

Legal Provisions and Effects of the Right of Withdrawal from Electronic Contracting under Iraqi, Iranian, and French Law

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Abstract

The right of withdrawal from electronic contracting is a relatively recent legal right recognized by various legislatures to protect the consumer, who is regarded as the weaker party, and to restore balance to the contractual relationship. It is a legal power granted by the legislature to the consumer in electronic contracting, enabling the consumer to withdraw from a contract already concluded within a period prescribed by law, without providing a specific justification or paying any amount other than the costs of returning goods or services. The right of withdrawal is discretionary and may be exercised by the consumer through unilateral will, without stating the reasons for its exercise, and the consumer's decision does not depend on the trader's consent or circumstances.

Different legislatures have recognized the consumer's right of withdrawal whether the contract was concluded through traditional means or through modern electronic means. Scientific and technological progress has led to the emergence of new methods and forms of contracting over the Internet, creating risks beyond those ordinarily associated with conventional contracting because the parties meet in a virtual environment. The consumer cannot physically inspect or handle the goods, nor can the consumer test the service, since it is only presented through electronic websites. This is in addition to the methods that traders may use to attract consumers through advertising and misleading promotional practices.

As a general rule, the consumer may exercise this right without being required to follow a particular method or specific procedure, whether the intention to withdraw is expressed expressly or implicitly. Nevertheless, some legislatures prescribe particular methods for exercising the right of withdrawal. The consumer is not required to state reasons for exercising this right. If the conditions necessary for

withdrawal are satisfied—namely, that the contract is one in respect of which withdrawal is permitted, the withdrawal period remains open, and the consumer follows the legally prescribed procedure—the legal effects of withdrawal arise for both the consumer and the trader.

Keywords: Right of Withdrawal; Electronic Contract; Consumer; Trader; Provisions Governing Withdrawal; Effects of Withdrawal.

Section One: The Manner of Exercising the Right of Withdrawal from Electronic Contracting under Iraqi, Iranian, and French Law

Most legislatures that recognize the right of withdrawal do not subject its exercise to a particular form or special procedure. Withdrawal may be express or implied, provided that it occurs within the statutory withdrawal period, which Iranian and French law identify as seven days in the provisions addressed here, and that the contract falls within the category of contracts subject to the right of withdrawal. Although these legislatures do not prescribe a specific form for exercising the right, as a practical matter it is in the consumer's interest to use a method that enables the withdrawal to be proved in the event of a dispute with the trader.

Subsection One: The Manner of Exercising the Right of Withdrawal from Electronic Contracting under Iraqi Law

The right of withdrawal is primarily subject to the consumer's own discretion and is exercised by unilateral will without the need for the other party's consent or for the consumer to provide reasons or disclose the motives for the decision. Its exercise is not subject to a specific form or special procedure; it is sufficient for the consumer to express the intention and desire to exercise the right of withdrawal. Such expression may be express or implied, for example by returning the goods previously received within the period prescribed for withdrawal.⁽¹⁾

The Iraqi legislature addressed the consumer's right of withdrawal in Iraqi Consumer Protection Law No. (1) of 2010, Article (6), paragraph (Second), contained in Chapter Three under the heading 'Consumer Rights': "The consumer and every interested person, where the information stipulated in this Article has not been obtained, may return all or part of the goods to the supplier and claim compensation before the civil courts for damage caused to him or to his property

¹⁰ Judge Muwaffaq Hammadi Abd, Civil Protection of the Consumer in Electronic Commerce Contracts: A Comparative Study, Al-Sanhouri Library, Al-Mutanabbi Street, Zain Legal Publications, 1st ed., 2011, p.

as a result thereof." ⁽²⁾ However, the Iraqi Consumer Protection Law does not contain clear provisions governing the manner in which the right of withdrawal is to be exercised.

