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**THE IRAQI CONSUMER PROTECTION IN INTERNATIONAL
ELECTRONIC CONTRACTS: ISSUES ON JURISDICTIONS
AND APPLICABLE LAW**



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Universiti Utara Malaysia

**DOCTOR OF PHILOSOPHY
UNIVERSITI UTARA MALAYSIA
2018**

**THE IRAQI CONSUMER PROTECTION IN INTERNATIONAL
ELECTRONIC CONTRACTS: ISSUES ON JURISDICTIONS
AND APPLICABLE LAW**



**A Thesis Submitted to the Ghazali Shafie Graduate School of Government in
fulfillment of the requirements for the Doctor of Philosophy
Universiti Utara Malaysia**



Kolej Undang-Undang, Kerajaan dan Pengajian Antarabangsa
(College of Law, Government and International Studies)
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(Title of the Thesis) : THE IRAQI CONSUMER PROTECTION IN INTERNATIONAL
ELECTRONIC CONTRACTS: ISSUES ON JURISDICTION AND
APPLICABLE LAW

Program Pengajian : Ph.D
(Programme of Study)

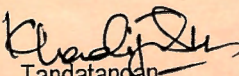
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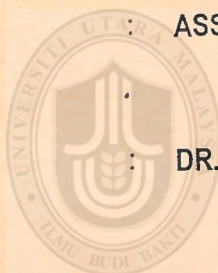
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ABSTRACT

The Iraqi Civil Law (ICL) No. 40 of 1951 generally deals with all issues concerning conventional contracts in Iraq. The ICL, however, does not cover important aspects of international electronic contracts particularly concerning jurisdictional issues and applicable law. This study examined the rights provided by the international law to consumers who deal with international electronic contracts on issues concerning jurisdiction and applicable law and compared the laws in Iraq to those in the European Union (EU). The objectives include to find solutions to the current problems in Iraq and to propose recommendations for improvement in this area of law. This study adopted the doctrinal approach in assessing the law which was corroborated by interviews with key figures specialized in the field of private international law in Iraq. Analytical, historical, comparative and thematic methods were employed in analyzing the data for this study. The study found that the current Iraqi legal framework does not provide appropriate protection to consumers who involve in international electronic contracts. This study recommends the Iraqi government to adopt a comprehensive legal framework as taken by the EU to address the issues of consumer protection in international electronic contracts as to guarantee better protection for consumers in this field. As such, amendment to the existing law is necessary including modifications to the ICL, Iraqi Electronic Signature and Transactions Act, and Iraqi Consumer Protection Law, so that Iraqi consumers will be equipped with appropriate legal protection when they carry out international transactions electronically.

Keywords: International Electronic Contract, Consumer Protection, Jurisdictional, Applicable Law, Iraq.



ABSTRAK

Undang-undang Sivil Iraq (ICL) No. 40 tahun 1951 secara amnya memperuntukkan semua perkara mengenai kontrak konvensional di Iraq. Walau bagaimanapun, ICL tidak merangkumi aspek-aspek penting dalam kontrak elektronik antarabangsa terutamanya mengenai isu berkaitan bidang kuasa dan undang-undang yang terpakai. Kajian ini meneliti hak yang diberikan oleh undang-undang antarabangsa kepada pengguna yang berurusan dengan kontrak elektronik antarabangsa dengan menangani masalah dan isu perundangan tentang bidang kuasa dan undang-undang yang terpakai serta membandingkan undang-undang di Iraq dengan undang-undang di Kesatuan Eropah (EU). Objektifnya adalah untuk mencari penyelesaian kepada masalah semasa di Iraq dan mencadangkan penambahbaikan yang bersesuaian. Kajian ini menggunakan pendekatan doktrin dalam mengkaji undang-undang serta disokong oleh temubual dengan tokoh penting dalam bidang undang-undang privasi antarabangsa di Iraq. Kaedah analitik, sejarah, perbandingan dan tematik digunakan dalam menganalisis data untuk kajian ini. Kajian ini mendapati bahawa rangka kerja undang-undang semasa Iraq tidak memberi perlindungan yang sesuai kepada pengguna yang terlibat dalam kontrak elektronik antarabangsa. Kajian ini mencadangkan agar kerajaan Iraq mengambil pendekatan yang diambil oleh EU dengan membina rangka kerja undang-undang komprehensif dalam menangani isu perlindungan pengguna terhadap kontrak elektronik antarabangsa yang menjamin perlindungan yang lebih baik kepada pengguna. Oleh itu, pindaan kepada undang-undang yang sedia ada perlu dibuat termasuklah pengubahsuaian kepada Undang-undang Sivil Iraq, Akta Elektronik dan Transaksi Elektronik Iraq dan Undang-Undang Perlindungan Pengguna Iraq supaya pengguna dilengkapi dengan perlindungan undang-undang yang sesuai apabila melakukan transaksi antarabangsa secara elektronik.

