khairy Hashem, Problems of Online Selling via the Internet in Civil Law. (Egypt : Dar-alnahda Alarabia, 1stedition, 2000), 14

⁽⁹⁾ AbdelFattah Bayoumi Hijazi, Introduction to Arab E-Commerce - Volume Two, E-Commerce in the United Arab Emirates. (Egypt: Dar Elfker Egamie, 1stedition, 2004), 118.

⁽¹⁰⁾ (as concealed defect and contractual responsibility...etc)

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II. Consumers' right to contractual knowledge and consumers' protection upon e-payment

As mentioned above, there are several preventive means to protect all consumers according to Islamic jurisprudence; the provisions of Shari'ah law contain some methods to protect the consumer's generally, including the preventive methods such as determining mandatory price (pricing)⁽¹¹⁾ prohibition of monopoly⁽¹²⁾, prohibition of false advertising, prohibition of usury⁽¹³⁾, the Hisba system through promotion of virtue and prevention of vices⁽¹⁴⁾, and forbidding some contracts, such as selling forbidden contract.⁽¹⁵⁾

On the other hand, legal protection is indispensable for traditional and e-commerce consumers. E-commerce consumers need special protection suits with e-commerce contracts⁽¹⁶⁾. This subsection addresses two special mechanisms to protect e-commerce

⁽¹¹⁾ See in more details, Hasîp Arkawi “Pricing in Islamic Jurisprudence”, The journal of Islamic Civilization Studies”, 1, number 2, (June 2015): 270 and next; see also, Mahmoud Abolial, “ Pricing in Islamic Jurisprudence”, Faculty of Shar'iah and law, seminar at United Arab Emirates University (UAEU), (1998), 7 and next.

⁽¹²⁾ See in this sense, Moslim Alhajaj Alnesabori, Sahih Moslim, (Beirut: Dar Al-kotob Al-ilmiyah for publishing, 1990), 1228; see also, Mohammad ahmad Aboseed, Consumer protection in Islamic jurisprudence, (Beirut: Dar Al-kotob Al-ilmiyah for publishing, 2004), 144

⁽¹³⁾ See Qur'an, 2: 275-278; 3: 130 4: 161 30:39; see also, Ali ibn Muhammad Jurjani, Al-Ta'rifat, (Beirut: Dar Al-kotob Al-ilmiyah for publishing, 1983), 109; see also, Muhammad bn Ismaa'eel al-Bukhaaree, Sahih al-Bukhaaree (Riyadh: Alroshd Library, 2006), 276

⁽¹⁴⁾ See Qur'an, 3: 104; see also Abdulstar Alshamari, “Consumer protection in Islamic jurisprudence”, Mu'tah Journal for Research and Studies Journal – Mutah University, Vol.19, (April 2004), 13 and following.

⁽¹⁵⁾ See in this sense, Mahmoud Tantawi, “Consumer protection in Islam and Law”, Faculty of Shar'iah and law, seminar at United Arab Emirates University (UAEU), (1998), 15 and next.

⁽¹⁶⁾ See in more details about the traditional protection and the influence of consumer law on the common law, J.-P. Pizzio, “La Protection des Consommateurs par le Droit commun des Obligations”, RTD com. (1998): 53 ; J. Calais – Auloy, “L'influence du Droit de la Consommation sur le Droit des Contrats”, RTD com, (1998):115; see also, Amer Qassem Ahmad Al-Qaisi, Consumer Legal

consumers: consumers' right to contractual knowledge and consumers' protection upon e-payment.

A. Consumers' right to contractual knowledge

There are privacy concerns in contracts between consumers and service providers, which are due to the weak position of consumers compared with service providers⁽¹⁷⁾.

The imbalance between consumers and service providers⁽¹⁸⁾ requires the development of special and distinct legal provisions to restore the contractual balance and to protect consumers. The weak position of consumers derives from their lack of contractual knowledge of the rules of good faith in the conclusion and execution of contracts compared with service providers⁽¹⁹⁾.

Consumers' right to contractual knowledge⁽²⁰⁾ arises in the context of not only e-commerce contracts but also traditional commerce contracts. This right is considered more

Protection, A Study in Civil and Comparative Law, (Amman, Jordan: Dar Althaqafa for Publishing and Distribution, 2002), 9 and next.

⁽¹⁷⁾ The provisions of Sharia law are not only restricted to regulating the consumer's relationship with the provider, but also extend to addressing the consumer's relationship with himself by setting controls on his consumption and how obtains his needs; see in this context, Qur'an, 17:29 and 25: 67; see also; Omar Almarzoqi, "Controls regulating consumption in-Islam", Shariah Law Journal – UAE University, Vol.34, (April 2008), 21 and following.

⁽¹⁸⁾ See in same context, Rabih Chendeb , *Le Régime Juridique du Contrat de Consommation, étude comparative - Droit Français, Libanais et Egyptien*, Paris: édition Alpha, 2010),18 and next; see also, Hassan Abdel Basset Jemai, *consumer protection in Egypt compared to protection conditions in European market countries and the Middle East*,(Egypt: Dar Al Fikr, 1stedition.1996),13

⁽¹⁹⁾ See in same context, Mohamed Bodali, *Consumer protection in comparative law, a comparative study with French law*, (Algeria: D.K Hadith, 2006), 22.

⁽²⁰⁾ See in this context, Guyon Yves, *Droit des affaires, Droit commercial general et Sociétés*, (France: Delta, Tome 1,12eme édition , 2003), 988.

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important in e-commerce because of consumers' privacy and protection regarding service providers' identification⁽²¹⁾, as consumers can only see service providers' goods and services on computer or mobile screens and cannot examine them in person. The right to contractual knowledge⁽²²⁾ is a vital mechanism to protect consumers.

