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Service Provider's Civil Liability of Electronic Trading: A Comparative Study between Saudi Law and Qatari Law

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Abstract

The present study embodies an analysis of service provider's civil liability of electronic trading. It investigates this phenomenon by analyzing relevant texts from the Saudi law and the Qatari law. Besides, it highlights the points of similarity and difference between the two laws. In order to achieve the objectives of the present research, the researcher follows the descriptive-analytical approach. That is, an analysis of relevant texts from the two laws is provided throughout the research. The most significant findings indicate that both the Saudi legislator and the Qatari legislator have given the consumer the right to terminate the contract unless the service provider and the consumer agree on another period for delivery or implementation of the contract. Unless the delay was caused by an emergency, the consumer may be able to recover the amount he paid under the contract in return for products or service, as well as any other expenses caused as a result of the delay.

Keywords

E-trading, Service Provider, Civil Liability, Saudi Law, Qatari Law.

1. Introduction

In the age of technology and digitization, many human activities related to information and communication technology are characterized by speed and volume of information. The Web offers numerous commercial services, often accessible within an international framework (Amadei, 2001). One of the outcomes of this rapid advancement is the emergence of e-trading as a new concept of modern economics. Moreover, it has become widely used in everyday conversation. In this respect, E-trading encompasses all commercial transactions, including buying and

selling. It is mainly based on an information system whose tools are all electronic, as represented by the computer and its accessories, and in which payment is made electronically, via electronic money transfers or credit card shopping.¹

The concept of e-trading is also referred to as e-commerce. It mainly refers to doing business electronically. In a general sense, e-trading is defined by the European Commission as the goods and services being sold on the Internet (Meral, 2019). Interestingly, e-commerce companies perform their operations in the traditional sense, while they can do their job through the Internet (Zott et al., 2011). Apart from this, as a result of the increasing exploitation of the consumer's demand by some service providers, e-trading transactions have resorted to a variety of practical issues. Therefore, the commodities and products they offer by electronic trading contracts have been manipulated. At times, their lack of commitment to what was agreed upon with the consumers leads to many consumers getting into problems and disagreements. Disputes arising from these contracts, in which the civil service provider's obligation is defined, are frequently brought before legal authorities especially when seeking reimbursement for losses incurred as a result of the service provider's inability to meet its contractual commitments.

In this context, the Saudi regulator took the initiative to release the e-trading law on 7/11/1440 AH, on the basis of the importance of e-trading and the essential role it plays in commercial and investment activities in the Kingdom nowadays. This system was created to improve the dependability of e-trading and boost its contribution to the national economy in order to accomplish the goals of the Kingdom's Vision 2030, as well as to promote and develop e-trading businesses in the Kingdom. One of the most important liabilities that the Saudi regulator is concerned about organizing is the service provider's liability in e-trading, as the regulator assigns to the service provider a number of legal articles related to obligations, duties, and liabilities towards the consumer; the person who deals with e-trading in order to obtain the services provided by the service provider.

2. Study Significance

Due to the fact that the practical problems caused by e-trading transactions are new in their kind, in addition to the increasing demand for buying and selling operations via the Internet, the lack of regulations that regulate such operations, the exploitation of some service providers for the consumer's need and their failure to comply with what was agreed upon with the consumer, there have been many problems and disputes in signing these contracts. Therefore, conducting this study on "service provider's civil liability of electronic trading: a comparative study between Saudi law and Qatari law" is highly significant.

The following points can further highlight the significance of

¹Mamdouh, K. (2010). Consumer Protection in E-Trading Contracts. Dar Al-Nahda Al-Arabiya, 8.

the present research

1. It provides an understanding of the service provider and the nature of its e-trading work in Saudi and Qatari law.
2. It identifies the legal basis for the service provider's civil liability in the Saudi and Qatari laws, as well as its many manifestations in e-trading.
3. It highlights circumstances of legal liability of service providers in e-trading in the Saudi and Qatari laws.
4. It determines the aspects of the service provider's civil liability in e-trading in the Saudi and Qatari laws.
5. It identifies the legal ramifications of establishing the service provider's civil liability in e-commerce in the Saudi and Qatari law.

3. Problem Statement

Paying attention to the significance of the service provider's role in e-trading, particularly in terms of concluding e-trading contracts with consumers, one can be curious to know the obligations of service providers. That is, these contracts entail a number of obligations imposed on the service provider by e-trading laws, in which the civil service provider shall compensate the consumer for any damages incurred if he fails to comply with the implementation or has carried out a defective implementation. As a result, the main study problem is represented as follows: Indicating the appropriateness of the legal texts included in the Saudi and Qatari laws, addressing the assertion of the service provider's civil culpability in e-trading, in case that he commits any violations in which his civil liability lies with the consumer in e-trading contracts.

4. Questions of the study

This study seeks to provide an answer to the following main question: "What is the legal liability of the service provider in e-trading in the Saudi and Qatari laws? The following sub-questions emerge:

1. Who is the provider of e-trading services? What exactly does he do in the Saudi and Qatari laws?
2. What is the legal justification for the service provider's civil liability in e-trading in the Saudi and Qatari laws?
3. What are the cases and forms of civil liability for service providers in e-trading in the Saudi and Qatari laws?
4. What are the elements of the service provider's civil liability in e-trading in the Saudi and Qatari laws?
5. What are the implications of the service provider's civil liability in e-trading in the Saudi and Qatari laws?