Kata-kunci: Kontrak Elektronik Antarabangsa, Perlindungan Pengguna, Bidang Kuasa, Undang-undang Yang Terpakai, Iraq.

ACKNOWLEDGEMENT

All praise be to Allah the Lord of the Heavens and the Earth for making this academic journey possible right from the very beginning up to the end. I wish to register my sincere appreciation to my supervisors Dr. Zainal Amin bin Ayub and Dr. Khadijah binti Mohamed for their patience, understanding and encouragement throughout the PhD journey. I ask Allah (SWT) to enrich their knowledge and wisdom.

I am particularly grateful to the government of Iraq for the sponsorship and all the supports I received. I pray to Allah to restore peace and prosperity to the country. Special thanks must be made to the Cultural Attache of the Embassy of the Republic of Iraq, Kuala Lumpur, Malaysia for always being there for me throughout my stay.

My family deserves to be appreciated: special mention of my late father, May Allah forgive his shortcomings; my mother whom I wish to thank for the guidance, upbringing and the overall moral and spiritual support; my brother and sisters.; and my darling wife, Zhean, my sons, Blend, and Bahand, and my daughter Dedan, who deserve the honour for their understanding and coping with my prolonged absence from home in the course of this program, and enduring my alienation from the country and the family.

Finally, I wish to dedicate this work to all who have sacrificed for my country

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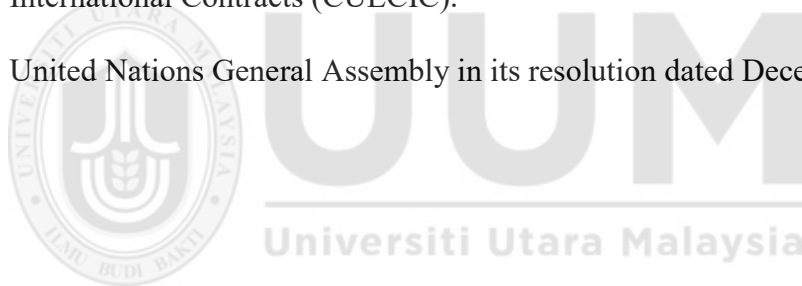
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LIST OF ABBREVIATIONS

BIR	Brussels 1 Regulation
BC	Brussels Convention
CUECIC	United Nations Convention on the Use of Electronic Communication in International Contracts
CIDIP	Organisation of American States and the Inter-American Specialised Conference on Private International Law
EEC	European Economic Community
ECJ	European Court of Justice
EU	European Union
ICL	Iraqi Civil Law
ICPL	Iraqi Consumer Protection Law
ICPR	Iraqi Civil Procedure Rules
IESTA	Iraqi Electronic Signature and Transactions Act
OECD	Organization for Economic Co-operation and Development
RIR	Rome1 Regulation
RC	Rome Convention
UCITA	Uniform Computer Information Transactions Act
UK	United Kingdom
WWW	World Wide Web

CHAPTER ONE

INTRODUCTION

1.1 Background of the Study

Traditional contracts in any commercial activities are based on offer and acceptance which bound the process of contracting and thus, vendors have to oblige. For example, to deliver sales physically, buyers have to pay the price whether directly in cash or by using any other alternative means through commercial securities.¹

The rules governing the organization of commercial activity have evolved to keep up with the requirements of trade regulation from time to time. The legal rules governing commercial activities and contracts have been able to simulate the evolving and changing reality in the world of commerce and especially with the rapid use of the internet and its related technology.²

¹ Mamdouh Hafez, *Private International Law According to the Iraqi and Comparative Law* (Baghdad: Freedom House Printing, 1993), 121.