In principle, service providers are obligated to provide consumers with all necessary, complete and correct information⁽²³⁾ according to objective and impersonal criteria. Otherwise, the purpose of this obligation –protecting consumers – is negated. Therefore, service providers must provide consumers with essential, clear, and true information⁽²⁴⁾ and data related to the offered services and goods and their methods of use⁽²⁵⁾. In this vein, article 8 of E-Commerce Law 2019 requires that service providers give consumers an invoice after the conclusion of a contract. The invoice must list the cost of each product or service; the total price, including fees, taxes or additional amounts related

⁽²¹⁾ see in same context, Michael Geist, “CONSUMER PROTECTION AND LICENSING REGIMES REVIEW: THE IMPLICATIONS OF ELECTRONIC COMMERCE”, (January 2000), <http://aix1.uottawa.ca/~geist/mccrgeist.pdf> ; see also, Khaled Ibrahim Mamdouh, Consumer protection in electronic transactions,(Alexandria: AlDar Elgamaa, 2007), 19; see also, Mahmoud, Consumer protection, 24-25.

⁽²²⁾ See in more details, Yvan Auguet : Droit de la consommation,(Paris: Ellipses, 2008), 84.

⁽²³⁾ See in same context, Hani Salah Sariulldin, International Commercial Contracts Negotiations, (Cairo: Dar Alnahdah for publishing and distribution, 1st edition 1998), 30

⁽²⁴⁾ In relation to the Islamic jurisprudence, the consumer could rely on the fraud option to abrogate the contract when the provider is using a fraudulent means whether in verbal or actions and concealment especially the consumer did not see the goods except on his computer or mobile screens; see in more details, Al-Sayed Ibrahim Al-Derini, consensual originated in the financial transaction contracts, (Jeddah: shorouk for publishing, 1982), 406 and next.

⁽²⁵⁾ See in this context, Omar Khaled Zureikat, Online Sale Contract. (Jordan:Dar Al-Hamid for Publishing and Distribution, 1st edition, 2007), 339 and next.

to delivery, if applicable; the date; and the place of delivery, as specified in the regulations⁽²⁶⁾.

It is clear from article 8 how Saudi legislators gave importance to the protection of consumers' right to contractual knowledge. Saudi legislators not only obligated service providers to provide contractual knowledge to consumers before the contract⁽²⁷⁾; but also imposed this obligation after concluding the contract to protect the consumer. The legislators intended that consumers obtain entire knowledge of a contract's conditions to remove confusion and give consumers the opportunity to ensure that their affirmation and acceptance are compatible. Although service providers must send invoices to consumers after concluding contracts, it is recommended that the electronic transaction be compulsory, with discretion to send additional copies another way, as electronic transmission may be the most favourable for e-commerce consumers.

Furthermore, service providers' obligation of contractual knowledge should include the provision of fundamental information relating to their services and goods. Such obligation can be executed by identifying the individual service provider through name, address and contact details as well as commercial registration number. Likewise, such obligation should include an accurate and full description of the material and moral goods or services. The description of material goods should consist of weight, size and quality. Moral goods should have a full description. The execution of this obligation requires a declaration of the cost of the goods or services plus taxes and a detailed explanation of the costs in their entirety. Service providers are obliged to declare a contract's clauses, date,

⁽²⁶⁾ See article 8 of the Saudi Electronic Commerce law which states that "The Service provider shall submit to the consumer after concluding the contract a receipt which includes costs of purchasing of each product or service, the total price of the product or service, the value of taxes, the date, place of delivery, in accordance with the implement regulation".

⁽²⁷⁾ See article 7 of the Saudi Electronic Commerce law which states that "The Service provider oblige in providing a statement to the consumer before the conclusion of the contract including the provisions and conditions of the contract...etc"; see also article 7 of implementing regulations of this law.

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methods of execution and payment, after-sale service, summary of the replacement and return provisions, and the consumers' right of conversion termination the contract⁽²⁸⁾.

Article 8, therefore, confirms that service providers have an obligation to give a downloadable invoice to consumers after concluding the contract. Pursuant to article 8, the downloadable invoice should include the following information:

1. The practitioner or trader service provider's name or trade name and a description of the product and/or service.
2. A confirmation of the contract's conclusion and said date.
3. The total price of the product and/or service, including taxes (if applicable), details of the price (i.e. how it is calculated) and its terms of entitlement.
4. The amount of shipping, transportation and import fees (if applicable).
5. The service provider's tax number (if applicable).
6. The delivery date of the product and/or service.
7. The name of the transporter that will handle the delivery of the product and delivery tracking data (if applicable).
8. A brief summary of the replacement and return provisions (if applicable).
9. The payment method and its general statement⁽²⁹⁾.

⁽²⁸⁾ See also in more details, "Chris Connolly, Electronic Commerce: Legal and Consumer Issues", paper was presented at the Cyber Law Conference (Business Law Education Centre), Hilton Hotel Sydney, (1 April 1998), available at: <http://www2.austlii.edu.au/itlaw/articles/Connolly.html>; see also, Sophie Louveaux, Yves Pouillet and Anne Salatün, ESPRIT Project 27028 "Electronic Commerce Legal Issues Platform", Deliverable 4.2 Recommendations to the Commission User Protection, P:7-9, available at: http://www.qlinks.net/lab991216/recomm_user-protection.pdf

⁽²⁹⁾ Article 8 states that " Subject to the provisions of Article 8 of the Law, the Service Provider shall submit to the Consumer after concluding the contract a downloadable receipt which includes the following Data:

Article 8 handles the privacy of the receipt data with comprehensive information to be provided by service providers. However, article 8 omits a precise time of the provider's obligation of contractual knowledge. Service providers' obligation of contractual knowledge, according to this article, should be after the conclusion of the contract. However, to protect consumers, it is strongly recommended that we must determine the exact time when service providers' obligation of contractual knowledge commences.