Motives behind the study

1. Providing a comparative study related to the topic (service provider's civil liability of electronic trading: a comparative study between Saudi law and Qatari law).
2. Developing a specialized scientific research to support those in charge of applying the law in the Kingdom in case that any difficulties related to the civil service provider's liabilities in the field of e-trading are brought to them.
3. In the Kingdom of Saudi Arabia and the State of Qatar, there are few studies on the present topic. Thus, there is a strong need to conduct researches in the field of e-trading.

5. Methodology of the study

The researcher follows the descriptive-analytical approach to investigate and define the topic of the present research. Moreover, the comparative method is used to compare the Saudi law and the Qatari law concerning the subject under study.

6. Outline of the study

6. Previous studies

1. Baraa (2020)

This study carries the title "The contractual liability of online service providers (a comparative study)". It is an attempt to examine the contractual liability of online service providers. The researcher follows the descriptive analytical method to achieve the objectives.

2. Luqman (2020)

This study carries the title "Obligations of the service provider in the Saudi e-trading system". It mainly investigates the obligations of the service provider in the Saudi e-trading system. The researcher follows the descriptive analytical method to achieve the objectives.

3. Al-Jubouri (2017)

This study is entitled "The Law Applicable to the Liability of Internet Service Providers". It mainly investigates the law applicable to the liability of internet service providers. The researcher follows the descriptive method to achieve the objectives.

4. Hamad

This study carries the title "The contractual liability of the provider of accommodation on the Internet in Jordanian law". It mainly examines the contractual liability of the provider of accommodation on the Internet in Jordanian

law. The researcher uses the descriptive method to achieve the objectives.

5. Sobh (2008)

This study is entitled "Consumer protection in electronic transactions (a comparative study). It is an attempt to examine consumer protection in electronic transactions. The study follows the descriptive method.

Research Terminology

Civil liability

Liability can generally be based on civil or criminal law. Within the range of civil law, liability may be derived from a contractual relationship between the provider and the person concerned. (Rolf, 2010).

Civil liability results from the enforcement of generally accepted principles which provide for the compensation of any damage caused or from a preexisting duty not to cause harm

Service Provider:

A service provider in general can enter into different contractual relationships with a user (Rolf, 2010).

A "service provider" is "any natural or legal person providing an information society service," and an established service provider is a service provider who effectively pursues an economic activity using a fixed establishment for an indefinite period (Baistrocchi, 2002).

The first topic: The nature of the e-trading service provider's work in the Saudi and the Qatari laws

In order to complete the buy and sell processes in e-trading transactions, two parties are required (the consumer - and the supplier or service provider). In e-trading contracts, the service provider can be a natural or legal person, but his work is defined by the fact that it is issued by a professional person, through whom the customer can complete the contract and acquire the product promoted on his website.

The first section: Identifying the service provider in e-commerce in the Saudi and the Qatari laws

In Saudi and Qatari law, the service provider in e-commerce is introduced as the most important party because it is the one who supplies the service to all consumer communities using different technological means. In general, a service provider is described as an ordinary or legal person who works for his or her business's requirements and wants profit. A person's trade professionalism is what

gets them the status of supplier. The provider's definition is related to the work he does.²

The service provider was also described as any natural or legal person who appears in the electronic contract as a professional and maintains a website through which he calls for the completion of contracts to enter into a connection with customers in one or more countries.³

In Article 1 of the Saudi e-trading law, the service provider is defined as "the trader or the practitioner." Moreover, it is described in the same article as "a person registered in the commercial registry who engages in e-trading". Moreover, the practitioner is sometimes characterized as "a person who operates internet commerce but is not enrolled in the business register." ⁴

Thus, it is observed that the Saudi legislator combined between the characteristics of the trader and the practitioner in the service provider in order to protect the consumer as a vulnerable party in contractual relations in e-trading⁵. According to Qatari legislation, the service provider in e-trading is defined as the person who provides the e-trading service. Moreover, it is a natural or legal person.⁶

Therefore, it can be concluded that the service provider, as defined by the Saudi and the Qatari legislations, is a natural or legal person who works in the e-trading business. He is a professional who performs this work for himself or others through a website he owns, with the purpose of engaging in e-trading activity by purchasing and selling for all consumer populations using various electronic ways.

The second section: The nature of the service provider's activity in e-trading in the Saudi and the Qatari legislations

Dealing with electronic means may be related to the purchase of commodities or the receipt of benefits from services. Moreover, in e-trading, service providers are considered the trader reference, and they shall educate consumers of all relevant information about the required service so that they are aware of it and, as a result, they will be satisfied with the service.⁷ To determine the nature of the service provider's job in e-trading as a trader, we shall first define the terms professionalism and profit. In commercial law, there are two essential elements for identifying traders:

² Fayyad, S. (2017). Civil Protection for Electronic Transactions According to the Provisions of Jordanian Law.

³ Al-Jerdli, J. Z. (2018). Review of electronic sale of counterfeit goods via the Internet. Legal Thought House, (2nd ed., p. 72.

⁴ Saadawi, S. (n.d.). E-Commerce Contracts, a comparative study. Dar al Khaldounin, Algeria, 2nd ed. p. 26.

⁵ Refer to: Article One of the Saudi E-Trading Law issued with No. (M/126) dated 7/11/1440 AH.

⁶ Luqman, W. (2020). [Review of the obligations of the service provider in the Saudi e-trading system,]. Journal of the Kuwaiti International Law College, Eighth Year (Issue 3 Serial Issue 31), p. 452. Retrieved from Muharram - Safar 1442 AH.