² Jaafar Al-Fadhli and Hala Al Galilee, "Civil Protection from Harmful Advertising," *Rafidain Magazine - Faculty of Law, University of Mosul* no. 19 (2003): 56.

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APPENDIX 1: INTERVIEW PROTOCOL

INTERVIEW PROTOCOL

On

**The Iraqi Consumer Protection in International Electronic Contracts: Issues on
Jurisdictions and Applicable law**

By

**Zana Ismael Aziz
(PhD Candidate)**

PART 1- DEMOGRAPHIC INFORMATION

1. Name :
2. Occupation:
3. Years of service:
4. Gender:
5. Age:
6. Position:
7. Highest academic qualification:
8. Date of interview:
9. place of the interview:



APPENDIX 2- INTERVIEW QUESTIONS

This section includes questions about the research topic addressed to the respondents and their answers will be used in the study:

First part:

1. From your experience as a judge / lawyer / professor / consumer. If there is a lawsuit regarding an international electronic contract between the Iraqi consumer and a person outside of Iraq any court has the right to consider in this case?
2. From your experience as a judge / lawyer / professor / consumer. Is jurisdiction which is applied to contracts under current Iraqi laws still able to be applied on for international electronic consumer protection contracts? Why?
3. From your experience as a judge / lawyer / Member of Parliament / consumer protection organizations / consumer. Are international electronic contracts requiring special legislation to a statement of jurisdiction to ensure Iraqi consumer protection?
4. From your experience as a judge / lawyer / Member of Parliament / consumer organizations / consumer. Is jurisdiction in current Iraqi legislation sufficient to protect Iraqi consumer in international electronic contracts?

Second part:

1. From your experience as a judge / lawyer / professor. What is the appropriate jurisdiction for application to international electronic contracts in Iraq that provide adequate protection for the Iraqi consumer?
2. From your experience as a Member of Parliament / consumer / consumer protection organizations. Are there attempts to protect the Iraqi consumer regarding the international electronic contracts in terms of jurisdiction so that they have the right to choose a competent court?

Third part:

- 1- From your experience as a judge / lawyer / professor. What is the law applicable to international electronic contracts if there is a lawsuit between the Iraqi consumer and a person outside of Iraq?

- 2- From your experience as a judge / lawyer / professor / consumer / consumer/ protection organization. Is still the applicable law to international electronic contracts under Iraqi laws appropriate or (adequate) in terms of Iraqi consumer protection?
- 3- From your experience as a judge / lawyer / university professor / consumer. What extent is there the freedom of parties to choose the applicable law to international electronic contracts in Iraq?
- 4- From your experience / consumer / civil society organizations / Member of Parliament. Dose the freedom to choose the applicable law by the parties to give adequate protection to the Iraqi consumer in international electronic contracts?
- 5- From your experience / consumer / civil society organizations / Member of Parliament / professor. Are there any attempts to protect the consumer in international electronic contracts in terms of the law applicable to international electronic contracts?

Four Parts:

- 1- From your experience as a Member of Parliament / university professor / consumer / consumer protection organizations. Is it possible to conclude an international agreement with other countries or to join international agreements regarding the Iraqi consumer protection in terms of jurisdiction and applicable law?
- 2- From your experience as a judge / lawyer / Member of Parliament / professor / consumer / consumer protection organizations. Choose the competent court by the consumer in the international electronic contracts can give adequate protection to the Iraqi consumer, as provided for in the Brussels 1 Legislation 2001 applied in the European Union?
- 3- From your experience as a judge / lawyer / consumer / Member of Parliament / consumer protection organizations. Is the application of consumer domicile law give the adequate protection for the consumer as provided in the Rome1 Legislation 2008 applied in the European Union?
- 4- From your experience as a Member of Parliament / consumer protection organizations / professor. Are there any international agreements between Arab countries along the lines of the European Union which gives adequate protection to the consumer in international electronic contracts?