On the other hand, article 8 considered the privacy of technology in e-commerce contracts by requiring consumers' ability to download invoice data. In other words, the Saudi legislators have confirmed the protection of consumers by ensuring consumers secure a contract's information permanently. However, article 8 does not clarify the means by which the invoice data must be downloaded. As long as the legislator places an obligation on service providers to inform consumers after the conclusion of a contract, this obligation can be satisfied by sending an email to consumers or transferring the data onto a CD, DVD or CD-Interactive and sending it to consumers⁽³⁰⁾.

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- a. The name of the Service Provider if the Service Provider is a Practitioner, or the trade name of the Service Provider if the Service Provider is a Trader, and a description of the product or service subject to the contract.
 - b. Confirmation of the contract and the date of its execution.
 - c. The total price of the product or service and the value of taxes (if any) clarifying the details of the price, how it is calculated and the conditions of claiming it.
 - d. Shipping, transportation and delivery charges (if any).
 - e. The Service Provider's tax number (if any).
 - f. The delivery date of the product or service.

⁽³⁰⁾ See in same context, Aron Youngerwood and Sunwinder Mann, "Extra Armory for Consumers: The New Distance Selling Regulations", The Journal of Information, Law & Technology (JILT 2000) (3), Paragraph 4: available at: https://warwick.ac.uk/fac/soc/law/elj/jilt/2000_3/youngerwood/

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The condition of article 8 concerning consumers' ability to download invoice data is an important legal and technical guarantee for consumers, especially in that the invoice data be secure and easy to read. In this vein, under article 18 of E-Commerce Law 2019, the penalties for service providers that breach this law or its implementing regulations include a warning, a fine not exceeding 1 million SAR, stoppage of e-commerce temporarily or permanently, and withholding the electronic shop partially or completely, temporarily or permanently⁽³¹⁾.

With regard to some Islamic jurisprudence, the consumer can rely on the option of viewing in order to obtain protection, so that he has the right to choose between the abrogation or completion the contract upon viewing the contract 'subject'⁽³²⁾. In addition, the option of viewing includes the vision, smell, taste, hearing and touch⁽³³⁾. The consumer has the right to abrogate the contract when he does not see the subject of the contract in a realistic manner. Accordingly, this right remains upon seeing the image of the thing on the screen. In contrast, the consumer loses his right to abrogate the contract if he has seen the contract's subject.⁽³⁴⁾

Furthermore, according to the Islamic jurisprudence, the consumer could be protected by the defect option. This option allows the consumer to choose between the abrogation or completion the contract upon finds a defect in the contract 'subject'⁽³⁵⁾. Additionally, this option requires several difficult conditions; the defect should be

⁽³¹⁾ See, article 18 of the Saudi Electronic Commerce Law.

⁽³²⁾ See in more details, Ahmad Albihagi, *Minor Sunnah*, (Karachi: Publications of the University of Islamic Studies, 1989), 240; see also, Ali bn omar Aldarkotni, *Sunnan Aldarkotni*, (Beirut: Dar Elmarefah for printing and publication, 2001), 569.

⁽³³⁾ See in more details, Muhammad Abu Zahra, *Property and Contract Theory in Islamic Law* (Egypt: Waqfeya library, 1996), 376.

⁽³⁴⁾ See in more details, Ali Alkafif, *The provisions of Sharia transactions*, (Cairo: Dar elfikr elarabi, 2010), 379.

⁽³⁵⁾ See in more details, Mohammad Ali Mahjoob, *Civil legislations in Islamic law and Egyptian laws* (Cairo: Nasse company for printing: NA), 410; see also, Ibrahim Aldwian, *Manar Al-Sabeel- explains the guide*, (Beirut, shamela library, 1989), 319; see also, al-Bukhaaree, *Sahih*, 275.

effective, old, constant, unknown to the consumer and does not have an agreement with the provider being exempted.⁽³⁶⁾

B. Consumers' protection upon e-payment

Under e-commerce contracts, consumers are obligated to pay the price for goods and/or services to service providers. Consumers can use the traditional payment method of cash or the newer e-payment method⁽³⁷⁾. E-payment has a vital role, as it is a quick payment method that connects with consumers' bank accounts online. There are several e-payment methods⁽³⁸⁾, such as plastic electronic payment card, electronic transfer or virtual wallet⁽³⁹⁾.

Bank cards are a good means of rapid payment, but their use poses a risk to consumers with the potential breach of data privacy. The danger of their use comes from illegal website, attempts to hack card data or when service providers do not execute the contractual obligation. Consumers can be protected from these risks by using, respectively,

⁽³⁶⁾ See in more details, Muhammad bin Ahmed bin Rushd, *The beginning of the Mujtahid and the end of the Moktassad*, (Beirut, shamela library, 2004), 287; Mohammad Almagrabi, *The theory of the contract in Islamic jurisprudence*, (Cairo, daralnahda for publishing and distribution, 2003), 128.

⁽³⁷⁾ See in same context, Bashar Mahmoud Dudin, "The legal framework for the contract concluded online", (Master dissertation, Mutah University. Jordan, 2006), 202 and next.