Accordingly, the Iraqi legislature should have adopted clearer wording that grants the consumer broad discretion to exercise the right of withdrawal without excessive concern over instability in transactions as a justification for legislative restraint. Consumer safety and the protection of legitimate consumer interests deserve priority, particularly because the trader generally has numerous means available to protect private commercial interests. ⁽³⁾

Iraqi Transport Law No. (80) of 1983 provides in Article (20)(First): "If the passenger withdraws from transportation before its commencement, the passenger shall notify the carrier of the withdrawal no less than 24 hours before the time fixed for performance of the transportation. In cases of extreme necessity, the carrier may be notified on the same day; in both cases the transportation fare shall not become due." ⁽⁴⁾

The legal characterization of the right of withdrawal provided in Article (20) of the Transport Law, without loss of or liability for the fare, is that the contract remains ineffective rather than merely non-binding. A non-binding contract is ordinarily one whose nature permits either party to terminate it unilaterally, whereas a contract of carriage is binding on both parties and neither party may ordinarily terminate it by unilateral will without legal consequence.

In our view, therefore, the appropriate characterization is that the contract remains ineffective until the point twenty-four hours before the scheduled transportation time. Thereafter, the contract becomes effective and the fare becomes due. This is also indicated by Article (20)(Second): "If the passenger fails to attend at the appointed time and does not notify the carrier, the fare shall become due...."

Accordingly, from the date the contract is concluded until expiry of the prescribed withdrawal period, the contract remains ineffective. The fact that transportation fares are often paid in advance does not by itself amount to performance of the contract; payment is a condition associated with the subject matter of transportation accepted by the passenger and does not alter the passenger's option to withdraw.

²⁰ Iraqi Consumer Protection Law No. (1) of 2010.

³⁰ Alaa Omar Mohammed Al-Jaf, Legal Mechanisms for Consumer Protection in Electronic Commerce Contracts: A Comparative Study, Al-Halabi Legal Publications, 1st ed., 201, p. 565.

⁴⁰ Iraqi Transport Law No. (80) of 1983.

The passenger may withdraw, in which case the carrier is obliged to refund the amount paid.⁽⁵⁾

Subsection Two: The Manner of Exercising the Right of Withdrawal under Iranian Law

The consumer's exercise of the right of withdrawal from contracts, whether through traditional means or through electronic means such as e-mail,⁽⁶⁾ in distance contracts constitutes a voluntary legal act. It is classified as a unilateral legal act and therefore requires legal capacity, awareness, freedom, and intent on the part of the consumer. Because such an act concerns the disposition of financial rights, a discerning minor or legally incapacitated person cannot exercise it independently and the intervention of a guardian or curator is required. Consistent with the principle of consensualism in legal transactions, the exercise of the right of withdrawal is not subject to any special formality. Under Article (38) of the Electronic Commerce Law, the consumer is not required to provide any reason or justification; it is sufficient that the right be exercised within the statutory period.

Nevertheless, because exercise of the right of withdrawal obliges the supplier to reimburse amounts paid pursuant to Article (38)(c), the supplier must be notified of the withdrawal. The reimbursement obligation cannot operate in practice unless the other party is aware that the right has been exercised.

1- Declaration of Withdrawal

The question arises whether withdrawal takes effect merely upon the consumer's internal intention, or whether a declaration is a condition of its legal effectiveness. A related question is whether the consumer may later prove that the right of withdrawal was exercised within the statutory period even though no declaration was communicated at that time.

The answer depends on the choice between the theory of internal intention and the theory of manifested intention. Under Article (191) of the Civil Code, a legal act is formed by the intention to create legal consequences, while expression of intent is

⁵⁰ Atiya Walid Khalid and Abbas Abd Al-Samad, 'The Concept of the Consumer's Statutory Option to Withdraw from the Contract: A Comparative Study between Positive Law and Islamic Jurisprudence,' *Journal of the College of Law for Legal and Political Sciences*, Vol. 4, No. 15, 2015, p. 917.