⁷ Al-Madhoun, N. (2017). Review of The Legal System for the Protection of E-Trading. Ph.D. Thesis, Faculty of Law, Ain Shams University, p. 79.

The First Element: The professional

Professionalism is defined as the practice of activity in a consistent and habitual manner in order to do a particular work for a profit. As a result, the professionalization of trade is the practice of business for the goal of earning a living, primarily as a habit.⁸ In this respect, the Saudi legislator defined the trader in the Commercial Court Law as "Anyone engages in commercial transactions and considers it as his job"⁹. Therefore, the necessity of professionalism as specified in the Saudi Commercial Court Law is related to the trader who is approved in the commercial registry as he is the one who provides e-trading services to the consumer.

However, it is noted that the Saudi regulator referred to another group in the e-trading law who are e-trading service providers or as they are known as (practitioners) and are unaccredited members of the commercial registry. In this instance, can they be called traders? Truly, registration in the business registry is not required for a person to be considered a trader. This is because there are some people who are called traders but are not registered in the business registry. Moreover, the aim of defining these e-trading practitioners and classifying them as providers of such services is to improve consumer protection from all people who supply him with e-trading services, whether they are registered businesses or not.

The second element: Profit

Profit is a significant factor in determining the service provider's concept in its contract with the customer, according to the trader's perspective. In this context, some argue that profit shall not be the primary factor in deciding the principle of a service provider's work. So it is important to consider the institutions that are not exclusively concerned with profit, such as companies and institutions that provide e-trading services and have business activities including power and water companies, and other public companies. Despite the fact that these people do not want profit, they shall be included in the list of service providers because the procedures they apply are similar to those employed by commercial businesses.¹⁰

It can be induced from the preceding discussion that service providers' work in the field of e-trading stems from their nature as people who engage in commercial work for the purpose of profit, and that the element through which they can define their work as traders is professionalism and the habit of providing this type of service, as well as the profit element that encourage them to engage in this type of trade.

8 Al Sharif, N. (n.d.). Review of Saudi Commercial Law. 2nded., (1443 AH / 2021 AD), p. 99.

9 Refer to the first article of the Saudi Commercial Court Law, issued by Royal Decree No. (2), dated 1/15/1390 AH

10Badr, O. (2019). *Consumer Protection in E-Commerce Contracts*. Hodeidah University Publishing House, 2nd Ed., Alexandria, p. 84.

The second topic: The legal provenance for the service provider's civil liability in the Saudi and the Qatari laws

E-trading transactions are becoming increasingly popular. They allow customers to contract through digital systems which are risky for their rights and obligations. As a result, most e-trading regulations required service providers in e-trading contracts to have a set of duties that shall be followed so that they might be held liable in the event of a breach or non-compliance. In this context, the legal provenance for the service provider's civil liability in electronic trading in the Saudi and the Qatari laws can be mentioned in the following section.

The first section: The commitment of the service providers to inform by the electronic trading contracts in the Saudi and the Qatari laws

The service provider is required to inform the customer so that the customer is informed before signing a contract. This is stipulated in both the Saudi Electronic Trading Law and the Qatari Electronic Trading Law. The Saudi legislator stipulates that the service provider shall inform and clarify the procedures for the consumer.¹¹

In this section, the researcher will discuss the service provider's liability, in the Saudi and the Qatari legislations, to inform consumers before contracting in e-trading contracts, as follows:

The extent to which the service provider is committed to informing in e-trading contracts in the Saudi and the Qatari laws:

The obligation to inform is: "Informing the contracting party with details about the contract that would clarify all the terms of the contract so that the consumer would be aware, and that he would make his decision based on his need and purpose of concluding the contract." ¹² Hence, we can define the service provider's obligation to inform before contracting in e-trading contracts as: A legal

11 According to Article (6) of the Saudi E-Commerce Law, "the service provider shall show the following data in his online store: A- His name or any distinguishing remark, as well as his address unless he is a member of one of the electronic store's authentication bodies. b- Contact Information C- If it is registered in a business register or another publicly accessible register, the name and number of the register in which it is registered. d- Any other information required by the regulation.

12 Article (51) of the Qatari legislator indicated in of the E-Commerce Law as states that: Without breaching to the rules of Law No. (8) Of 2008 concerning consumer protection, the service provider should offer the following information to its customers as well as any authorized government agency: 1- The service provider's name. 2- The service provider's address. 3- Information about the service provider's contact information, including an electronic contact address. 4- If the service provider is registered in a business register or a similar public register, details of the commercial register or any other ways of identifying the service provider. 5- Information about the competent authority to whose supervision the service provider is subject, if the service provider is required to obtain a permit or license from it. 6- The service provider's applicable standards or standards of conduct, as well as the ability and way to obtain them electronically.

obligation that the service provider undertakes before to the execution of e-trading transactions, by giving all information connected to the advertised service or commodity; with the goal of assuring consumer satisfaction before to contracting.

