



# LHB

## Subject: Article Acceptance Letter

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## Notification-Commitment as a Mechanism for Consumer Protection According to Consumer Protection Law No. 7 of 2017: A Comparative Study

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### ABSTRACT

This study sheds light on the nature of the commitment to notify customers as one of the most important fundamental guarantees providing them with legal protection. This commitment is considered the primary means to inform the consumer by highlighting the essential characteristics and features of the goods or services provided to protect them from misleading commercial advertisements that adversely affect their material and moral interests.

### Notification-Commitment as a Mechanism for Consumer Protection According to Consumer Protection Law No. 7 of 2017: A Comparative Study

*Keywords:* Notification-Commitment, Supplier, Consumer, Goods, Services.

### Introduction

Due to the significant advancements witnessed globally in contracting mechanisms and the resulting complexity in the technical nature of goods and services, consumer protection has become a priority for countries, regardless of their legal and economic systems. This is of paramount importance in our current era due to modern economic and technological developments, the emergence of innovative goods and products, and society's inclination towards acquiring these goods and services without clear insight into the legal aspects of contracting mechanisms and contractual terms. Consequently, consumers often fall prey to the allure of dazzling and exaggerated advertisements, leading them to contract and purchase goods that may not benefit them significantly. Additionally, consumers may be susceptible to fraud or deception through misleading advertising practices that diverge from reality, coupled with suppliers or advertisers failing to provide sufficient, clear, and accurate information about the goods or services offered to consumers.

From this standpoint, considering the consumer as the weaker party in this contractual relationship, the Jordanian legislator deemed it necessary to provide the necessary legal protection for consumers against service providers and advertisers who employ ambiguous or exaggerated advertising methods to market their goods and services. This is achieved by taking necessary measures to ensure transaction stability, integrity, and transparency, and providing consumers with everything necessary to establish a fair and balanced contractual relationship. This includes imposing preventive mechanisms that protect consumers and assist them in obtaining information and data related to the goods or services provided to them. The consumer's right to access information is one of the most important obligations imposed on service providers or sellers, as they are obligated to provide essential and necessary information required for contract formation. Failure to provide such information could result in dissatisfaction on the part of

the consumer, who may not have entered into the contract had they not obtained it. This led me to choose the topic of the study: "Notification-Commitment as a Mechanism for Consumer Protection According to Consumer Protection Law No. 7 of 2017."

Therefore, this topic raises numerous questions, which collectively constitute the problem of the study. These questions include, for example: What is meant by Notification-Commitment? What is the scope of this commitment? What are its justifications? To what extent is Notification-Commitment sufficient in providing protection for consumers? What are the consequences of violating this commitment? What is the Egyptian legislator's stance on these questions as part of the comparison in this study? Is it consistent with the Jordanian legislator's approach, or does it differ?

These questions and others that may arise in this study will be the focus of our future research, hopefully providing answers that benefit those interested in this aspect. In our study, I will focus on the nature of Notification-Commitment according to Consumer Protection Law No. 7 of 2017, without enquiring the seller's obligations in a sales contract in general except as necessary and incidental to this study. I will adopt a comparative analytical approach in our study, examining relevant legal texts in Jordanian and Egyptian law through analysis and scrutiny to understand their contents and objectives. I will also analyze the opinions of scholars and critique them, all within the framework of comparing Jordanian texts with their counterparts in Egyptian legislation.

Based on the foregoing, this study will be divided into two sections. The first section will address the nature of notifying commitment in consumer contracts and its justifications, while the second section will focus on delineating the scope of informing-commitment in consumer contracts.

*Human Behavior* editorial team, Brad McAuliff, Jenni Cox, Dave DeMatteo,

## 1. First Section: The Nature of Notification-Commitment in Consumer Contracts and its Justifications

In order to examine the subject of the study, it is necessary to note the existence of Notification-Commitment in many legal legislations, whether old or modern. However, its study has only recently garnered attention from jurists and legal scholars due to industrial and technological advancements and the emergence of modern transactional patterns that impose on service providers or sellers a fundamental commitment to providing complete, clear, and accurate information about goods or services. It is worth noting the multiplicity and divergence of opinions among jurists regarding the terms indicative of this commitment, as it has been referred to by several terms such as commitment to disclosure, commitment to enlightenment, and commitment to notification<sup>1</sup>.

### 1.1. The First Part: The Nature of Notification-Commitment

Referring to the provisions of Consumer Protection Law No. 7 of 2017<sup>2</sup>, I find that the Jordanian legislator did not explicitly stipulate the obligation of the provider or advertiser to inform. However, Article 3/A of the law guarantees the consumer's right to obtain complete, clear, and explicit information about the product or service they are purchasing. The law also specifies cases that constitute breaches of contractual obligations by the provider or advertiser in Article 6/B, including the provision of inaccurate information about the product or service to the consumer or withholding any essential information from the consumer, as well as the failure to provide accurate information to the consumer before completing the purchase regarding the obligations arising from the contract or the provider's rights in relation to it, indicating the legislator's recognition of the importance and necessity of Notification-Commitment.

In contrast, the Egyptian legislator explicitly stipulated in Article 4 of the Consumer Protection Law that "the supplier is obliged to inform the consumer of all essential data about the products, especially the product source, price, characteristics, and essential features, and any other data specified by the executive regulations of this law according to the nature of the product."<sup>3</sup>

In Jordanian Civil Law, the concept of Notification-Commitment before contracting is acknowledged, as Article 466 stipulates:

1. The sale must be known to the buyer, excluding gross ignorance.

2. The sale must be known to the buyer by stating its condition and distinctive features, and if it is present, a reference to it suffices.<sup>4</sup>

Accordingly, the law obligates the seller to provide all information and data related to the sale, especially in cases where it is difficult for the buyer to obtain this information. The primary purpose of this commitment is to protect the buyer from fraud and deceit and enable them to enter into the contract with full and informed consent.