⁶⁰ <https://snejatzadegan.com/withdrawal-from-online-shopping>

merely the means by which that intention is manifested and communicated to others rather than an essential constituent of the act. Accordingly, a consumer may seek to prove that the right of withdrawal was exercised within the statutory period even if the notice of withdrawal did not reach the supplier, although the burden of proof rests on the consumer because an internal intention can be established only through a declaration, presumptions, or other admissible evidence. ⁽⁷⁾ The information that must be stated and provided to the consumer before conclusion of a distance contract includes matters such as the total price of the goods or services and guidance concerning the right of withdrawal. The withdrawal period under the Electronic Commerce Law is seven days. The statutory right is granted because the consumer is the weaker party in the contractual relationship and therefore should have an opportunity to evaluate the contract calmly after receiving the purchased products. ⁽⁸⁾ Under the Iranian Electronic Commerce Law, the legislature adopted two significant consumer-protection mechanisms: first, the obligation to provide the consumer with necessary information before conclusion of the contract; and second, the right of withdrawal, which is among the most effective protective rights available during the period prescribed by Article (37). ⁽⁹⁾

2- Means of Declaring Withdrawal

The Electronic Commerce Law does not prescribe a particular means for declaring withdrawal. Reference may therefore be made to the general rules of the Civil Code, which do not require a specific form for expressing intent; any means that clearly indicates the intention is sufficient. Within European Union legislation, three principal approaches can be identified. The first permits notification by any possible means and is adopted in distance sales and timeshare contracts. A second approach requires a means that is capable of proof according to legal or customary standards. A third requires withdrawal to be in writing or recorded on a durable medium; this approach has been applied in certain distance transactions involving immovable property and in later developments concerning electronic timeshare arrangements. European legal regulation thus ranges from broad flexibility to

⁷⁰ Mostafa Elsan, *Electronic Commerce Law*, Tehran: Organization for the Study and Compilation of Humanities Books for Universities (SAMT) and Institute for Humanities, 1st ed., 1399, pp. 189-190.

⁸⁰ Nahid Parsa, 'The Consumer's Right of Withdrawal in Payments by Bitcoin under Iranian and European Union Law,' *Scientific Quarterly of Private Law Research*, Vol. 12, No. 46, Spring 1403, p. 118.

⁹⁰ Mostafa Najafi Marboueh, *Examination of the Nature and Effects of the Right of Withdrawal under Iranian Law and European Contract Regulations*, Master's Thesis in Private Law, Summer 1395, p. 32.

requirements of writing or a durable medium, depending on the nature of the contract and the degree of consumer protection required.

The right of withdrawal arising from a contract concluded by electronic communications or other means of distance communication exists only where the contract is actually concluded through such means. Article (2)(f) of the Electronic Commerce Law does not restrict these means to a particular type, but leaves the category open. Likewise, Article (b) of the 2005 Convention defines electronic communication as any communication between parties by means of 'data messages'. Both the Convention and Iranian law define a 'data message' as information generated, sent, received, or stored by electronic, magnetic, optical, or similar means. ⁽¹⁰⁾ The Electronic Commerce Law also imposes conditions governing exercise of the right of withdrawal in respect of goods under Article (34)(c), and in respect of service contracts under Article (34)(d). Those provisions require suppliers of goods and services to provide information, in addition to confirming the initial information, concerning the conditions and procedures for withdrawal from electronic transactions for goods and service contracts. Thus, under Article (34)(c) and (d), the method of withdrawing from the electronic contract forms part of the initial information and must again be communicated to the customer through supplementary information. Article (35) requires that such information and confirmation be provided in a durable, clear, and explicit form, at an appropriate time and through suitable means of communication, in accordance with the principle of good faith. Article (33) likewise requires the supplier to inform the consumer of the conditions and procedures governing withdrawal from the electronic contract, including payment, delivery of goods and services, performance of the contract, and the method for returning goods and services after sale. ⁽¹¹⁾

Subsection Three: The Manner of Exercising the Right of Withdrawal under French Law

The French Consumer Code, in Article L. 121-25 concerning doorstep sales, provided that within seven days, including holidays, the customer had the right to

¹⁰⁰ Mostafa Elsan, op. cit., p. 190.