The contract information is divided into two sections

1. An obligation to inform before contracting: This occurs before contracting, or in a sense, during the discussion phase, as the service provider is expected to disclose information that allows the customer to have a clear understanding of the contract.¹³ Therefore, the requirement to inform before contracting is the liability of the service provider, as it is the first party to the electronic contract, and breach of this contractual obligation may result in contract termination. Furthermore, the consumer who suffers as a result of the service provider's failure to tell him of the commodity's requirements and basic data has the right to seek compensation for the consequences.¹⁴
2. The obligation to inform while contracting: This includes the service provider's need to offer all details that the customer shall know during contracting, which is known as the obligation to inform after the contract.¹⁵

Two conditions shall be met for the service provider to comply with before or after contracting:

First: One of the contractors shall be a professional and an expert with good knowledge of the information and quality standards of the product, and the professional's knowledge shall include not only information about the product, but also knowledge of its importance and role in the effect on consumer satisfaction.

Second: If the consumer has no idea about this product, the service provider in electronic contracts is obligated to inform the consumer. ¹⁶

The second section: The service provider's obligation to inform in electronic trading contracts in the Saudi and the Qatari laws

There are several types of obligations on the service provider to inform the consumer, whether before or during the contract:

First : Determining the service provider's identity and any details that identify him:

13 Mustafa, K. A. M. (2011). Consumer Protection in Electronic Contracting a Comparative Study. A Thesis for a PhD in Law - Faculty of Law, Ain Shams University, p. 342.

14 Rushdie, O. A.-S. (2018). Contracting by modern means of communication and the extent of its authenticity in evidence. Alexandria Knowledge Foundation, p. 16.

15Hijazy, A.-F. B. (2019). Consumer Protection in E-Commerce Contracts, Consumer Protection in E-Commerce Contracts. Dar Al-Nahda Al-Arabiya, Cairo, 2nd Edition, p. 28.

16Bakhkri, I. (2013). Civil Protection for the Consumer in the Electronic Sale Contract, Master's Thesis, El-Baz University, Setif, Algeria, p. 68.

In e-trading, determining the identity of the service provider allows the consumer to feel confident before contracting since there are trade names for people and companies, with a local and international reputation, which let the consumer confidence in their transactions.¹⁷

The necessity of giving the service provider's name helps the consumer to know the identity of the person contracting with him as well as the address of the company's main activity center, thus making it easier for the consumer to contact the service provider and enquire about his needs. It will also be returned to the main center if there are any issues.¹⁸

When we look at the Saudi E-trading Law and see what it says about this liability, we find that Article (6) states: "In his electronic store, the service provider shall clarify the following information: A- His name, as well as any identifying documents proving his identity and address, unless he is enrolled with one of the electronic retailers' authentication agencies. B- How to contact him. C- The name and record number in which it is enrolled. D- Other data prescribed by the Regulations in a commercial registry or other publicly accessible record. In the Qatari legislator, on the other hand, this liability is stated clearly in Article (51) of the E-trading Law.¹⁹

Second: Informing by using the service provider's contact information

The service provider shall also provide his electronic address, which is the address of his website via which he shows his activity to the consumer audience, on all of his documents and correspondence, whether paper or electronic, so that any consumer can communicate with the service provider.²⁰

The Saudi regulator confirmed this point. According to Article (6) of the Saudi E-trading Law, "the service provider should reveal the following data in his electronic store: B- The way of contacting him... D- Other information provided by the regulation." ²¹. As for the Qatari legislator, this liability is clearly stated in Article (51) of the E-trading Law.

17Khelifi, M. (2011). Commitment to Electronic Media and Transparency of Dealing in the Field of E-Commerce. Published Research in the Journal of Bashar University, Algeria, (Issue IV,), pp. 206-207.

18 Mansour, M. H. (2010). Electronic Liability "A Comparative Study". Publisher, New University House, Alexandria, Egypt, Edition 2010, p. 129.

19Luqman, W. (2020). The obligations of the service provider in the Saudi e-trading system. Journal of the Kuwaiti International Law College, Eighth Year (Issue 3 Serial Issue 31), p. 363. Retrieved from Muharram - Safar 1442 AH (previous reference).

20Article (51) of the Qatari legislator indicated in of the E-Commerce Law as states that: Without breaching to the rules of Law No. (8) Of 2008 concerning consumer protection, the service provider should offer the following information to its customers as well as any authorized government agency: 1- The service provider's name. 2- The service provider's address. 3- Information about the service provider's contact information, including a web site address. 4- If the service provider is registered in a business register or a similar public register, details of the commercial register or any other ways of identifying the service provider.

21Article (6) of the e-commerce system's executive regulations states: "2- The service provider should disclose the information provided in Article 6 of the system and item (1) of this article by making reference to it on its website, with a description of any modifications made to it."

Third: The service provider's obligation to inform the customer about the contract's terms

The consumer shall be informed of the contract's terms, as well as any requirement that may influence the consumer's decision to contract with him. Among these requirements are the consumer's awareness of payment methods, the place and delivery method, and guarantees, as well as the consumer's right to terminate the contract in accordance with Article (13) of the Saudi E-trading Law and the after-sales service and its provisions.²²

Fourth: The service provider is required to announce the commodity's essential qualities and data

The service provider is required to provide the consumer with information about the commodity being purchased in e-trading contracts, as every trader is expected to take the customer from a state of not having enough about the product to a state of knowing the essential quality of products or service being advertised. Therefore, informing the consumer about the characteristics of the commodity is the primary motivator for him to contract.²³ That is, the service provider shall inform the customer about the product or service he intends to purchase, and if this is critical for traditional consumers, it is even more critical for online consumers. The consumer does not see the product he wants to buy on the ground in this form of contract. Rather, photos of the product may be available on the site, but they may not be accurate representations of it. Thus, it is important to be informed on the product's qualities before to signing a contract.²⁴

The Saudi regulator clarified this point in Article (7), item (C) of the E-trading Law, and the Executive Regulations of this Law verified it in Article (7), which is entitled with the details of the contract's terms with its completion and conditions.²⁵ As for Qatari legislation, Article (55) of the Qatari E-trading Law expressly states this obligation.²⁶

The second section: The service provider's obligation to deliver the sold items in e-trading contracts in the Saudi and the Qatari laws

Even if this liability is not stated in the electronic sale contract, the service

²²Luqman, W. (2020). p. 365. (previous reference).