Notification-Commitment is one of the most important obligations imposed on service providers in consumer contracts. Therefore, it has become a matter of concern for most legislators. Despite the absence of a legislative definition of this commitment, jurists have varied in defining it, although most definitions share a common ground. This commitment represents a general and fundamental obligation in consumer contracts, preceding the contracting stage and extending to include the contract's formation and implementation.

Some have defined it as "a pre-contractual obligation related to one of the contracting parties providing the other party, upon contract formation, with the necessary data to reach a sound, complete, and informed consent, with full awareness of all the contract's details." This definition arises from certain circumstances and considerations related to the nature of the contract, the characteristics of one of its parties, the subject matter, or any other consideration that makes it impossible for one party to provide certain data or grant legitimate trust to the other party, who is obligated based on all these considerations to provide the necessary data<sup>5</sup>.

Additionally, others have stated that it is "a general commitment covering the pre-contractual stage in all consumer contracts, related to providing all necessary information to ensure the consumer's free and informed consent."<sup>6</sup> Some argue that this commitment arises during the contractual negotiations stage and imposes on each party the duty to inform the other party or it should be known to him with the information related to the subject matter of the contract.<sup>7</sup> Consequently, this commitment leads to the consumer's integration at the beginning of contract formation with full awareness of the contractual reality and detailed information regarding its elements and conditions, and their suitability for the intended purpose of the contract.

French jurisprudence adds that Notification-Commitment between the contracting parties is "considering all contract conditions, it is nothing but a new means added to traditional methods aimed at protecting consent, thereby preventing the contract from being based on the non-free consent of one of the parties. Consent is only free if it is based on complete freedom of the contracting parties in assessing

<sup>1</sup> Muwaffaq Hamad Abd, Civil Protection of the Consumer in Electronic Commerce Contracts, Zain Publications, Baghdad, 2011, p. 92.

<sup>2</sup> ) Consumer Protection Law No. 7 of 2017, published in Official Gazette No. 5455 on 16/4/2017.

<sup>3</sup> Law No. 181 of 2018, published in Official Gazette No. 37 on 13/9/2018

<sup>4</sup> Corresponding to Article 419 of the Egyptian Civil Law.

<sup>5</sup> Nazih Mohamed Al-Sadek Mahdi, Contractual Commitment to Provide Data

and its Applications on Some Types of Contracts, Dar Al-Nahda Al-Arabiya, Cairo, 1982, p. 15.

<sup>6</sup> Akram Mohammed Al-Hassan Al-Tamimi, Legal Regulation of the Profession, 1st edition, Halabi Publications, Lebanon, 2010, p. 96.

<sup>7</sup> Ahmed Essam Mansour, Legal Protection of Electronic Consumers, Dar Al-Jamiah Al-Jadidah, Egypt, 2019, p. 86.

the contract's circumstances. If this requires participation from the other party, they are obligated to do so."

From the above, it becomes clear that most definitions consider Notification-Commitment as an obligation that arises in the pre-contractual stage, paving the way for contract formation. It obligates the more knowledgeable party about the contract's subject matter to provide information and data to the less experienced party to enlighten and assist them in forming their free consent to the intended contract. This includes the obligation to warn them of potential risks associated with the goods or services provided to them due to misuse. It's worth noting that this commitment does not dissolve for the provider or advertiser during the contract execution stage but remains continuous and equally significant<sup>8</sup>.

Therefore, since this commitment arises in a stage preceding the contract, it does not derive its existence from the contract itself but rather from general legal principles such as the principle of good faith or explicit provisions in the law that explicitly obligate the contracting party to inform before contracting and during contract execution. Therefore, it is undeniable that this commitment is a legal obligation preceding the contract, characterized by generality. It is not specific to a particular contract but extends to cover all contracts. However, its importance becomes more apparent in certain contracts, such as consumer contracts and contracts involving technically complex items or items with inherent risks. French jurisprudence has affirmed this by stating that<sup>9</sup> "the professional seller is not only obligated to mention ordinary sales data but is also obligated to dispel doubts regarding the use of technical or domestic appliances, especially if the appliance's form is mixed with other devices intended for different purposes."

Based on the above, I can define the commitment to inform in consumer contracts as follows: "An obligation imposed on one of the parties to a consumer contract, by virtue of which they are obliged to inform the other party at any stage of the contract about information and essential data related to the goods or services provided, in addition to warning them about the risks of using them and the precautions that must be taken, using appropriate language and methods suitable for the nature of the contract and its subject matter, enabling the other party to use the product safely and effectively." The commitment to inform, whether preceding or following the contract, requires two conditions to be met:

The first condition is that one of the contracting parties must be a specialist possessing sufficient and comprehensive knowledge of the data and specifications of the goods or services subject to the contract<sup>10</sup>. This knowledge also extends to understanding its importance and its influential role in shaping consumer satisfaction. It is inconceivable for them to be ignorant of this unless it is

impossible to list all this information or the provider or advertiser is obligated to provide it. However, in consumer contracts specifically, consumers are concerned with obtaining information, data, and essential characteristics of the goods or services provided to them<sup>11</sup>. The second condition is that the consumer should be inexperienced and ignorant of the data and information related to the goods or services they desire to obtain, and this ignorance must be reasonable and justified legally, considering that the obligation of the provider or advertiser to inform has limits that do not exceed what the provider personally is unaware of or the information that the consumer knows or is assumed to know<sup>12</sup>. French Cassation Court decisions have affirmed this on multiple occasions.<sup>13</sup>

Due to the lack of contractual balance and equality between the parties in consumer contracts, and the inequality in their levels of knowledge and experience, which makes the obligation to inform have its own legal justifications. This will be discussed in the second part.