⁽³⁸⁾ See in more details, Gringers, C, *The law of the Internet*, (London: Butter Worths Press, 1997), 17

⁽³⁹⁾ (Porte Monnaie Virtual PMV). In addition, the plastic electronic payment card such as visa Card and Master Card includes some data such as the bank's name, card's logo and number, date of validation, the client's name and account number...etc. The client could use this card directly in ATM machine or by using it on the internet without paying in cash to the service provider and the bank deducts the price from the client's account. See in same context, Patrick Frazer , *Plastic and electronic money : new payment systems and their implications* , (Cambridge: Wood head-Faulkner, 1985), 12; see also, Benjamin Wright and Jane K.Winn, *The Law of Electronic Commerce*, A division of Aspen Publishing-INC,(New York, USA, 3ed edition, 2000), 3; see also, Daniel, C Lynch and Leslie Lundquist, *Digital Money, The New Era of Internet Commerce*, (Canada: John Willy Press, 1996), 37

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electronic certificates, encryption programs that requires passwords⁽⁴⁰⁾ and amounts that are not deducted from their bank accounts until service providers obtain written confirmation from them⁽⁴¹⁾. Banks are required to prove the legitimacy of their customers' handwritten orders if challenged; however, for telephone and online banking, some banks have terms that overburden consumers' responsibility for transactions they have not approved. The security technology available to customers and the security techniques that ordinary customers can be expected to use are insufficient to protect consumers from this risk of responsibility. The conditions in question, therefore, are debatably unreasonable⁽⁴²⁾.

Although e-payment has many advantages, its risks and challenges are various and observable, especially in light of hackers⁽⁴³⁾ seeking to obtain information and data illegally⁽⁴⁴⁾. Accordingly, the protection of the e-payment system is an important mechanism of consumers' protection. In this context, article 5 of E-Commerce Law 2019 confirms that service providers shall take the necessary means to protect the personal data of consumers. In addition, service providers shall refrain from saving personal consumer data or electronic communication, except for the period required by the nature of e-commerce.

From article 5, we can conclude that Saudi legislators placed importance on consumers' personal data and electronic communications, so service providers have

⁽⁴⁰⁾ Elias Nassif, International contracts, The electronic contract in comparative law, (Lebanon: Al-Halabi publications, 2008), 163

⁽⁴¹⁾ See in same context, Xavier Thunis, "Responsabilité du Banquier et Automatisation des Paiements, Belgique, [Presses Universitaires de Namur](#), 1996), 239 et suivent.

⁽⁴²⁾ See in details, **Nicholas Bohm, Ian Brown and Brian Gladman**, "Electronic Commerce: Who Carries the Risk of Fraud?" The Journal of information, Law and Technology, issue 3, 2000, https://warwick.ac.uk/fac/soc/law/elj/jilt/2000_3/bohm

⁽⁴³⁾ Abdulfattah Bayomi Hojazi, E-commerce and its legal protection, (Egypt: Dar Elfker Egamie/ D.F.G Publish, 1st edition, 2006), 214.

⁽⁴⁴⁾ Osama Ahmed Bader, "Buyer guarantees in the electronic sales contract", Sharia and Law Journal, 1st and 2ed part, United Arab Emirates University, (January 2010): 458.

a responsibility to take the necessary methods to protect them. In the same vein, article 5, paragraphs 1 and 2 also assert that consumers' personal data includes their name, ID number, address, contact details, licence numbers, records, personal property, bank account numbers and credit cards. Service providers are obligated to protect consumers' personal data⁽⁴⁵⁾ from access, disclosure, exposit, exchange or use for illegal reasons. Service providers must not save consumers' personal data except to execute the obligations.

If such data are hacked, then service providers must notify the Ministry of Commerce and the affected consumer(s) within three days of the date of its knowledge. In notifying the affected consumer(s) of the hacking, service providers must submit an analytical report stating the key reasons for the hacking, its effects and the measures taken to resolve it. The notification does not exempt service provider from responsibility to the affected consumer(s). Service providers oblige with what is issued by the competent authorities. We note that article 5 does not define 'competent authorities' – it is an unclear concept. Accordingly, we recommend determining the meaning of 'competent authorities'.

III. Consumers' right of retraction from a contract and consumers' protection against arbitrary conditions

As mentioned previously, e-commerce contracts pose legal issues for consumers, particularly because they are the weaker party in this contractual relationship. In instances where consumers are not satisfied with the delivered goods and/or services, their legal protections in e-commerce contracts require the right to return the goods and/or services⁽⁴⁶⁾ and protection from arbitrary conditions. In this regard, e-commerce consumers need more

⁽⁴⁵⁾ See also, Muhammad Al-Banan, *Electronic Contracts - contracts and agreements in electronic commerce*. (Egypt: Arab Organization for Administrative Development, 1st edition, 2007), 25

⁽⁴⁶⁾ Julia Hörnle, "The European Union Takes Initiative in the Field of Ecommerce", *The Journal of information Law and Technology*, issue 3,(2000), https://warwick.ac.uk/fac/soc/law/elj/jilt/2000_3/hornle/,

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and special protection with e-commerce contracts⁽⁴⁷⁾. Referring to the Islamic jurisprudence, we can say that the provisions of Shari'ah law contain treatment mechanisms to protect the consumers in E-commerce contracts where the consumers have the right of retraction from a contract such as; the condition option and the lesion option.

This subsection reviews two special mechanisms: consumers' right of retraction from a contract and consumers' protection against arbitrary conditions.

A. Consumers' right of retraction from a contract

Parties to a contract are obligated to execute it according their contractual relationship, and no party is permitted to retract from that contract unilaterally. Traditional contract principles prohibit retracting from a contract or abrogating a contract, except by agreement of the parties or for legal reasons. However, in some cases, consumers enter e-commerce contracts without thinking about their need for the goods and/or services or without checking the conformity of the goods, especially as consumers cannot examine them directly. In this sense, consumers have the right of retraction from a contract unilaterally⁽⁴⁸⁾ during certain time periods⁽⁴⁹⁾, without giving any reason or waiting for the other party's approval, and whereby consumers return the goods and/or do not benefit

⁽⁴⁷⁾ Youssef Shendi, "The effect of the consumer's option to revert in the contract to determine the moment of the conclusion of the contract", Shariah Law Journal – UAE University, Vol.43, (July 2010), 256 and following.