APPENDIX 3: INFORMED CONSENT FORM

INFORMED CONSENT FORM

Dear participant

My name is **Zana Ismael Aziz**; I am a PhD candidate at the University Utara Malaysia.

You are invited to participate in this research study which aims at studying The Iraqi Consumer Protection in International Electronic Contracts: Issues Jurisdictions and Applicable law. The following points will highlight the role of the participant and other important issues;

1. You will be kindly asked to participate in an interview with the researcher. Your participation in this study is absolutely voluntary. At the interview you (i.e. the participant) will have the freedom to express your opinions, prior experiences and perceptions regarding the changing concept of sovereignty.
2. The participant has the right to withdraw from the study at any time without worrying about any penalties or consequences.
3. The interview location and timing will be decided by the participant to assure his/her convenience. The interview will last for approximately one to two hours.
4. The participant's identity will be kept confidential, will not be disclosed to any third party and will not be mentioned within the study's body or the final report. A coding procedure will be used to replace the participant's name in order to ensure his/her identity confidentiality. However, the results of the study can be published but without declaring the names of the participants.

5. The interview will be digitally recorded in order to be transcribed later for the purpose of analysis and information extraction. The interview material will be stored securely for a period of two years, after that it will be destroyed.
6. After clarifying all the important points regarding this study and the participants' role and rights, if you have any further inquiries you may contact the researcher on the following contact information; the researcher's e-mail (zana.dezai@yahoo.com) and mobile No. (0060184066810, 009647701314391).

Thanks for your participation, your time and efforts are truly appreciated.

Name of Expert

Scientific Title.....

Place of Job.....

.....

Current Position

.....



CONTACT INFORMATION

Frequently Used E-Mail.....

Official E-Mail (if any).....

Phone No.

Signature of the interviewee -----, Date-----

RESEARCHER INFORMATION

PhD Candidate (Zana Ismael Aziz) Studying at University Utara Malaysia, College of Law, Government and International Studies (COLGIS).

Place of Job: Kirkuk University, College of Law and Political Science -Iraq

Phone No: 0060184066810 of Malaysia, 0096477013214391 of Iraq.

E-Mail: zana.dezai@yahoo.com

APPENDIX 4: THE IRAQI CONSUMER PROTECTION LAW No.

1 of 2010

Consumer Protection Law No. 1 of 2010

Chapter One

Definitions, objectives and scope of application

Article 1

Definitions

For the purposes of this Law, the following terms shall have the following meanings:

1. **Council:** Consumer Protection Council.
2. **Goods:** Any industrial, agricultural, processed semi-manufactured, raw material or any other product that can be calculated by numerical manner, or estimated by weight or measurement to be prepared for consumption purposes.
3. **Service:** Any work or activity offered by any entity with or without a monetary consideration seeking the benefit therefrom.
4. **Consumer Protection:** Maintaining consumers' rights and preventing detriment.
5. **Consumer:** Any natural or legal person, provided by a good or service for the purpose of gaining benefit therefrom.
6. **Supplier:** Any natural or legal person, who produces, imports, exports, distributes, sells goods or provides service, and whether he is the principal, broker or agent.
7. **Advertiser:** Any natural or legal person, who advertises or promotes a good or service by himself or by others using any means of advertisement.
8. **Inspection Committees:** Committees established by the Council and destined to censor the implementation of the provisions of this Act.

Article 2

Objectives

This law aims to:

1. Ensuring and protecting the basic rights of consumer against illegal practices that cause detriment.
2. Raising consumer awareness.

3. Preventing any action that violates the rules pertinent to importing, producing or marketing goods and diminishing their benefits or even misleading consumers.

Article 3

This law shall apply to all natural and legal persons who manufacture, process, sell, purchase, market, import, provide or advertise services.