## 1.2. The Second part: Justifications for the Obligation to Inform in Consumer's Contract

Consumer's contracts are generally characterized by a lack of contractual balance between their parties and a lack of equality in their levels of knowledge and experience. Due to scientific and industrial progress, the obligation to inform has become a practical necessity dictated by the nature of life, aiming to enlighten and inform the consumer in a way that achieves equality between the parties in terms of knowledge. Thus, several justifications for imposing the obligation to inform have emerged:

### 1.2.1 Firstly: Achieving equality of knowledge between the contracting parties.

Economic and industrial advancement, along with modern inventions, has led to an imbalance in knowledge between the contracting parties in consumer contracts. This has given rise to specialists and professionals who possess knowledge, information, and competencies that others do not have, in addition to modern techniques and monitoring methods. On the other hand, there is a category of individuals, primarily consumers, whose position is characterized by weakness and who are ignorant of what they are about to engage in. Their perspective is limited to purchasing the item out of necessity without having the minimum amount of information and data related to modern inventions. They lack any information to guide them in determining the characteristics of the subject matter of the contract, whether it is a product or a service. This leads to a distortion in the element of trust.

From this perspective, the concept of obligating the party possessing necessary information to provide it to the party lacking it, especially

<sup>8</sup> Ibrahim El-Dessouki, Pre-Contractual Information Commitment, Dar Al-Nahda Al-Arabiya, Cairo, 1985, p. 16.

<sup>9</sup> Judgment of the Cassation Court referred to by Hassan Abdul Basit Al-Jumaili, Consumer Protection, Dar Al-Nahda Al-Arabiya, Cairo, 1996, p. 16.

<sup>10</sup> Khaled Mamdouh Ibrahim, Consumer Protection in Electronic Transactions, Dar Al-Jami'ah Al-Jadidah, Alexandria, 2017, p. 165.

<sup>11</sup> Kawthar Saeed Adnan, Electronic Consumer Protection, Dar Al-Jamiah Al-

Jadidah, Alexandria, 2012, p. 280.

<sup>12</sup> Khaled Mamdouh Ibrahim, Consumer Protection in Electronic Contracts, Dar Al-Fikr Al-Jami'i, Alexandria, 2008, p. 101.

<sup>13</sup> Saeed Abdul Salam, Obligation to Disclose in Contracts, Dar Al-Nahda Al-Arabiya, Cairo, 2000, p. 27.



during contract negotiations, emerged<sup>14</sup>. This is to prevent the provider from exploiting this information and to indicate their good faith. It serves to protect the weaker party in this relationship, as justice dictates achieving a form of equality between the provider and the consumer, aiming to stabilize commercial transactions<sup>15</sup>. Jurisprudence has adopted the substitution of the ordinary man standard with the professional standard in determining the obligation of professionals to inform consumers<sup>16</sup>.

This principle has been upheld by the French Court of Cassation, which stated, "The professional seller is not only obligated to mention the ordinary data related to the sale, but also to remove doubts about the use of technical or household equipment if the appearance of the device is mixed with other devices intended for different purposes."<sup>17</sup> Additionally, French courts have ruled in favor of consumers in cases where product misuse led to harm, holding the producer liable for failing to provide information regarding the proper use of the product. This failure to inform led to harm.<sup>18</sup>

### 1.2.2 Secondly, Economic and Technological Developments:

The advancements in modern technology have led to the emergence of numerous innovative and complex goods, varying in sizes, shapes, uses, and benefits. This exposes consumers to risks when dealing with these goods, especially given the large-scale production and the likelihood of these goods not being subject to proper manufacturer oversight before entering the market, potentially containing defects. This makes their consumption fraught with risks, particularly in light of the proliferation of various forms of advertising, especially interactive electronic advertisements, which easily persuade consumers of the importance of the product, leading them to purchase it<sup>19</sup>. This poses a real danger to directing the consumer's will and hindering their satisfaction with misleading information.

This leads to a lack of contractual equality between the parties, with the supplier becoming the dominant party in the contractual relationship.<sup>20</sup>

### 1.2.3. Thirdly, Restoring Contractual Equilibrium:

Protecting consumer satisfaction is one of the key pillars upon which the obligation to inform is based, considering the consumer as the weak party in this relationship, lacking the necessary and sufficient data and information to clearly define the subject of the contract. This is countered by the specialized provider who possesses expertise and knowledge, leading to an imbalance of contractual equilibrium between the parties, creating a kind of subjugation for the consumer. Thus, legal protection for them

becomes necessary.

Some jurists view this protection as an application of the protection provided to the consenting party in contracts of consent, which are based on a significant disparity and imbalance between the contract parties. Therefore, the traditional protection for the consenting party is essential in imposing this obligation, considering that contracts of consent are often consumer contracts, and the opposite is not true.<sup>21</sup> However, prevailing jurisprudence does not agree with this, despite the similarity between the protection provided in contracts of consent and the protection provided according to consumer protection laws. The former is decided after the contract is formed, while the latter is decided before its formation. Therefore, the protection provided under consumer protection laws has become an independent theory, making the consumer a weak party against the supplier. This imposes an obligation on the latter to inform them in advance of all data and information and to enlighten them in a way that makes them trust and delegate their affairs to them.

Some argue that this obligation can be justified and exists in the principle of prevention being better than cure, aiming to prevent dissatisfaction and enlighten the will, in addition to the principle of good faith governing contract execution. This imposes a positive obligation of truthfulness and honesty towards the consumer, achieving cognitive balance between the contracting parties, both during and after contracting, to achieve contractual equilibrium<sup>22</sup>.

## 2. The Second Section: Scope of the Obligation to Inform

Determining the scope of the obligation to inform requires clarifying the content of this obligation, both in terms of the matters it addresses and the individuals bound by it. Since the identities of the provider and the consumer play crucial roles in consumer contracts, as goods or services go through several stages of circulation before reaching the final consumer, it is necessary to identify who is responsible for the obligation to inform and who benefits from it. This is what I will explore in the first part. As for the second part, I will focus on explaining the content of the obligation to inform regarding the items themselves.

### 2.1. The First Part: Content of the Obligation to Inform in Terms of Individuals

The Jordanian legislator has kept pace with developments in the field of production and manufacturing by expanding the scope of individuals obligated to provide information. This obligation applies to every natural or legal person, whether from the public or private sector, who engages in activities involving the distribution, trading, manufacturing, leasing, or provision of services to consumers. This

<sup>14</sup> Ali Al-Zu'bi, "The Obligation to Inform and Its Applications in Some Contracts," Research published in the Jordanian Journal of Law, Issue 4, 2011, p. 40.