⁽⁴⁸⁾ Bawadly Mohammed, Consumer protection in comparative law - a comparative study with French law, (Cairo: D.K.H Books, 2006), 152; see also Amer Mahmoud Al-Kiswani: Trade via Computer, (Jordan: Dar Al Thaqafa for Publishing and Distribution, 1st edition 2008),16; see also Mahjoob, Civil, 391

⁽⁴⁹⁾ Omar M. Abdelbaki, contractual Consumer Protection/ a comparative study of Sharia and law, (Alexandria: Monchaat Al Maaref Library, 2004),769; see also Ramadan Ali alshrnbas, Generals theories in Islamic Jurisprudence (Alexandria:2000), 120.

from the services and receive a refund of the price⁽⁵⁰⁾. Such a right is considered one of the modern legal mechanisms in e-commerce contracts for protecting consumers⁽⁵¹⁾.

In accordance with the special nature of e-commerce operations, *article 13, paragraph 1 of E-Commerce Law 2019* affirms that *under certain* conditions consumers have the right to retract the contract for seven days following the date of receiving the product or the date of contracting to provide the service⁽⁵²⁾. In addition, article 13, paragraph 1 requires some conditions for consumers to exercise this right as follows: it is not allowed to breach the provisions of legal or conventional compensations; the retraction should occur within seven days after the date of receiving the goods or the date of contracting for the service; consumers neither used the goods nor benefited from the service; and the costs of retraction are paid by consumers unless otherwise agreed.

We can conclude from article 13, paragraph 1 that the right of consumers' retraction from a contract is temporary and limited to a short period⁽⁵³⁾. Furthermore, this right relies

⁽⁵⁰⁾Solange Mirabail, "La Rétractation en Droit Privé Français", L.G.D.J, (1997):128; see also, Abdel Moneim Mousa Ibrahim, Consumer Protection, Comparative study, (Lebanon: Halabi L.P, 1st edition, 2007), 507

⁽⁵¹⁾ Mohamed Saad Khalifa, "Online Selling and Consumer Protection (in light of Bahrain's Electronic Transactions Law)", *Law Journal-Bahrain College of Law, 1st edition, Vol.5,(2008): 63.*

⁽⁵²⁾ See in same cadre about the time limit in the remote contract, CALAIS-AULOY.J, "Actualité de la Protection du Consommateur dans l'Espace Européen", *Rapport de synthèse, Dr. et patrimoine, (oct. 2002): 93; see also, TROCHU (M.), "Protection des Consommateurs en matière de Contrats à Distance : directive n° 97/7 CE du 20 mai 1997", D. chron, (1999):179 ; GATSI (J.), La Protection des Consommateurs en matière de Contrats à Distance dans la directive du 20 mai 1997", D. aff. (1997): 1378.*

⁽⁵³⁾ Concerning the Islamic jurisprudence, the consumer has the right to benefit from the condition option. This condition allows the consumer to abrogate or complete the contract during time limited. However, the condition option requires an agreement between the consumer and the provider and determines a certain time to take it; See in more details, Abdul Qadir bin Omar Al-Shaibani, Obtaining benefits, with an explanation of the student guide,(Cairo: alfalah library,1983), 254; see also, Wahba Al-Zuhaili, Contemporary financial transactions, (Egypt: dar fikr, 2006),72.

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on consumers' choice to be protected. In other words, consumers could retract from a contract without providing any justification or needing the approval of service providers and the retraction is free. *Any associated expenses are only charged to consumers unless agreed otherwise with the service provider.* Furthermore, consumers can use this right without notifying service providers or resorting to litigation.

We believe, therefore, that Saudi legislators should use the term 'retract from the contract' *instead of* 'terminate the contract', as termination is the result of a breach of contract and both parties return to their condition before the termination. Although the term appears in article 13, we think that the article is intended to give consumers time to reconsider the completion of the contract or to withdraw from it. This period is similar to the so-called 'cooling-off period'. Our view is confirmed by article 14, which affirms consumers' right to terminate the contract in instances when service providers delay or fail to deliver the product or perform the service and limits the delay period to 15 days.

Additionally, article 13, paragraph 2 of E-Commerce Law 2019 balances consumers' right of retraction from a contract and services providers' rights. Paragraph 2 provides that in some cases consumers are not allowed to abrogate a contract, such as under article 13, paragraph 2/A, when the object of the contract is a manufactured product based on the request of consumers or according to consumers' stipulations. However, consumers can abrogate the contract when the products lack conformity⁽⁵⁴⁾. With this exception, we observe that, on one hand, Saudi legislators seek justice for the benefit of service providers. We agree with this exception, especially for products manufactured at consumers' request. On the other hand, Saudi legislators balance the right of consumers to abrogate from a contract when products have a defect or lack conformity with the agreed specifications.

⁽⁵⁴⁾ See also in this sense, Guidance for Electronic Stores according the Saudi Electronic Commerce Law, Chapter 3(1): 22.

Article 13, paragraph 2/B also prevents consumers from retracting a contract if the object of the contract is video tapes, CDs or software used by consumers ⁽⁵⁵⁾. This exception protects intellectual property; it is illogical to permit the abrogation of a contract when the consumer has used the product. In contrast, consumers have the right to abrogate a contract if they did not use the product. We agree with Saudi legislators on this exception, though we recommend adding ‘or any products similar to the above’ to be wider and more comprehensive.

Under article 13, paragraph 2/C, consumers cannot abrogate a contract if its object is buying newspapers, magazines, publications or books ⁽⁵⁶⁾. We think that the objects of these contracts contradict consumers’ right of retraction.

Under article 13, paragraph 2/D, it is not permissible to abrogate if the defect appears in the product due to misuse by consumers ⁽⁵⁷⁾. We believe that it is logical for consumers to deal with this defect because their misuse caused it.

Moreover, article 13, paragraph 2/E states that ‘the consumer loses his right of abrogation if the contract is relating in providing accommodation, transportation or feeding services’ ⁽⁵⁸⁾. We can say that the nature’s subject of the contract prevents the consumer from abrogating a contract.