²³ Abdel-Baqi, O. M. (2008). Nodal protection for the consumer. Dar Manshaat Al-Maaref. Alexandria, Egypt, 2nd ed.

²⁴ Khaled, K. S. A. (2012). Electronic Consumer Protection. New University House, Alexandria, 1, p. 370.

²⁵ The basic characteristics of the services or products for which the contract will be executed are stated in paragraph (C) of the article.

²⁶ According to this article, "If the electronic communication relates to a request to conclude a commercial contract, and before the application is submitted, the service provider should provide the consumer with the terms and conditions of the contract, including: 3- A description of the basic characteristics of the services or goods...".

provider's obligation to deliver the sale is one of the most critical elements of the electronic sale contract. Therefore, the seller's delivery of the sold item is described as "a method conducted by the seller to place the sold item at the buyer's control in such a way that allows him to complete all procedures without impediments while informing him of this."²⁷ In the case of an electronic sales contract, there is ethical delivery in addition to this direct and judgmental delivery, i.e., the delivery of things over the Internet by downloading them to the buyer's device. Hence, the consumer has a legal right to get a similar product from the seller.²⁸

E-trading contracts leave the sale at the contracting party's disposal, allowing him to hold and use it without restriction, even if he does not get it actually, as long as the seller has told him that he is ready to provide it.²⁹

Furthermore, the items sold may be intangible. That is, they do not have a physical reality, such as computer programs, databases, and so on. The delivery will take place on physical devices such as flash memory, CDs, hard disks, and other electronic data transfer devices.³⁰ In the following, the researcher shall read the Saudi and the Qatari laws regarding the provision of the service provider's obligation to deliver the sale to the electronic consumer.

The Saudi legislator has expressly stipulated this requirement in relation to the service provider. It stated that: 1- If the service provider delays delivery by more than (fifteen) days from the date of contract conclusion or the agreed-upon date, the consumer has the right to terminate the contract unless the service provider and the consumer agree on another period for delivery or implementation of the contract. Unless the delay was caused by an emergency, he may be able to recover the amount he paid under the contract in return for products or service, as well as any other expenses caused as a result of the delay. 2. Without prejudice to item (1) of this article, the service provider is required to inform the customer of any anticipated delays or issues that have a major influence on the delivery or implementation of the contract's subject matter.³¹

The Qatari legislator, on the other hand, adopts the same ruling as the Saudi legislator does regarding the consumer's ability to terminate an e-trading contract if the service provider fails to deliver it on time. This is in compliance with Qatar's

27Badr, O. A. (2014). *Buyer's Guarantees in the Electronic Sale Contract, A Comparative Study*. New University House in Alexandria, Egypt, 1st ed., p. 58.

28Al-Amin, A. M. I. (2021). *Regulations of the Electronic Sale Contract, for Political and Legal Studies*. Research Published in *Al-Qalzam Journal International Scientific Court*, (3rdIssue), p. 149.

29Issa, S. H. I. (2020). *Legal provisions for e-commerce contracts, a comparative study*, Publisher Dar Al-Nahda Al-Arabiya, Cairo, 4th edition, p. 209.

30 Article (14) of the Saudi E-Commerce Law.

31 According to this article, "unless the service provider and the consumer agree on another period for delivery or implementation of the contract, the consumer may break the contract with the service provider if there is a delay in delivery or execution of the contract for a period of more than (30) days, and recover any amounts paid under the contract for the products, goods, services, or other contract obligations affected by such delay." The Consumer is not bound to pay for or return any products, goods, or services that he or she did not request, including any products or merchandise delivered in default by the Service Provider. The service provider is obligated to inform the customer of any delays or other issues that have a major influence on the contract's execution.

E-trading Law, Article 58. 32.

The consequences of the service provider's failure to deliver the sale to the customer in e-trading contract are as follows:

The service provider shall deliver the sold item at the agreed-upon time, and under general legal liability standards. Moreover, the service provider is liable for breaching his contractual commitments if he is responsible about that. As a result, he will be required to compensate those who have suffered losses as a result of the breach.³³ Moreover, when looking at the Saudi law concerning the service provider's liability to deliver the sale to the consumer, it becomes obvious that the Saudi legislator gave the consumer the right to terminate the contract concluded with the service provider under the e-trading law, as stipulated in Article (14), if the service provider delayed the delivery of upon- agree sale for more than 15 days from the date of the contract's conclusion. In addition to his right to recover the amount he paid under this contract in exchange for the product or service, or other costs incurred as a result of the delay, the consumer has the right to be compensated for any damages he may have suffered as a result of the service provider's delay in delivery.

The Qatari legislator, on the other hand, agrees with the Saudi legislator in this regard. But it gives a shorter period. Article (58) of the Qatari E-trading Law stipulates that the consumer has the right to terminate the contract concluded between him and the service provider if delivery is delayed for more than 30 days, rather than 15 days as stated by Saudi regulatory authority.