<sup>15</sup> Ibrahim Abdulaziz Dawood, "Imbalance of Knowledge in Contracts," Dar Al-Jamea Al-Jadida, Egypt, 2014, p. 13.

<sup>16</sup> Abdul Manna Musa Ibrahim, "Consumer Protection: A Comparative Study," Publications of Al-Halabi, Lebanon, 2007, p. 372.

<sup>17</sup> Hassan Abdel Basset Al-Jumai, "Consumer Protection," Previous reference, p. 22.

<sup>18</sup> Siyad Al-Sadiq, "Consumer Protection under the New Law 03-09

Concerning Consumer Protection and Combating Fraud," Master's thesis, Faculty of Law, University of Constantine, Algeria, 2014, p. 71.

<sup>19</sup> Osama Ahmed Badr, "Consumer Protection in Electronic Contracts," Dar Al-Jamea Al-Jadida, Alexandria, 2005, p. 157.

<sup>20</sup> Sayed Mohamed Omran, "Obligation to Inform Electronically Before Contracting via the Internet," Dar Al-Jamea, Beirut, p. 57.

<sup>21</sup> Abdul Manna Musa Ibrahim, "Consumer Protection," Previous reference, p. 374.

<sup>22</sup> Mustafa Ahmed Amro, "Summary of the Provisions of the Consumer Protection Law," Halabi Publications, Lebanon, 2011, p. 121.

includes anyone who puts their name, trademark, or any distinguishing mark on goods or services<sup>23</sup>.

In contrast, the Egyptian legislator<sup>24</sup> defines a supplier as any person engaged in commercial, industrial, professional, or artisanal activities who provides services to consumers or produces, manufactures, imports, exports, sells, leases, displays, trades, distributes, or markets goods or services for the purpose of providing them to consumers or engaging in transactions with them, using any means. The Egyptian legislator has expanded the scope of this interaction to include electronic and other modern technological means, recognizing the significant role of the electronic environment in creating consumer vulnerability. Therefore, the Egyptian legislator has shown concern and care for electronic consumers, who face difficulties in engaging in electronic commerce contracts when the identity of the electronic supplier is unknown. Revealing the identity of the supplier plays a significant role in instilling trust and security in consumers, encouraging them to engage in contracts<sup>25</sup>. Consequently, anyone involved in trading goods or providing services, whether they are the product manufacturer, specialized non-manufacturer, or non-specialized seller, is obliged to inform the consumer about the relevant information and data transparently and honestly. This includes information on usage methods, characteristics, precautions, risks, and providing accompanying leaflets and brochures with the goods. The non-exemption of non-specialized or non-product sellers from this obligation is necessary to ensure the health and safety of consumers<sup>26</sup>. This requires identifying the party responsible for providing information about the goods and services. It is possible to narrow down those obligated to inform to include the product manufacturer, the specialized non-manufacturer, and the non-specialized seller.

#### **2.1.1. Firstly: The Product Manufacturer:**

Every natural or legal person from the public or private sector engaged in manufacturing goods or providing services to consumers in their own name. Jurisprudence<sup>27</sup> considers the product manufacturer primarily responsible for the obligation to inform due to the extensive information and data they possess about the goods they produce. It is assumed that they have complete and sufficient information, as it is inconceivable for someone to produce specific goods or services without having essential information about them, or without possessing the technical competence to control their components, characteristics, usage methods, associated risks, and how to avoid them. The product manufacturer is required to provide all this information to the consumer through all available means and

methods<sup>28</sup> because of the consumer's confidence in their capabilities, technical expertise, and distinguished position, which necessitates them to explain all details related to the usage method of the product and how to benefit from it. Obtaining this information for the consumer does not pose any difficulty for the product manufacturer but is considered an obligation to ensure the validity of the contract.

#### **2.1.2. Secondly: The Non-Manufacturing Specialized Seller:**

This is any natural or legal person who engages, on behalf of another, in activities related to trading, selling, leasing, or providing services. While they may not produce the goods themselves, they dedicate their activity to selling them, such as a pharmacist who sells medicine or a merchant specializing in selling electrical appliances<sup>29</sup>. Since the specialized seller possesses detailed and essential information about the goods they trade, including their components and unique characteristics, as well as associated risks, it is assumed that they should inform the consumer of all these details to avoid exposing them to risks and enable them to use the product effectively. Some scholars<sup>30</sup> argue that their obligation extends further, as they are required to intervene to rectify any shortcomings on the part of the manufacturing seller in fulfilling their obligation to inform. Therefore, they must clarify any ambiguities surrounding product information and provide any necessary missing information, correcting any misinformation if necessary. Additionally, some scholars suggest that the non-manufacturing specialized seller is responsible for conducting research and investigation themselves to obtain necessary and important information about the product, considering them a primary party responsible for informing. It's worth noting that the obligations of the non-manufacturing specialized seller do not reach the level of responsibility of the manufacturing seller. The latter is considered fully responsible for the most detailed information or characteristics related to the product, while the non-manufacturing specialized seller is only responsible for the information and risks they knew or could have known due to their specialization.<sup>31</sup>

#### **2.1.3. Thirdly: The Non-Specialized Seller:**

This refers to an individual who trades or sells goods without specialization in this field and lacks sufficient information about these goods. However, based on the principle of good faith in contract execution, they are expected to act with honesty and transparency. Their responsibility includes distributing brochures and leaflets accompanying the product and explaining the information they possess about the product. They are not responsible for information they are unaware of, and their obligation to inform does not extend to knowledge of risks associated with the product, while still considering the consumer's interests. Their exemption

<sup>23</sup> Refer to Article (2) of the Jordanian Consumer Protection Law.

<sup>24</sup> Refer to the text of Article (1) of the Egyptian Consumer Protection Law.

<sup>25</sup> Khalid Mamdouh Ibrahim, "Electronic Contracting," 2nd ed., Dar Al-Fikr Al-Jame'i, Alexandria, 2011, p. 439.