Likewise, article 13, paragraph 2/F prevents abrogation of the contract if it deals with purchasing software downloads ⁽⁵⁹⁾. The purpose of paragraph 2/F is similar to paragraph 2/B. Paragraph 2/F adds an exception where consumers keeps their right of retraction if the programs have a defect that prevents downloading or lacks of conformity in contradiction with the contract ⁽⁶⁰⁾. Authorising consumers to retract from a contract

⁽⁵⁵⁾ Ibid.

⁽⁵⁶⁾ Ibid.

⁽⁵⁷⁾ Ibid.

⁽⁵⁸⁾ Ibid.

⁽⁵⁹⁾ Ibid.

⁽⁶⁰⁾ Ibid.

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when the product has a defect or lacks conformity with the agreed specifications constructs equilibrium in the contractual relationship.

Article 13, paragraph 2/G concerns the retraction of contracts according to the nature of the products and/or services. Saudi legislators appear to have opened the door and not to be limited with specific cases in accordance with the nature of the products or services, as determined by the implementing regulations. In this context, article 11 of E-Commerce Law 2019 indicates some cases, except there is agreement in instances when the consumer is prohibited from abrogating the contract.

Article 11, paragraph 1 pertains to when the subject of the contract is a perishable product damaged during the permissible period of abrogation of the contract⁽⁶¹⁾. In this sense, consumers lose their right to abrogate in accordance with the nature of perishable products, such as fresh fishes, meats and vegetables.

Article 11, paragraph 2 prevents the abrogation if the subject of the contract is a product that cannot be resold for health reasons, such as health and beauty products (e.g. shaving machines, oral and dental care equipment)⁽⁶²⁾. Under article 11, paragraph 3, abrogation is impermissible if the contract's subject is a product that includes many merged elements that cannot be returned to their original condition⁽⁶³⁾. We agree with this logical and fair exception because the product will not return to the initial conditions, which causes a prejudice to service providers.

Furthermore, article 11, paragraph 4 confirms that consumers cannot abrogate a contract if the service subject of the contract is a hotel or ticket booking, vehicle rental, transportation or events organising service⁽⁶⁴⁾. We assume this exclusion is not completely logical in instances when the consumer provides justification for the abrogation. We recommend that Saudi legislators omit this exception to prevent unfairness to consumers.

⁽⁶¹⁾ Ibid.

⁽⁶²⁾ Ibid.

⁽⁶³⁾ Ibid.

⁽⁶⁴⁾ Ibid.

Similar to article 13, *paragraph 2/A*, the fifth paragraph of article 11 prevents the abrogation of a contract *if the object is manufactured goods produced on demand of consumers or according to their stipulations*⁽⁶⁵⁾.

If a contract is concluded in a public auction, consumers cannot exercise their right to abrogate according to article 11, *paragraph 6* ⁽⁶⁶⁾.

The purpose of this exception is to preserve the rights of all parties in the public auction.

Article 11, paragraph 7 states that the abrogation of the contract is impossible if its subject is a product or service whose price changes during the ‘cooling-off period’, depending on a market characterised by uncontrollable price instability, such as gold and silver. In this exception, we observe that Saudi legislators aim to protect service providers against price fluctuations aligned with market prices. In this context, this exception is justified in countries facing economic problems; however, it is unjustified in countries that do not face economic problems. Accordingly, we recommend that Saudi legislators change this exception because it negatively impacts consumers by reducing their protection.

As previously mentioned, article 14, *paragraph 1* gives consumers the right to terminate a contract if service providers delay delivery or the service more than 15 days. As a result, consumers have the right to a refund unless the delay is due to *force majeure*. In addition, article 14, *paragraph 2* obligates service providers to notify consumers of any expected delays or major difficulties affecting delivery or the execution of the contract. We can conclude that Saudi legislators seek to ensure superior protection for consumers, especially by setting 15 days as a waiting period for delays before terminating the contract, unless the delay is due to *force majeure*. Although this period is considered appropriate for consumers, it may bear some kind of pressure on service providers. Accordingly, we

⁽⁶⁵⁾ See what was explained previously in this article.

⁽⁶⁶⁾ See also in this sense, Guidance for Electronic Stores according the Saudi Electronic Commerce Law, Chapter 3/1 P: 22.

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recommend extending this period to 30 days to balance the legal positions of the two parties and to prevent consumers from having a stronger position than service providers. In this context, some products do not show their defects unless they are used for a period of time; therefore, it would be more appropriate to specify a longer period to guarantee the rights of consumers and service providers.

B. Consumers' protection against arbitrary conditions

Generally, contracts are based on the principle of autonomy. This important principle stipulates that contracts are the products of the common will of the parties, which gives a binding force to the contracts⁽⁶⁷⁾. In addition, contracts do not operate except among the contracting parties; a third party cannot change the agreement⁽⁶⁸⁾. This principle supposes that the wills of both parties are equal in determining what is allowed in terms of conditions, rights and obligations, etc⁽⁶⁹⁾.

Furthermore, a problem arises when there is no equality between the contracting parties. In this context, consumption contracts are a large area for professionals to take advantage of their privileged positions⁽⁷⁰⁾ by stipulating unfair conditions⁽⁷¹⁾ in their

⁽⁶⁷⁾ See in more details, Rémy Cabrillac, *Droit des obligations*, (Paris, Dalloz, 2008), 18.

⁽⁶⁸⁾ See in more details, Jacques Flour et Jean- Luc Aubert, *Droit Civil, Les obligations*, 1. L'acte juridique, (Paris: Dalloz, 2006), 71.