¹¹⁰ Saeedeh Bagheri Asl, Methods of Withdrawal from Electronic Contracts under the Iranian Electronic Commerce Law, Department of Law and New Technologies, Faculty of Law, Theology and Political Sciences, Islamic Azad University, Tabriz, Iran, (3)(5), 1401, p. 126.

withdraw from the undertaking or purchase by registered letter with acknowledgment of receipt.⁽¹²⁾ The French legislature also adopted a more flexible approach to the electronic consumer's exercise of the right of withdrawal in Article L. 221-21 of the Consumer Code, allowing the consumer several means of notifying the trader of the decision before expiry of the statutory period, either on paper or by using the withdrawal form prepared in accordance with the model referred to in Article L. 221-5(2) and prescribed by decree of the Conseil d'État.

Withdrawal may also be effected through any other unambiguous statement. The French legislature further permits withdrawal by completing and submitting electronically the form or declaration made available by the trader through the trader's website.⁽¹³⁾

Accordingly, when exercising the right of withdrawal, the consumer should notify the contracting trader through the Internet. The trader must enable the consumer to complete a withdrawal form constituting an express declaration of withdrawal and must send the consumer confirmation of receipt on a durable medium. Under former Article L. 121-20 of the French Consumer Code, withdrawal is not dependent on the trader's approval because it is a discretionary right of the consumer. The consumer is not required to justify the decision or state the motives underlying it, and no particular form is generally required.

To avoid disputes, however, the consumer may prudently use a method capable of proving the withdrawal at a later stage, such as a registered letter with acknowledgment of receipt where the producer or trader denies having received notice of withdrawal.⁽¹⁴⁾

When exercising the right of withdrawal, the consumer must communicate to the other contracting party, or to that party's legal representative, the intention to exercise the right and to terminate the legal effects arising from the contract. The parties must then be restored to the position that existed before contracting: the consumer returns the goods and the supplier or trader refunds the price, without

¹²⁰ Ahmad Sabri Kazim Abd Al-Saadi, *The Consumer's Option to Withdraw from the Electronic Contract: A Comparative Study*, Master's Thesis, University of Karbala, College of Law, 2015, p. 119.

¹³⁰ Ben Yatto Aribi Saliha and Alaq Abd Al-Qadir, 'The Electronic Consumer's Right of Withdrawal from the Contract: A Study in French Legislation,' *Algerian Journal of Rights and Political Sciences*, Vol. 6, No. 2, 2021, p. 302.

¹⁴⁰ Alaa Qashi, 'The Option of Withdrawal from the Contract as a Consumer Guarantee in Electronic Transactions,' *Algerian Journal of Legal, Political and Economic Sciences*, Vol. 57, No. 4, 2020, p. 346.

requiring an inquiry into the reasons, motives, or considerations underlying the consumer's decision.⁽¹⁵⁾

Section Two: Contracts Excluded from the Right of Withdrawal from Electronic Contracting under Iranian and French Law

As a general principle, contracts concluded between consumers and traders in the field of electronic contracting are subject to the right of withdrawal. Nevertheless, certain legislatures, including Iranian and French law, exclude the exercise of the right in specified contracts because of their particular nature and circumstances.

Subsection One: Contracts Excluded from the Right of Withdrawal in Electronic Contracting under Iranian Law

Pursuant to Article (38)(d) of the Electronic Commerce Law, the consumer does not enjoy a right of withdrawal where the goods or services are subject to special circumstances. These cases are governed by the provisions referred to in Article (79).