<sup>26</sup> Mona Abu Bakr Al-Sadeq, "Obligation to Inform Consumers about Products," Dar Al-Jamia Al-Jadida, Egypt, 2013, p. 113.

<sup>27</sup> For further details, see Zahia C. Youssef, "Civil Liability of the Producer," Dar Huma, Algeria, 2009, p. 150.

<sup>28</sup> Amer Ahmed Al-Qaisi, Legal Protection of Consumers, Dar Al-Thaqafah, Amman, 2002, p. 122.

<sup>29</sup> Zahia C. Youssef, "Civil Liability of the Manufacturer," Ibid, p. 151.

<sup>30</sup> Luc Grynbaum, "Civil Law, Obligations," Hachette Supérieur, 2nd edition, 2007, p. 37.

<sup>31</sup> Qrawash Radwan, "Legal Guarantees for Protecting Consumer Safety and Security," Doctoral Thesis, Faculty of Law, University of Algiers, 2013, p. 276.

from this responsibility should not come at the expense of the consumer, especially since the manufacturing seller is liable for risks resulting from misuse of the product.

Moreover, the identity of the provider plays a crucial role in shaping consumer satisfaction, as consumers are interested in knowing the identity of the contracting party and ensuring their reputation, expertise, and ability to fulfill obligations in a manner that provides security and trust. Therefore, commercial transactions should include the name of the project, contact information, address, commercial registration, and if it's a legal entity, its external headquarters, legal form, main administrative center, and registration number in the country where the headquarters is located, making it easily accessible through all legal means in case of contractual breaches.

The Jordanian legislator considers any advertisement for goods or services containing false, incorrect, or incomplete information regarding the identity and qualifications of the provider, if deemed significant in contracting, as misleading. It prohibits its publication, and holds the provider responsible for compensating the consumer for any damages incurred as a result. Conversely, the Egyptian legislator explicitly requires the supplier to provide information that identifies their identity, especially their address, contact methods, registration data in their commercial activity register, and trademark or logo<sup>32</sup>. Remarkably, the Egyptian legislator stipulates that this information must be provided in two or more languages, one of which must be Arabic, which is a commendable practice not specified by Jordanian law.

As for the second party in this relationship, or the creditor obligated to inform, it is the consumer, as defined by the Jordanian legislator in Article (2) of the Consumer Protection Law as "every natural or legal person who obtains goods or services, whether for consideration or without consideration, to satisfy personal needs or the needs of others, excluding those who purchase goods or services for resale or lease." Based on the foregoing, it becomes apparent that the Jordanian legislator did not restrict the concept of the consumer to natural persons only but extended this characteristic to legal persons as well, narrowing down the general concept of the consumer. Consequently, it limits the circle of creditors obligated to inform to the consumer contracting to meet their personal or family needs, a trend adopted by most consumer protection laws<sup>33</sup>. This is also adopted by the Egyptian legislator, defining the consumer as any natural or legal person receiving products to satisfy non-

professional, non-craft, or non-commercial needs or conducting transactions or contracts in this regard.

From the above definitions and in terms of contradiction, it is understood that someone who purchases goods or services for their profession does not acquire the status of a consumer, and the provider is not obliged to inform them.

The definition of the consumer has sparked significant debate among jurists<sup>34</sup>, where some have narrowed down the concept of the consumer to focus on the goal or purpose the consumer seeks to achieve when contracting. Some define the consumer as "every natural person who obtains or can obtain consumer goods or services for individual satisfaction alone, whether personal or family."<sup>35</sup> Others define them as "the person who owns or uses goods or services for non-professional use."<sup>36</sup> From these definitions, it is inferred that the contract should be made for purposes not related to the professional activity practiced by the consumer, thus someone contracting for professional or craft purposes is not considered a consumer<sup>37</sup>.

In contrast, there is another trend that expands the concept of the consumer<sup>38</sup> to include any person obtaining goods or services for consumption purposes, whether for personal or professional use, as long as their action is outside their professional field to satisfy their needs. This trend began to spread with the emergence of the call for consumer protection, embodied in a call to the former US President Kennedy, who said, "Consumers are all of us"<sup>39</sup>. Some jurists in this regard argue that the obligation to inform in its various forms should not be monopolized by the consumer in its narrow sense but should also benefit the professional consumer if they act outside their specialization. Some jurists have defined the consumer as "every person who contracts for the purpose of consumption"<sup>40</sup> or "every person aiming to satisfy their personal or professional needs."<sup>41</sup> Thus, according to this approach, anyone purchasing a car for personal or professional use is considered a consumer, and this entails the benefit of legal protective rules for other individuals, despite not having the consumer status themselves<sup>42</sup>. Some legislations have adopted this broad concept of the consumer<sup>43</sup>.

Based on the foregoing, I can say that the first approach is closer to accuracy and precision. This is because consumption means "the depletion of produced goods and services"<sup>44</sup>, and depletion can either be legal or material in a way that prevents the re-investment of the good or service, meaning its use in a manner that eliminates the possibility of making financial profit from it, considering it the final

<sup>32</sup> See Article (5) of the Egyptian Consumer Protection Law.