⁽⁶⁹⁾ See in more details, François Terré, Philippe Simler et Yves Lequette, *Droit civil, Les obligations*, (Paris: Dalloz, 1993), 24; see also, Jean Hauser : *Les Contrats*", (Vendôme: Presses Universitaires de France, 1977), 5.

⁽⁷⁰⁾ See in the same context, Taib Aurélie: " La Modification Unilatérale des Contrats de Communication Electronique", (Master 2, Université de Versailles Saint Quentin, France, 2007): 22.

⁽⁷¹⁾ See in more details, Jean Calais-Auloy, Frank Steinmetz, *Droit de la Consommation*, 5eme édition, (Paris: Dalloz, 2006), 186; see also, Panagiota Kontogeorgou and Michael G. Alexiou, "Enhancing consumer confidence in electronic commerce, consumer protection in Electronic payments", 17th BILETA Annual Conference Free University, Amsterdam (April 5th - 6th, 2002), P: 5 and next available

contracts because consumers must submit these conditions. Such arbitrary conditions lead to imbalance in favour of the professionals and to adhesion contracts, which require the intervention of the judiciary to modify or eliminate.

As indicated previously, e-commerce contracts are characterised by weak consumer positions compared with service providers. Accordingly, service providers may stipulate arbitrary conditions in e-commerce contracts. The problem here is: which legal means⁽⁷²⁾ can consumers use to cancel or amend these conditions? There are two possible answers to this question.

In the first answer, some doctrine considers e-commerce contracts to be adhesion contracts⁽⁷³⁾ on which consumers could rely on general rules. In service providers drafting such contracts and placing conditions, the role of consumers is just pressing the button to submit to the conditions. This creates an unbalance between consumers and service providers. In the second answer, e-commerce contracts are not adhesion contracts because

at <http://www.bileta.ac.uk/02papers/alexiou.html>; see also, Mahmoud, Consumer protection, 27 and next.

⁽⁷²⁾ Referring to some Islamic jurisprudence; the consumer has the option of lesion. According this option, the consumer has the right of retraction from a contract when the contract contains an unfair condition. The minor lesion is not allowing the consumer to retract from the contract. However, this option requires a major lesion in the contract. In other words, the lesion is major when it is out of the ordinary under the custom; see in more details, Almagrabi, The theory, 157; see also, Al-Derini, consensual, 431.

⁽⁷³⁾ Bernard D. Reams, Jr, The law of electronic contracts, E-BOOK, (LEXIS Publishing, 2002), second edition,: 110; see also in more details, Hosni Mahmoud Abdel-Dayem, monopolistic contracts. (Egypt: Dar Elfker Egamie, 1stedition, 2008), 34 and next; see more, Samir Burhan, Conclusion of the contract in e-commerce, (Egypt: Arab Administrative Development Organization, First edition, 2007), 59.

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such contracts require two main elements⁽⁷⁴⁾: the urgent need of consumers for the goods or services and the service providers' monopoly on them⁽⁷⁵⁾.

Furthermore, although the provider outperformed the consumer economically⁽⁷⁶⁾ and technically, however, this outperformed without monopoly the good or service. Furthermore, e-commerce contracts are preceded by contractual negotiations, unlike adhesion contracts.

The second answer does not consider e-commerce contracts as adhesion contracts. Accordingly, consumers cannot rely on rules of adhesion contracts. In this context, Saudi legislators should prepare a list to determine the arbitrary conditions, though it may be difficult for the legislators to do so in light of the development and movement of e-commerce. Furthermore, the privacy of e-commerce contracts prevents consumers from relying on one law because these contracts can be between two parties that are not in the same country.

Regarding E-Commerce Law 2019 and its implementing regulations, we observe that there are no express texts to consider e-commerce contracts as adhesion contracts. Despite the weak position of consumers, e-commerce contracts are not considered to be pure adhesions contract, as seen in articles 1 and 7 of E-Commerce Law 2019. Article 1

⁽⁷⁴⁾ See in same sense, Muhammad Ibrahim Bandari: "Towards a broader concept of consumer protection in compliance contracts, a comparative study in Egyptian, Emirati and French law," Journal of Security and Law, issued by the College of Sharia and Law, UAE University, Dubai Police Journal, eighth year, first edition (January 2000): 66

⁽⁷⁵⁾ See in same sense, Muhammad Abdul-Zahir Hussain, "The Legal Aspects of the Pre-Contract Stage", Journal of Law, issued by the Faculty of Law, University of Kuwait, 22 years, second issue, (March and June 1998): 751; see also, Osama Abu Al-Hassan Mujahid, Privacy of contracting online, (Egypt: Dar-alnahda Alarabia for Publishing and Distribution, 1998), 27

⁽⁷⁶⁾ See in this context, Muhammad Al-Sayyed Imran, Consumer Protection during Contract Formulation, a Comparative Study with an Analytical and Applied Study of Texts on Consumer Protection, (Aldar. G for Printing and Publishing: Beirut, Lebanon, 2003), 49; see also, Abdel-Moneim Moussa Ibrahim, Consumer Protection, a Comparative Study, (AL Halabi Legal publications For printing, publishing of legal books, Beirut, Lebanon, 2007), 453.

defines the e-commerce contract as ‘an agreement concluded electronically between the parties dealing in electronic commerce’. In addition, article 7 obligates service providers to provide consumers with a statement, including the terms and conditions of the contract to be concluded. Article 7 of the Saudi Electronic law disposes that ‘ ‘ the Service Provider shall include the following in the statement given to the Consumer clarifying the terms and conditions of the contract to be concluded...etc’’⁽⁷⁷⁾. Furthermore, it is notable that consumers have the right to obtain the terms and conditions of the contract to be concluded and to terminate it (where permissible), pursuant to art 13, *paragraph* 1. Similarly, the two major factors of adhesion contracts are not present: the vital necessity of the goods or services and the service providers’ monopoly of them. Accordingly, we think that terms and conditions can be negotiated by consumers before the conclusion of the contracts. Consumers have the right to terminate contracts, even after their conclusion, in accordance with article 13, *paragraph* 1 of E-Commerce Law 2019.⁽⁷⁸⁾