It should also be noted that the Saudi legislator and the Qatari legislator have agreed on the right of the consumer in e- commerce contracts to retrieve any payment made under the contract concluded between him and the service provider, as well as the consumer's right to be compensated for any damages he may have suffered the consequences of the delivery delay.

The third section: The service provider is obligated to guarantee defects in e-trading contracts in the Saudi and the Qatari legislations

The basic goal of an electronic sale contract is for the buyer to benefit from the sale he has bought, and in order to do this, the seller is required to supply a useable product. Consequently, the seller is liable for any defects in the sale that produce a defect in the benefit of the product.³⁴ The hidden defect is something that is not easily visible and cannot be detected by a normal examination conducted by each buyer; otherwise, the seller is liable for the defect.³⁵ To guarantee the service provider's liability to the consumer in terms of guaranteeing the hidden

32Samia, L. (2019). Review of Legal guarantees for the buyer in the electronic sales contract. A

Thesis Submitted to Obtain a Doctorate in Law, Mohamed Khedira University of Biskra, Algeria, p. 88.

33 Al-Amin, A. (2021). Regulations of the Electronic Sale Contract, for Political and Legal Studies. Previous reference, p. 150

34Issa, S. H. I. (2020). p. 221 (previous reference).

35Hijazy, A.-F. B. (2019). p. 90 (previous reference).

defect in e-trading contracts, these defects should have an impact on the use of the product by reducing the possibility of profiting from it. Similarly, the problem should be old and before the delivery. That is, the defect shall be there at the time of arrival of the products, and it should also be hidden and difficult to detect, needing the services of an expert.³⁶

Consequently, creating the guarantee requirements in e-trading contracts has the following goals: to ensure equitable contractual relationship, and because the contract is the law of the contracting parties, the seller and buyer are obligated to carry out the contract in accordance with its terms and in a way that is compatible with the principle of good faith.³⁷

In e-trading contracts, the implications of a hidden defect in the sale are as follows: If a customer preceding a warranty claim, the service provider is responsible for compensating the customer for any hidden defects discovered after the sale.³⁸ In the case that a lawsuit is filed to terminate the contract, if a defect shows, the buyer has the right to return the cost of the item, not the value of the item sold, and to seek compensation if possible. Thus, understanding the proportion of the defect is one of the objective problems that a judge should evaluate. In this respect, the assistance of an expert is required to determine whether or not the problem is serious.

The researcher found no explicit provision covering the service provider's liability and obligation to ensure hidden defects in e-trading contracts after reviewing the Saudi E-trading Law and the Qatari E-trading Law. This does not, however, eliminate the service provider's duty to the consumer in case of hidden defects in the goods delivered to him. This is in accordance with the general laws of civil liability, which require the seller to ensure the item supplied is free of hidden defects.

The third topic: The Role of Civil Liability of E-Trading Service Providers and Its Implications

Civil liability emerges when a detrimental conduct occurs in order to ensure the compensation of the aggrieved party, and civil liability comprises the consumer's right to seek compensation for losses caused as a result of the service provider's liability.

In this section, the researcher will discuss the elements of civil liability of the service provider in e-trading as well as the implication of developing civil liability of the service provider.

The first section: Elements of the service provider's civil

³⁶Samia, L., p. 153 (previous reference).

³⁷Samia, L., p. 169 (previous reference).

³⁸Khalifa, M. S. (2015). Problems of Electronic Sales Contracts. House of Legal Thought, Cairo, 1st Edition, p. 58.

liability in e-trading in the Saudi and the Qatari laws

First: Service Provider Error

The error is among the elements that control civil liability in general and service provider liability in particular. Moreover, the error can be described as a breach of a legal liability, whether it is an obligation or a general liability, that results in tortious liability.³⁹ Besides, the online tortious error is defined as harmful act conducted electronically on the internet.⁴⁰ In this respect, the contractual error causing compensation and the creation of the service provider's civil liability is in the service provider's non-compliance with the consumer's agreement, whether the error occurred intentionally or accidentally.⁴¹

The consumer bears the burden of proving the service provider's evidence of error; however, actually, both parties attempt to exchange evidence that supports each other's claims, and both try to prove or reject the contractual error, and the final result is influenced by the level of damage suffered by the consumer for which compensation is sought.⁴²

Second: The Harm or Damage

Damage is an essential concept of civil liability. It is not a civil liability if there is no harm. Moreover, it is one of the elements of the service provider's civil liability. That is, it refers to harm to the consumer, whether mentally or financially, for which the consumer is entitled to compensation as a result of the service provider's inability to fully or partially implement his obligation, or its defective execution, or his delay in execution. ⁴³

Electronic damage is considered one of the modern types, which means: "the damage that occurs to computer parts or any of its programs and electronic data, as well as any of the websites on the Internet"⁴⁴. The following are the damages that shall be compensated: it shall be direct, predictable, and observable. However, if the future is predicted, it is necessary to compensate for it rather than wait for it to occur, and if it is possible, it is not appropriate to seek recompense directly⁴⁵. The liability of proving that the damage was caused by the service provider falls on the affected consumer, regardless of whether the damage was directly caused to him or caused by harm to others. This is in accordance with the rule which states that the plaintiff is charged with proving what he claims, and that includes using all

39 Al-Shami, M. H. (2009). *The Corner of Error in Civil Liability (a comparative study)*. Dar Al-Nahda Al-Arabiya, Cairo, 2nd Edition, p. 299.