<sup>33</sup> Mohamed Boudali, *Consumer Protection in Comparative Law*, Dar El Kitab El Hadith, Algeria, 2006, p. 27

<sup>34</sup> For more details, see the previous reference, p. 28

<sup>35</sup> BIHI, *Le droit de la vente, vente mobilier*, dalloz 1986 p 192

<sup>36</sup> Mohamed Boudali, *Obligation to Advise within the Scope of Service Contracts*, 1st Edition, Dar El Fajr, Algeria, 2005, p. 71

<sup>37</sup> Mohamed Boudali, *Consumer Protection in Comparative Law*, Dar El Kitab El Hadith, Algeria, 2006, p. 27

<sup>38</sup> For more details, see the previous reference, p. 28

<sup>39</sup> BIHI, *Le droit de la vente, vente mobilier*, dalloz 1986 p 192

<sup>40</sup> Mohamed Boudali, *Obligation to Advise within the Scope of Service Contracts*, 1st Edition, Dar El Fajr, Algeria, 2005, p. 71

<sup>41</sup> Michal Giest, *Consumer Protection and Licensing Regimes*, [www.aixl.uottawa.ca](http://www.aixl.uottawa.ca)

<sup>42</sup> Strickler, *La protection de la partie faible en droit civil*, [www.iej.u-starbg.f](http://www.iej.u-starbg.f)

<sup>43</sup> (7) Article (1) of the Iraqi Consumer Protection Law No. (1) of 2010 defines the consumer as "a natural or legal person who obtains goods or services for their benefit." Also, see Article (1) of the Omani Consumer Protection Law No. (81) of 2002 and Article (2) of the Tunisian Consumer Protection Law No. (117) of 1992. As for French law, it has not taken a clear position on the concept of the consumer due to its regulation of issues related to consumer protection in scattered legal texts, leading to the creation of several definitions, sometimes with an expanded concept and sometimes with a narrow one.

<sup>44</sup> Rashid Al-Brawi, "Al-Mawsu'ah Al-Iqtisadiyah" (The Economic Encyclopedia), Vol. 1, Dar Al-Nahdah Al-Arabiyyah, Cairo, p. 41.

stage of the economic cycle. Additionally, adopting the narrow concept of the consumer would provide legal protection for them, which would not be achieved when adopting the broader concept. Therefore, I can define the consumer as "every natural or legal person who obtains a good or service with the aim of benefiting from it to satisfy their own needs or the needs of others, without the goal of making a profit." It is worth mentioning that a consumer who engages in a specialization outside the scope of their profession, without being knowledgeable about the characteristics, features, and risks of the product or service, enjoys the same protection and rights as an ordinary consumer. The information or data available to them remains incomplete and lacks accuracy, which necessitates the supplier's intervention to clarify it, making the consumer fully knowledgeable about the product or service, as I will elaborate in the next section.

## 1.2. The Second Part: The Content of the Obligation to Inform in Terms of Items

In light of modern technological advancements and the widespread use of electronic commerce channels, consumers can now obtain goods or services they desire with a single click, without the need for a relationship with the provider or seller, and without physically inspecting the goods. They rely solely on the images and information provided in the advertisements<sup>45</sup>. The law imposes on the provider the obligation to clearly state the essential characteristics of the goods or services offered. According to the provisions of the Jordanian Consumer Protection Law, the legislator intended by "goods" any movable property obtained by the consumer from the provider, including intangible assets such as electricity. As for "services," it refers to any commercial service, whether provided for a fee or free of charge, including the leasing of movable property<sup>46</sup>. Among the many rights granted to the consumer by this law is the right to obtain complete and accurate information about the goods or services being purchased, including the terms of sale and the obligations incurred by the provider and the rights of the provider vis-à-vis the consumer. It is essential to obtain this information before completing the purchase, as it significantly influences the consumer's decision to contract<sup>47</sup>.

The Egyptian legislator defined products as "goods and services provided by individuals or legal entities, excluding used goods contracted through a supplier, except for financial and banking services regulated by the Central Bank Law and the Banking Sector and Market Regulation Law"<sup>48</sup>. Traditionally, jurists did not show much interest in defining goods or services. However, after the emergence of product liability due to modern technological

advancements, innovative products, and non-traditional commercial transactions conducted through electronic means, various perspectives have emerged on this matter. One perspective expanded the definition of products to include any tangible material, regardless of its nature. Another perspective narrowed down the concept of goods or products, considering them only as tangible industrial or agricultural materials and raw materials.

Similar to consumer protection regulations, the Jordanian legislator obligates the provider to declare all essential features of the goods or services provided to the consumer, providing an accurate description that enables the consumer to make an informed decision before entering into a contract. This requirement negates gross ignorance, and it undoubtedly includes all goods and services offered to the consumer, whether real estate or movables, simple or complex, commonly used or hazardous. The text is general and does not distinguish between hazardous and non-hazardous products, which aligns with the provisions of Egyptian consumer protection law<sup>49</sup>.

As for jurisprudence<sup>50</sup>, there has been disagreement on this matter. One perspective argues that the obligation to inform is more important regarding hazardous goods, whether inherently hazardous or due to their use or storage. In this view, it is the responsibility of the provider to warn the consumer of the risks associated with such goods and to explain the optimal way to use them to avoid those risks<sup>51</sup>. This perspective is reflected in the jurisprudence of the French courts, where the French Court of Cassation has emphasized in several rulings that the hazardous nature of an item constitutes a fundamental element obligating the seller to warn the buyer of its dangers and to provide all necessary precautions for its use, thus guiding the buyer to avoid those risks<sup>52</sup>. However, another perspective argues that this obligation is not limited to hazardous items but includes all contracted items, especially those characterized by their novelty<sup>53</sup>. This is to protect consumers who are unaware of the characteristics and components of these items and are often not well-informed about their usage. Since advertisements often focus on enticing consumers to purchase goods without investigating the details of their components and usage instructions, the provider remains obligated to provide complete information about the product and its usage to prevent potential risks due to misuse. I support this perspective because technological advancements and industrial progress have led to the introduction of numerous products in the market, making it difficult for consumers to be fully informed about all relevant information, especially if the products are innovative or newly introduced. Therefore, it is incumbent upon the provider to inform the consumer and warn them of any potential risks associated

<sup>45</sup> Yahya Youssef Hassan, "Legal Regulation of Electronic Contracts," Master's Thesis, Faculty of Graduate Studies, An-Najah University, Palestine, 2006, p. 33.

<sup>46</sup> See Article 2 of the Jordanian Consumer Protection Law.

<sup>47</sup> Ghaleb Al-Mahayrat, "The Obligation of Product Disclosure Before Contracting in Electronic Contracts," Dar Al-Yazoudi, Amman, 2018, p. 45.

<sup>48</sup> Shahida Qada, "Civil Liability of the Producer," Doctoral Thesis, Faculty of Law, University of Belqasid, Tiemcen, 2005, p. 15.