1- Goods or services involving the supply of foodstuffs or goods intended for daily consumption. Although consumer protection in distance transactions is necessary, such protection must operate within reasonable limits. Rules that are imprecise or disproportionate may cause irreparable harm to the supplier and, instead of restoring relative balance between the supplier and the consumer, may exacerbate the imbalance. Returning daily necessities and food products may, because of their perishable nature, expose the supplier to loss.⁽¹⁶⁾

2- Goods or services whose price is determined by fluctuations in the financial markets, such as shares, currencies, and gold. In these cases the consumer is aware of the market price at the time of purchase, while prices change continuously. Granting a right of withdrawal could therefore create a substantial risk of loss to

¹⁵⁰ Abdul Majid Khalaf Mansour Al-Enezi, 'The Option to Withdraw from Contracting under Kuwaiti Law: A Comparative Study,' Kuwait International Law School Journal, No. 2, No. 22, 2018, pp. 130-131.

¹⁶⁰ Abbas Qasemi Hamed and Yasser Moeini, 'The Scope of the Consumer's Right of Withdrawal in Distance Transactions under Iranian, German, and European Union Law,' Private Law Research Journal, No. 4, Second Half of 1393, p. 24.

the supplier and impede the immediate supply of such goods because their prices are beyond the supplier's control. ⁽¹⁷⁾

3- Goods manufactured according to a special order placed by the consumer. Where a good or service is produced specifically for the consumer and cannot reasonably be sold to another purchaser, the consumer is not granted a right of withdrawal because the order was made with full knowledge of the specifications and the loss resulting from error or misjudgment should fall on the consumer. If, however, the supplier fails to comply with the agreed specifications, Article (41) applies and the consumer may return the goods or require performance of the service.

4- Perishable goods. Because the withdrawal period begins on delivery, granting a seven-day period in these cases could result in the goods being returned to the supplier in a spoiled condition. It is therefore reasonable to exclude such goods from the right of withdrawal. ⁽¹⁸⁾

4- Investment-related services, including insurance services and other financial and credit institution services. Article (2) treats financial services as falling within Article (42)(a), outside the ordinary scope of consumer protection under the Electronic Commerce framework and therefore excluded from the right of withdrawal. ⁽¹⁹⁾

5- Auction contracts. An auction is a particular method of acquiring goods in which purchasers compete and each submits a higher price than previously offered. The price is the final price reached through the bidding process and is not reopened for renegotiation after the auction concludes.

6- Newspapers and periodicals governed by press law. Newspapers are consumed on a daily basis and ordinarily have no resale market after their date of issue. Periodicals are also commonly purchased by persons who act with sufficient awareness and knowledge that the same degree of protective intervention, including a right of withdrawal, is considered unnecessary. ⁽²⁰⁾

¹⁷⁰ Mostafa Elsan, op. cit., p. 190.

¹⁸⁰ Mostafa Elsan, op. cit., p. 191.

¹⁹⁰ Deputy for Planning and Economic Affairs, Ministry of Commerce of the Islamic Republic of Iran, Collection of Electronic Commerce Laws and Regulations, p. 42.

²⁰⁰ Mohammad Mahdi Al-Sharif and Seyyed Hossein Asad, 'Reflections on the Nature of the Right of Withdrawal in Electronic Contracts,' Journal of Comparative Legal Studies, Vol. 5, No. 1, Spring-Summer 1393, p. 79.

7- Audio and video recordings, computer programs, and encrypted Internet subscription cards, provided that the packaging has not been opened or the encryption removed. In these cases the consumer is presumed capable of identifying the characteristics of the product from the information stated on the packaging. Once the packaging is opened, acceptance becomes final and the consumer loses the right of withdrawal. ()²¹

8- Transactions concerning the sale of immovable property or proprietary rights arising from it, except leases. Article (42) of the Electronic Commerce Law reflects the fact that transactions involving immovable property are generally not concluded entirely through means of distance communication. With respect to transfer of ownership, Article (22) of the Registration Law recognizes an 'official instrument' as proof of ownership.