Chapter II

Consumer Protection Council

Article 4

First: A so-called “Consumer Protection Council” shall be established, provided with a legal personality and financial and administrative independence. The abovementioned council shall be linked to the Ministers Cabinet.

Second: The Council shall be headed by a full-time person with experience and competence in the matters related to consumer protection, and qualified at least with a bachelor’s degree (University degree), as a Degree of Undersecretary.

The Council shall consist of:

A- Members of the rank of General Manager representing the following entities:

1- Ministry of Industry and Minerals.

2- Ministry of Commerce.

3- Ministry of Health.

4- Ministry of Agriculture.

5. Ministry of Communications.

B - Members of the rank of expert representing the following bodies:

1- Ministry of Environment.

2- The General Directorate of Customs.

3- The General Authority for Tourism.

4- The Central Machinery for Standardization and Quality Control.

C- A representative of the following bodies:

1- Federation of Iraqi Industries.

2- Federation of Iraqi Chambers of Commerce.

3- An agricultural association.

D- Three members representing the private sector.

Third: The Prime Minister shall determine the financial reward for each of the representatives mentioned in paragraphs (c) and (d) above.

Fourth: The President of the Ministers Cabinet shall, upon a proposal by the President of the Council, appoint the persons representing the entities mentioned in paragraphs (c) and (d) and add a representative of the consumer protection associations.

Article 5

The Council shall carry out the following functions:

First: To develop policies and action steps to protect, regulate the consumer and his rights.

Second: Raising consumer awareness.

Third: Receiving and investigating complaints and taking appropriate decisions and recommendations in this regard.

Fourth: Warning violators to remove such a violation within seven (7) days from the date of warning, otherwise the case shall be preceded by the end of that date. To release such warning the Council is predicated on the reports of the inspection committees.

Fifth: Studying and making observations regarding the drafts of laws related to consumption and consumer, carrying out studies and researches, and building a database on consumer protection.

Sixth: Defining the functions, competencies and objectives of consumer protection associations to use them in awareness campaigns pertinent to consumer rights.

Seventh: The Council may seek the assistance of experienced and competent officials of the State or otherwise, whether natural or legal, in return for remuneration or wages determined by the Council.

Eighth: The Council may establish its own inspection committees headquartered in Baghdad with branches in the Iraqi governorates. The committees consist of members specialized regarding to consumer protection.

Ninth: A special budget shall be dedicated to the Council branched from the public state budget.

B- Inspection committees shall carry out the following tasks:

- 1- Reviewing the specifications of the goods and monitoring the compliance of the storing conditions in stores and places of supply, during or after the official working hours. In this regard, any supplier and advertiser shall show full cooperation.
- 2- Informing the competent authorities of the damaged goods that do not meet the requirements of health safety and preceding their procedures in coordination with the competent ministries.
3. Reporting irregularities to the Council.

Chapter III

Consumer Rights

Article 6

First: The consumer has the right to obtain the following:

- A. All information relating to the protection of his legitimate rights and interests;
- B. Complete information on the specifications of the goods, identification of the proper methods of use, or how to receive the service in the official form and language.
- C. Proof of purchase of any commodity or receipt of any service indicating the value, date, specifications, quantity, quality and price of the commodity.
- D. Guarantees for goods that its nature requires such a guarantee and the period agreed upon with the supplier, without incurring additional expenses.

Second: The consumer and any interested party in the event of not receiving the information provided in this article shall return the goods, wholly or partially, to the supplier and to claim compensation for the resulted damage, incurred personally or financially, before the civil courts.

Third: Obtaining the post-sales services in accordance with the agreement with the supplier.

Fourth: The freedom to choose the offered product or service for its price without any interference from the supplier.

Chapter four

Duties of the supplier and advertiser

Article 7

- The supplier and advertiser are committed to:

First: Ensure the installation of the data, specifications and entire components of the product, especially the start and expiry dates and the country of origin before launching it to the market or before selling, purchasing or advertising the product.