40 Al-Masry, S. H. (2016). *Tortious liability arising from the use of the Internet, a comparative study*. Ph.D. Thesis, Ain Shams Law, p. 32.

41 Al-Khalayleh, A. R. (2011). *Electronic tort liability due to misuse of computers and the Internet, a comparative study*. House of Culture for Publishing and Distribution, Amman, Jordan, (1), p. 228.

42 Al-Masry, S. H. (2016) [previous reference,]. p. 45.

43 Mamoun, A. R. (2009). *Contractual Liability for the Action of Others*. Dar Al-Nahda Al-Arabiya, Cairo, (3rd Edition), p. 149.

44 Al-Khalayleh, A. R. (n.d.). [Review of Electronic tort liability, previous reference,]. pg. 246.

45 Kandil, S. S. (2014). *Contractual liability in the field of informatics - the problematic of guaranteeing hidden defects and guaranteeing non-conformity*. " New University House, Alexandria, 1st edition, p. 25.

means of proof.⁴⁶

Third: Causal Relationship

Unless there is a relationship between the damage and the error, civil liability does not emerge. The causal relationship is described as "the direct relationship between the responsible party's error and the damage caused to the other party."⁴⁷ Consequently, the occurrence of an error and damage is insufficient to guarantee civil liability. Rather, the error shall be the source of the damage. i.e., if there is a causal relationship between the error and the harm, there may be a defect on the part of the debtor and damage to the creditor without the error being the source of the damage.⁴⁸

To apply the service provider's legal liability in e-trading contracts, the customer shall suffer damage as a natural and direct outcome of the service provider's failure to fulfill or breach his contractual obligations. Hence, if there is no causal relationship between the service provider's error and the contractual damage, the service provider's civil liability is not imposed, and if the damage is caused by an external cause other than the service provider, the causative relationship is also not proven.

The second section: The implications of the service provider's liability in e-trading in the Saudi and the Qatari legislations

If the components of civil liability of the service provider are available based on what has previously been described above, the consumer has the right to seek compensation for the damages he has suffered as a result of the service provider's error. The compensation sought by the consumer as a result of the service provider's error is deemed compensation for the resulting damage. The following are the details of the affected person's compensation claim:

First: Restitution

Restitution is described as "The judgment to reinstate the original stance that it was in before the person responsible committed the error that led to the occurrence of the damage,"⁴⁹ In this sense, restitution is the appropriate way to compensate since it returns the aggrieved party to the state it was in before the occurrence of the damage, i.e., it is based on removing the damage and its

46Al-Masry, S. H. (2016). [previous reference]. p. 57.

47 Al-Khalayleh, A. R. (2011). Electronic tort liability due to misuse of computers and the Internet, a comparative study. p. 251.(previous reference)

48 Al-Sanhoury, A. R. (1968). The Mediator in Explaining Civil Law. House of Revival of Arab Heritage, Beirut, Lebanon, (Volume One), p. 688.

49 Al-Amiri, S. (2008). Compensation for Damage in Tort Liability, Legal Research Center, Baghdad, p. 149.

effects.⁵⁰ Accordingly, restitution based on the service provider's civil liability is intended to return the situation to the state it was in before the service provider's error which caused the consumer harm, whether it was financial or ethical, as if it had never happened.⁵¹

Despite the necessity of restitution, it is complicated to implement, if not impossible, in some circumstances. In-kind reimbursement may not be sufficient to compensate for the affected person's moral harm. If in-kind compensation is sufficient to compensate for financial harm, it is insufficient to compensate for moral damage, which is impossible to hide and remove.⁵²

Second: Compensation in Return

It is meant to repair the damage with a financial compensation, and reimbursement may be non-financial. The researcher will discuss the many types of compensation in return as follows:

First: non-monetary compensation

It is the judgment to do something as compensation to satisfy the aggrieved party as soon as he believes that he has got his right.⁵³ This is not a monetary compensation, which requires the actor of the damaging to pay an amount of money to the affected party, nor is it in kind compensation, which includes of returning the situation to the way it was before the harm. Instead, this kind of compensation is characterized by the most suitable form of compensation, which frequently takes into account the affected person's circumstances and interests.⁵⁴ Concerning the service provider's civil liability in e-trading, the aggrieved consumer has the right to seek non-monetary compensation if he believes it will be more acceptable to him than monetary compensation. In another word it is the judgment on a specific thing as compensation. This sort of compensation is considered the intermediate way between in-kind compensation and monetary compensation. The judgment condemning the person responsible for the damage should be publicized in the press as this sort of compensation is regarded as non-monetary recompense to the consumer.

Second: Monetary compensation

Monetary compensation is described as "an amount of money paid to the

50 Al-Hasnawi, H. (1999). Review of Judicial Compensation within the Scope of Contractual Liability. House of Culture for Publishing and Distribution, Amman, p. 81.

51 Al-Auji, M. (2009). Civil Law (Civil Liability) Part Two. Al-Halabi Human Rights Publications, Beirut, Lebanon, 4th ed., p. 287.

52 Al-Kalabi, H. A. i. (2005). The damage resulted from the use of the computer within tort (a comparative study. PhD Thesis, College of Law, University of Baghdad, p. 70.

53 Al-Amiri, S. (2008). Compensation for Damage in Tortious Liability. Legal Research Center, Baghdad, p. 156. (previous reference).