9- Purchases of goods or services from vending machines, such as the purchase of transportation services or tickets for a train or metro. This exception is explained by the fact that the automated system lacks the practical capacity necessary to reverse or correct the transaction in the ordinary manner. ()²²

10- Transactions conducted through public telephones. Because of the difficulty of proving the source and time of conclusion of such contracts, the legislature excludes these transactions from the ordinary consumer-protection framework under Article (42) of the Electronic Commerce Law in order to prevent an excessive increase in litigation. () To avoid a proliferation of disputes, such transactions have therefore been excluded from the scope of consumer protection. ()²³²⁴

11- Services supplied with the consumer's consent before expiry of the seven-working-day period. Since the period for exercising withdrawal from a service contract begins on the date of the contract, if the service provider begins performance with the consumer's consent before the seven-day withdrawal period

²¹⁰ Mostafa Elsan, op. cit., p. 191.

²²⁰ Mostafa Elsan, op. cit., p. 192.

²³⁰ Mohammad Mahdi Al-Sharif, op. cit., pp. 79-80.

²⁴⁰ Mostafa Elsan, op. cit., p. 193.

expires, the consumer will in practice no longer have a meaningful period in which to withdraw once the service has been performed. ()²⁵

Subsection Two: Contracts Excluded from the Right of Withdrawal in Electronic Contracting under French Law

The French legislature recognizes a number of exclusions from the right of withdrawal. Some exclusions apply directly, while others apply unless the parties agree otherwise.

First: Exceptions under Article L. 121-20-4

1- Contracts for the supply of consumer goods delivered periodically and regularly to the consumer's residence or workplace by distributors. ⁽²⁶⁾ The rationale for this exception is that a consumer who regularly contracts for the periodic supply of such consumer goods acquires sufficient experience to protect his or her interests, so there is no compelling justification for applying the special protection provided by the right of withdrawal.

2- Contracts concerning restaurant, transportation, accommodation, and leisure services that are to be supplied on a specified date or during specified periods. ⁽²⁷⁾ The rationale is to avoid harm to the trader where performance has been agreed for a particular prearranged time and a hall, seat, room, or other place has been reserved for the consumer. If withdrawal were permitted in such contracts, the trader could suffer a loss because the opportunity to make the reservation available to another consumer would have been lost. ⁽²⁸⁾

Second: Contracts Excluded under Article L. 121-20-2 of the Consumer Code

This provision sets out several exclusions from the right of withdrawal unless the parties agree otherwise, as follows:

1- Service contracts whose performance begins before expiry of the withdrawal period where such early performance was agreed in advance. This exception applies to service contracts in which the trader and consumer agree that performance will begin before expiry of the seven-day withdrawal period. Its

²⁵⁰ Mohammad Mahdi Al-Sharif, op. cit., p. 78.

²⁶⁰ Salem Youssef Al-Omda, *The Consumer's Right to Withdraw from Contracting*, Dar Al-Jami'a Al-Jadida, 2018, pp. 340-341.

²⁷⁰ Mostafa Ahmad Abu Amr, *The Contracting Session in Internet Contracting: A Comparative Study*, 2008, pp. 128-129.

²⁸⁰ Hamed Mansour Hamed Saqr, *Civil Protection against False Advertising in the Electronic Sales Contract*, Dar Al-Jami'a Al-Jadida, 2020, p. 218.

purpose is to prevent harm to the trader where the consumer seeks to withdraw after already benefiting from the service. ⁽²⁹⁾

2- Contracts for the supply of goods or services whose price depends on fluctuations in the financial market. This exception protects the trader where the price of goods or services is linked to market movements and may rise or fall independently of the trader. ⁽³⁰⁾

3- Contracts for the supply of goods manufactured according to specifications determined by the consumer or clearly personalized. The transaction may concern a product prepared specifically for the consumer; for example, a consumer may contract through an Internet marketplace for the preparation of a wedding dress made to individual specifications.