We can conclude that the general rules cannot give full protection to consumers in case of e-commerce contracts. Instead, consumers must be protected with special provisions that are compatible with the privacy of e-commerce and their weak and

⁽⁷⁷⁾ Article 7 of the Saudi Electronic Law disposes that ‘ ‘ the Service Provider shall include the following in the statement given to the Consumer clarifying the terms and conditions of the contract to be concluded...etc’’. The Article 7 of the Implementing Regulations of the Electronic Commerce Law Saudi Electronic LAW also satiates that ‘ ‘ Subject to the provisions of Article 7 paragraph 1 of the Law, the service provider shall include the following in the statement given to the Consumer clarifying the terms and conditions of the contract to be concluded: A. Reference to the right to terminate the contract in accordance with paragraph (1) of Article 13 of the Law where termination is permissible...etc’’.

⁽⁷⁸⁾ Refer to the above mentioned previously in this research article about the cases that the consumer shall or not be entitled to terminate the e commerce contract paragraph (1) and (2) of Article 13 of the e commerce Law and article 11 of the Implementing Regulations of the Electronic Commerce Law, 13 and next.

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unbalanced position compared with service providers position. Such special provisions must also give a wide scope for determining the identity of an arbitrary condition.

IV. Conclusion

This article discussed consumers' privacy and protection in e-commerce contracts provided under E-Commerce Law 2019 and its implanting regulations compared with Shari'ah law. This article provides the following results and recommendations.

A. Results

E-Commerce Law 2019 and its implementing regulations try to improve overall consumer trust in e-commerce transactions. It contains provisions intended to protect consumers against fraudulent, deceptive and misleading practices. In this context, E-Commerce Law 2019 highlights the protection of consumers' data and imposes legal obligations on service providers to maintain the privacy of consumers' data. However, the law and its implementing regulations do not give full protection to consumers in e-commerce contracts, as detailed below:

- Article 5 contains ambiguous terms of competent authorities.
- Article 8 gives importance to the receipt of data through the requirement of inclusivity of information. However, article 8 did not determine the time of service providers' obligation of contractual knowledge, which, according to this article, should be after concluding the contract. Such an obligation is for the protection of consumers.
 - Furthermore, article 8 addresses technology and privacy in e-commerce contracts by requiring a downloadable receipt. Saudi legislators have sought to protect consumers by requiring that they can obtain all information permanently
 - Article 8 did not clarify the concept or mechanisms of the downloadable receipt data. As long as Saudi legislators obligate service providers to inform consumers after concluding the contract, the method for executing this

obligation is by sending an email or transferring data onto CDs, DVDs and CD-Interactive and sending them to consumers.

- Consumers' right of retraction from a contract is temporary and limited to a short time, which should be used within seven days or this right disappears.
- Consumers may retract from a contract without providing any justification or requiring the approval of service providers.
- Consumers' right to retract from a contract is free. *The only expense of the abrogation charges on consumers unless agreed otherwise with services provider.*
- Consumers can use the right of retraction without notifying service providers or resorting to litigation.
- The exclusion in art 11, *paragraph 4* is not completely logical in instances when consumers provide justification for their abrogation.
- Article 11, *paragraph 7* negatively impacts consumers by reducing their protection.
- The provisions of Shari'ah law in Saudi Arabia should be applied in case of lack or insufficient legal provisions on the issues that include fundamental regulations and principles for all topics without exception.
- There are no express provisions in Islamic law concerning electronic commerce contracts as they are novel contracts, conversely, this does not indicate the inability of applying the provisions of Islamic law because they are suitable in application in all times and places.
- Shari'ah law has taken great care of protecting consumers by various means. The provisions of Shari'ah law include double methods to protect the consumers in general and in particularly E-commerce contracts. First, the preventive means such as pricing, prohibition of monopoly and prohibition of false advertising. Second, the treatment means such as lesion option, condition option, fraud option, viewing option and defect option.

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- The provisions of Sharia law are not only limited to regulating the consumer's relationship with the provider, however it wide enough to deal with the consumer's relationship with himself by organising his consumption and how obtains he needs.

B. Recommendations

From this research and analysis, it is clear that consumers must be protected with special provisions that are compatible with privacy and the weak and unbalanced position of consumers when compared with service providers. We recommend the following for Saudi legislator:

- Clarify the meaning of 'competent authorities' in art 5, *paragraph 2/C* of E-Commerce Law 2019.
- Determine an exact time of the obligation of contractual knowledge to protect consumers. Although service providers are obligated to send receipts to consumers after concluding contracts, it is recommended that the electronic transmission be compulsory, with discretion to send additional copies another way, as electronic transmission may be the most favourable for e-commerce consumers.
 - Omit the exception of article 11, *paragraph 4* to prevent unfairness to consumers.
 - Change the exception in article 11, *paragraph 7*.
 - Change article 14, *paragraph 1* so that the period for terminating the contract becomes 30 days to balance the legal position of the contracting parties and to not put consumers in a stronger position than service providers.
 - Change the terms in articles 11 and 13 from 'terminate of the contract' to 'retract from the contract', as termination is the result of breach of contract wherein both parties return to their condition before the termination.
 - Distinguish between the period of return (retraction of the contract) without reason and the period of return in breaches of contract (terminate the

contract) due to the fact that the period of time seven days under the first scenario and 30 days under the second scenario.

- Create a governmental commission for consumer's protection. In addition, encouraging the establishment of private institutions and associations for consumer's protection.

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SAUDI E- COMMERCE LAW 2019 (ROYAL DECREE No M/126 DATED 07/11/1440H, 10 JULY 2019),

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