54 Al-Amiri, S. (2008). Compensation for Damage in Tortious Liability. Legal Research Center, Baghdad, p. 153. (previous reference).

aggrieved party to repair the harm he has incurred. It is the most prevalent sort of compensation, and it is intended to compensate the damaged party for the harm he or she has suffered."⁵⁵ Thus, the researcher can infer that the civil service provider's obligation in e-trading has some distinctive characteristics that set it apart from other liabilities, and this is what needs to be addressed in terms of its impact. Hence, monetary compensation is considered the most successful way to guarantee and compensate the damage caused by the service provider to the consumer, due to the impossibility of in-kind compensation.

Conclusion

The researcher has conducted a comparative analysis of the Saudi law and the Qatari law in terms of service provider's civil liability of electronic trading. Moreover, the legal provisions relevant to the subject of the study have been analyzed. Below are the most important findings and recommendations.

Findings

1. The service provider is a natural or legal person who engages in e-trading business for his or her personal gain or the benefit of others via his website with the aim of offering and buying to all consumers using various electronic media.
2. The service providers' work in the field of e-trading stems from their nature as people who engage in commercial work for the purpose of profit, and that the element through which they can define their work as traders is professionalism and the habit of providing this type of service, as well as the profit element that encourage them to engage in this type of trade.
3. The service provider is responsible for informing the consumer of the contract's terms as well as its elements, particularly the crucial conditions that may influence the consumer's decision to contract with him.
4. The obligation of the service provider to inform at the pre-contracting stage refers to ensuring transaction honesty and integrity because it is one of the fraud tactics that leads to the customer's satisfaction. It is an obligation not to deceive one of the contracting parties to the other and not to conceal the truth from the customer.
5. The service provider is required to provide the consumer with information about the commodity being purchased in e-trading contracts in which every trader is expected to take the customer from a state of not having enough about the product to a state of knowing the essential quality of products or service being advertised. Thus, informing the consumer about the characteristics of the commodity is the primary motivator for him to contract.
6. The service provider shall deliver the sold item at the agreed-upon time. Moreover, under general legal liability standards, the service provider is liable for

⁵⁵ Al-Auji, M. (2009). *Civil Law (Civil Liability) Part Two*. Al-Halabi Human Rights Publications, Beirut, Lebanon, 4th ed., p. 296.

breaching his contractual commitments if he is responsible about that.

7. The Saudi regulator and the Qatari legislator have given the consumer the right to terminate the contract unless the service provider and the consumer agree on another period for delivery or implementation of the contract. Unless the delay was caused by an emergency, he may be able to recover the amount he paid under the contract in return for products or service, as well as any other expenses caused as a result of the delay.

8. In case of a hidden defect in the commodity being sold, one of the civil service provider's liabilities is to compensate the consumer. In this instance, the buyer has the right to recompense for hidden defects that surface in the sale under any circumstances, according to the general principles governing commercial sales, whether the defect was substantial, or the service provider was aware of it.

9. In case that the service provider fails to comply with what was agreed upon with the consumer, the contractual error mandating compensation and the establishment of the service provider's civil obligation is executed.

10. To apply the service provider's legal liability in e-trading contracts, the customer should suffer damage as a natural and direct outcome of the service provider's failure to fulfill or breach his contractual obligations. Hence, if there is no causal relationship between the service provider's error and the contractual damage, the service provider's civil liability is not imposed, and if the damage is caused by an external cause other than the service provider, the causative relationship is also not proven.

11. The civil service provider's obligation in e-trading has some distinctive characteristics that set it apart from other liabilities, and this needs to be addressed in terms of its impact. Hence, monetary compensation is considered the most successful way to guarantee and compensate the damage caused by the service provider to the consumer due to the fact that sometimes in-kind compensation is impossible.

Recommendations

1. At the initial phase of the Kingdom's application of specialized judiciary, it is recommended that the Saudi legislator establish specialized judicial departments to investigate electronic commerce contract disputes, particularly civil ones involving claims for damages to consumers as a result of service providers' breach of contractual obligations. Given the challenges surrounding e-commerce conflicts in practice, such issues shall be resolved immediately. This is done in accordance with e-commerce contracts that necessitate quick termination of their obligations.

2. In the case of e-commerce contract disputes, particularly those involving compensation, the researcher recommends that the Kingdom's competent judicial authorities consider requiring service providers to pay compensation in cash and non-monetary forms if they commit any contractual error. This is because compensation in kind is not possible in most cases.

3. The researcher recommends that experts and those in the power of trade

and commerce in the Kingdom work develop the infrastructure and appropriate environment for the development of e-commerce in the Kingdom, by identifying protection systems capable of providing complete confidence in the exchange of commercial activity and enhancing the e-commerce contracts between the service provider and the consumer, along with working on technological means to ensure the reliability of e-commerce. This will result in an increase in e-commerce activity in the Kingdom. They should also take into account an essential element of national income, which is in line with the Kingdom's future vision 2030 and its role to attract foreign investment.

4. The researcher suggests increasing legal awareness of the service provider's position and functions in e-commerce contracts, as well as clarifying their obligations, duties, and civil liabilities in such contracts among e of the consumer.

5. The researcher recommends encouraging consumer protection organizations in the Kingdom by giving them the authority to educate consumers about electronic commerce contracts and the ability to take legal action on behalf of consumers' interests and rights in order to deal with service providers in e-commerce contracts in the case of service provider error.

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