<sup>49</sup> See Article 1/4 of the Egyptian Consumer Protection Law.

<sup>50</sup> Hamdi Ahmed Saad, "The Obligation to Disclose the Hazardous Nature of the Sold Item," Technical Office for Legal Publications, Cairo, 1999, p. 235.

<sup>51</sup> Mohamed Abdelkader El-Haj, "Product and Distributor Liability," Dar Al-Nahda Al-Arabiya, Cairo, 2004, p. 60.

<sup>52</sup> Mervat Abdel Aal, "The Obligation to Warn in the Field of Sales Contracts," Dar Al-Nahda Al-Arabiya, Cairo, 2004, p. 46.

<sup>53</sup> Tharwat Fathi Ismail, "The Civil Liability of the Professional Seller," Doctoral Thesis, Ain Shams University, 1987, p. 366.



with the product, as well as to explain its usage, storage, and preservation methods, whether the products are hazardous or not.

The supplier's obligation to provide information is based on the rules set forth in the general theory of contracts, whereby it is required that the subject matter in contracts of exchange be clearly specified to avoid gross ignorance, whether by indicating it or its specific location if it exists, or by describing its distinctive characteristics and stating its quantity if applicable, in any way that dispels gross ignorance. Otherwise, the contract would be void<sup>54</sup>. This is what the Jordanian Court of Cassation has settled in many of its rulings<sup>55</sup>.

Referring to Article (3/2) of the Consumer Protection Law, which stipulates "the consumer's right to obtain complete and accurate information about the goods or service he purchases, the terms of sale thereof," and Article (3/3) which states his right to obtain complete and clear information before completing the purchase about the obligations he incurs to the supplier and the supplier's rights against the consumer, I find that the Jordanian legislator did not specify the nature of this information or its details. Instead, he settled for stating the consumer's right to obtain complete, accurate, and clear information without specifying the nature, details, or type of this information, leaving it to the general principles of civil law. Despite the fact that this information has an impact on the consumer's decision to obtain the goods. It acts in accordance with the principle of suitability of the contract to the purpose for which it is intended. The legislator considered the goods or service to be defective if they did not conform to the characteristics advertised. In contrast, the Egyptian legislator did not suffice with the general rules in the Civil Law but obliged the supplier to inform the consumer of all essential data about the products, especially the source, price, characteristics, and essential features, and any other data specified by the executive regulations according to the nature of the product. All this information must be written in Arabic and in clear font to facilitate reading. The supplier must also provide the data required by Egyptian standards, laws, or executive regulations thereof in Arabic, depending on the nature of each product and the method of advertising, presenting, or contracting it, in line with the approach adopted by European Directive No. 7 of 1997<sup>56</sup>.

And it obligated the professional to inform the consumer about the essential characteristics of the goods or service and their distinctive elements, considering it a fundamental matter in the contract<sup>57</sup>. This assists the consumer in obtaining the goods or service under the best

economic, legal, and technical conditions, which consequently affects their decision to enter into the contract or not<sup>58</sup>. However, this is not found in Jordanian law.

As for the obligation to inform about the service provided to the consumer, given its inherent complexity, making it difficult to present or assess, this does not exempt the provider from this obligation. The Egyptian legislator was clearer and more explicit in this regard, as he obliged the service provider to explicitly specify the clear method of presenting the service, its features, characteristics, places of provision, and schedules<sup>59</sup>. Additionally, the provider must inform the consumer of all sales conditions, including the stages of contract execution, delivery method, timing, and any obligations arising from the contract, such as after-sales services, especially maintenance or necessary spare parts for the product. Moreover, they must specify a duration for ensuring these services in line with the nature of the product. Such information plays a fundamental role in protecting the consumer from any arbitrary conditions that the provider may impose in the contract<sup>60</sup>. Scholars have expanded the scope of this information to include everything related to the method of use, its conditions, and any precautions, obstacles, or hindrances that prevent the consumer from achieving the purpose for which they acquired the goods or service<sup>61</sup>, especially in light of the technological and scientific advancements accompanying the production of goods and the provision of services in our current era. It has become difficult for the average consumer to keep up with all the latest technological developments, making them ignorant of the correct way to use products, especially those that are technological or innovative. Therefore, it is incumbent upon the provider to clearly explain the method of using the product and how to store it to avoid its risks<sup>62</sup>.

Particularly, the provider must alert the consumer and draw attention to the risks that may affect their health and safety when misusing the product or service only when it comes to perishable food or pharmaceutical products requiring specific storage temperatures<sup>63</sup>. On the other hand, the French jurisprudence adds that this obligation becomes more urgent when it concerns something hazardous sold to individuals lacking any information about it<sup>64</sup>. Some substances inherently carry risks, such as medications, chemicals, pesticides, and firearms. Therefore, in this context, the French Court of Cassation ruled on the distributor's liability for a substance used in bird breeding areas, which caused a fire due to its flammability. The court stated, "Even if the manufacturer did not indicate in its leaflet

<sup>54</sup> For further detail, see Articles (161), (466), and (467) of the Jordanian Civil Law.

<sup>55</sup> See the judgment of the Jordanian Court of Cassation (General Assembly) No. 4289/2005 dated 4/7/2006 and judgment No. 229/2001 dated 21/6/2001 (General Assembly).

<sup>56</sup> See Article (111/1) of French Law No. 344-2014 dated 17/3/2014 on consumer protection published in the Official Gazette on 18/3/2014.

<sup>57</sup> Guy Rommel, "The Obligation to Provide Information," doctoral thesis in law, Brussels, 1982, p. 6.

<sup>58</sup> Dunia Mubarak, "Legal Protection for Consumer Satisfaction with Goods and Services," published research in the Moroccan Journal of Economics and Law, Issue No. 3, 2001, p. 51.

<sup>59</sup> See Article 6 of the Egyptian Consumer Protection Law.

<sup>60</sup> Rabih Ghendeb, "The Legal Regime of the Consumption Contract," Edition Alpha, 2010, p. 181.