Second: Comply with Iraqi or international standards to determine the quality of imported or locally manufactured goods. The Central Machinery for Standardization and Quality Control shall be the reference for such a purpose and may use the relevant authorities.

Third: Taking a name and a commercial address and registering them in the fundamental records of the competent authorities and keeping records of its activity.

Fourth: To keep, copy and present the sale and purchase vouchers, or submit them to the competent official authorities upon request, or enable them to view them in their place without any objection.

Fifth: Not to promote by any means of media, publication and advertisement of the product or service that does not meet the approved standards of local or international specifications.

Sixth: To record his trade name and address on all his correspondence, publications and advertisements, as well as any trade mark legally approved, if any.

Seventh: To attend by himself or his representative before the competent authorities or those related to his work within seven (7) days from the date of his notification to answer any violation of the provisions of this act or to give any information about the goods or service he is providing or advertising.

Eighth: To allow the relevant official authorities to conduct the inspection at his place of work to obtain samples of his inventory and exhibits in order to carry out tests by the officially approved authorities to determine their suitability for human consumption.

Article 8

Without prejudice to the provisions of Article 6 (2) of this Act, the supplier shall be fully responsible for the rights of consumers of his goods, commodities or services and shall remain responsible for the guarantee period agreed in Article 6/1 (c) of this Act.

Chapter V

Prohibitions

Article 9

- The supplier and advertiser are prohibited from the following:

First: The practice of fraud, deception, misleading and concealment of the fact of the articles constituting the specifications adopted in all goods and services.

Second: The use of force or objection with the inspection committees and representatives of relevant official bodies and preventing them from carrying out their duties entrusted to them or obstructed by any means.

Third: Producing, selling, offering or advertising:

(A) Goods and services contrary to public order or morals.

(B) Any goods that have not been marked clearly on their packaging or boxes with the full components thereof, warnings (if any), and the date of commencement and expiry.

Fourth: Hide, change, remove or misrepresent the validity date.

Fifth: Re-packaging the damaged or expired products with containers and envelopes that have a different validity and misleading dates to the consumer.



First: A penalty of imprisonment for a term not less than (3) months or a fine of not less than (1000000) million Dinars or both shall be imposed on any person who contravenes the provisions of Article (9) of this Act.

Second: A penalty of imprisonment for a term not exceeding three (3) months or a fine not exceeding (1000000) million Dinars or both shall be imposed on anyone who contravenes the provisions of Articles (8,7) of this Act.

Third: The exposer of a crime imputed to this Act shall be awarded a financial reward of not less than (100000) a hundred thousand dinars and not more than (1000000) million dinars paid by the relevant authority before which the exposure submitted to, if that exposure led to the conviction of the offender and the decision has become final and imperative.

Chapter VII

General Provisions

Article 11

Goods and services dealt with by the supplier, marketer or advertiser are subject to quality standards, the mechanism of supply and demand for prices and production.

Article 12

The provisions of the Civil Service Act No. (24) of 1960 (Amended) and the Unified Retirement Act No. (27) of 2006 (Amended) and the State Employees Discipline Act No. (14) of 1991 (amended) shall apply to the employees of the Council.

Article 13

The Chairman of the Council shall set the appropriate structure for the implementation of the provisions of this Act which shall be approved by the Prime Minister

Article 14

The functioning of the Council shall be determined by an internal system issued by the Council.

Article 15

The provisions of the Central Machinery for Standardization and Quality Control Act No. (54) of 1979 or any law superseding it shall be applied in the event of absent provisions in this law.

Article 16

The decision of the Revolutionary Command Council (dissolved) No. (236) for the year 2002 shall be repealed and shall not be in force in any provision contrary to the provisions of this Act.

Article 17

The Prime Minister may issue instructions to facilitate the implementation of the provisions of this Act.

Article 18

This law will be effective once it is published in the formal newspaper.

Positive Reasons

In order to protect the consumer, to establish the principle of justice and equality between providers and consumers of goods and recipients of services, to maintain consumers' health and safety and to reduce the practices of industrial fraud and manipulation of the process of industrial packaging and the included data and specifications, this Act was promulgated.