<sup>61</sup> Omar Mohamed Abdelbaqi, "Contractual Protection of the Consumer," previous reference, p. 229.

<sup>62</sup> Khalid Jamal Ahmed, "Compliance with Pre-contractual Disclosure," Dar Al-Nahda Al-Arabiya, Cairo, 2003, p. 314.

<sup>63</sup> Faten Hussein Hawwa, "Concise Guide to Consumer Protection Law," 1st ed., Halabi Publications, Beirut, 2012, p. 57.

<sup>64</sup> Philippe Malaurie and Laurent Aynes, "Les Obligations," 2nd edition, Defrenois, 2005, p. 211.

that this substance was flammable, due to his expertise, the provider should have explained all the risks of this substance to the buyer"<sup>65</sup>. There is no doubt that if this information is provided appropriately and accurately, the provider is not responsible for any damage resulting from the consumer's lack of precaution in using or storing the product.

Thus, according to the Jordanian Consumer Protection Law, the provider is not liable for damage resulting from defective goods or services in two cases:

1. If they did not put the goods or services on the market.
2. If the damage occurred due to the victim's error or for a reason unrelated to the provider.

Contrary to the above, the provider is responsible for any breach of its contractual obligations as stipulated in the law or committed by anyone representing them legally or working for them or dealing with consumers on their behalf. This includes not delivering the goods or services within the agreed or customary period, as well as being responsible for the accuracy of the information provided to the consumer about the goods or services or withholding any essential information about them. Additionally, their responsibility extends to providing the necessary after-sales services or spare parts unless there is an agreement to the contrary.

Upon proving their liability, according to Article 7 of the Jordanian Consumer Protection Law, the provider is obligated as follows:

1. If the goods are defective, the provider must refund them and return the price to the consumer or any person who owns the goods.
2. If the defect appears after the consumption of the goods, the provider must pay fair compensation to the consumer equal to the damage incurred.
3. If the defect appears after the consumer has received the service in full, the provider is liable to pay an amount equal to the value of the damage.

When there are multiple providers, they are jointly responsible towards the consumer, as indicated by the Jordanian legislator, and it's possible to enter into a written agreement with the consumer to rectify any defect in the goods or services. Any agreement or condition exempting the provider from liability for any of its obligations stipulated in the law is void<sup>66</sup>. As for the Egyptian legislator, deceptive conduct is defined in Article 1 of the Consumer Protection Law as "any act or omission by the producer or advertiser that creates a false or misleading impression on the consumer or leads him into confusion or error." The supplier is also obliged to avoid any deceptive behavior, especially concerning the characteristics, elements, source, and other essential information about the goods<sup>67</sup>. The supplier must notify the Consumer Protection Agency of any defect in the product within seven days of discovering it or becoming aware of it or its possible damage. If the defect poses a risk to the consumer's health or safety, the supplier

must cease its production or use and warn consumers against using it through various media channels. Article 21 of the same law stipulates that the consumer has the right, within thirty days of receiving the goods, to exchange or return them with a refund if they are defective or not in compliance with the specifications or the purpose for which they were contracted. Finally, the supplier is forced to substitute the goods or refund the value upon the consumer's request. Moreover, this would have no extra charge and defection to warranties of the consumer's contractual conditions.

### 3. Conclusion

In this paper, and by revisiting the literature of consumer protection and contractual obligations, I have explored various aspects related to pre-contractual information disclosure, cognitive imbalance in contracts, legal protection for electronic consumers, and civil liability of sellers and producers. The paper highlights the fundamental part of pre-contractual information disclosure in accomplishing equality and balance in consumer contracts, emphasizing its importance from the early stage of pre-contractual to the process of contracting and reach to the final stage of performing the contract. Moreover, the literature underscores the obligation of sellers and producers to provide clear and comprehensive information about goods and services, including their characteristics, source, and price, to ensure informed consumer decision-making. Furthermore, it advocates for enhancing legal protections for consumers, particularly in electronic transactions, through effective enforcement mechanisms and the imposition of civil liability on professionals. Finally, the researcher provides some recommendations stemming from this review that suggest the necessity for legislative amendments to address the evolving landscape of electronic commerce, including specific rules governing pre-contractual information disclosure in e-commerce contracts. Additionally, there is a call for redefining the concept of consumers to encompass modern electronic transactions comprehensively.

After completing our study on the obligation to inform as a means of protecting the consumer, below is a set of results and recommendations:

#### 3.1. Results

1. The obligation to inform is considered one of the most important legal guarantees for achieving equality and contractual balance between the parties in consumer contracts.
2. The importance of compliance with information provision in providing legal protection to the consumer from the pre-contract stage, during its formation, and during its execution.
3. Compliance with information provision requires abundance of information and data highlighting the characteristics and features of the goods or services provided to the consumer to ensure their informed satisfaction.
4. The Jordanian legislator equates the manner of compliance

<sup>65</sup> Refer to the judgment of the Court of Cassation mentioned by Abou Zmirra, "Consumer Right to Information," published research in the Journal of Comparative Legal Studies, Vol. 1, Issue 1, 2015, p. 14.

<sup>66</sup> Refer to the text of Articles 20 and 21 of the previous law.

<sup>67</sup> For further details, refer to Article 9 of the Egyptian Consumer Protection Law.

with information provision between goods and services despite the apparent differences between them.

### 3.2. Recommendations:

1. I recommend that the Jordanian legislator establish specific rules clarifying how to comply with information provision in electronic commerce contracts.
2. I hope the Jordanian legislator revises the definition of "consumer" in Article 2 of the Consumer Protection Law to include the following: "Consumer: a natural or legal person who obtains a good or service, for consideration or free of charge, to satisfy their personal needs or the needs of others in any way, including electronic means and other modern technological means, excluding those who purchase the good or service for resale or leasing."
3. I hope the Jordanian legislator explicitly mandates suppliers to provide detailed data regarding the goods, including their source, price, basic characteristics, and features, in Arabic and in a clear manner that facilitates reading, while considering the necessity of distinguishing between the presentation of data for goods and services.

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