4- Goods that, by their nature, cannot be returned to the seller or are liable to deteriorate or expire rapidly. These include goods that would be damaged by being repackaged and shipped back, such as composite items that must be dismantled for return, as well as fragile or perishable products such as foodstuffs and flowers. ⁽³¹⁾

5- Contracts for the supply of audio or visual recordings or computer software where the consumer removes the packaging after receipt. This provision concerns the sale of audiovisual recordings and software. The French legislature requires, for the exception to apply, that the consumer have removed the protective packaging from the recording or software medium. Even if the consumer has not actually used the item, merely opening the packaging causes the right of withdrawal to lapse. ⁽³²⁾ One rationale for this exception is the protection of intellectual property.

Allowing a right of withdrawal in such circumstances could enable the consumer to obtain the protected content without paying for it. The consumer might open an audiovisual recording or computer software, copy it, and then invoke the right of withdrawal, thereby infringing intellectual-property rights. ⁽³³⁾ Examples include video recordings, discs, compact discs (CDs), software, and digital products made available through the various services of the Internet.

²⁹⁰ Ramzi Bidallah Ali Al-Hijazi, *Civil Protection of the Consumer after Electronic Contracting: A Comparative Study*, Al-Halabi Legal Publications, 1st ed., 2016, p. 164.

³⁰⁰ Alaa Omar Mohammed Al-Jaf, *op. cit.*, pp. 554-555.

³¹⁰ Ramzi Bidallah Al-Hijazi, *op. cit.*, p. 166.

³²⁰ Salem Youssef Al-Omda, *op. cit.*, p. 344.

³³⁰ Bouzari Mouloud and Dharif Walid, *The Right to Withdraw from the Contract*, Master's Thesis, Mohamed Ben Yahia University, Faculty of Law and Sciences, 2017, pp. 39-40.

6- Contracts for the supply of newspapers, magazines, and periodicals. These publications have a time-sensitive nature and, after the relevant period expires, may lose most or all of their commercial value. A consumer should not, for example, be able to read a newspaper or magazine and then demand withdrawal. In relation to periodicals, the exception also protects intellectual-property rights by preventing the purchaser from copying the publication and then returning it. ⁽³⁴⁾ Permitting withdrawal and return before expiry of the withdrawal period could deprive the publisher of any realistic possibility of resale once the publication has lost its value, thereby causing loss to the trader. ⁽³⁵⁾

7- Contracts for legally authorized betting and gambling services. Entering such contracts necessarily involves an element of risk or speculation that the consumer must accept. This is inconsistent with the rationale underlying the right of withdrawal and therefore supports excluding such contracts from its scope. ⁽³⁶⁾

Section Three: Legal Effects of Exercising the Right of Withdrawal from Electronic Contracting under Iraqi, French, and Iranian Law

The right of withdrawal is a discretionary consumer right. If the consumer does not exercise it within the statutory period, the contract concluded through the Internet becomes binding, final, and enforceable. If, however, the consumer exercises the right in accordance with its governing conditions and requirements, a number of legal effects arise.

Subsection One: Effects of Exercising the Right of Withdrawal for the Consumer under Iraqi and French Law

Exercise of the right of withdrawal by the consumer in electronic contracting results in an obligation to return the goods to the trader and, in the circumstances described below, to bear the costs of returning them.

1- The Consumer's Obligation to Return the Goods to the Trader

When the consumer elects to withdraw from a contract concluded over the Internet, the contract is brought to an end and treated as though it had not produced its intended continuing effects. The consumer who exercises the right must restore

³⁴⁰ Hala Ali Shalhoub, *Withdrawal from the Contract in the Context of Electronic Contracting*, Master's Thesis, Lebanese University, Faculty of Law, Political and Administrative Sciences, 2019, p. 59.

³⁵⁰ Karim Ali Salem Hashmawi, *The Consumer's Right of Withdrawal: A Comparative Study*, Arab Democratic Center, 2022, p. 121.

³⁶⁰ Salem Youssef Al-Omda, *op. cit.*, p. 345.

the parties, as far as possible, to the position existing before contracting. If the consumer has received an item, it must be returned in good condition, substantially in the state in which it was received, and within the period prescribed for withdrawal. ⁽³⁷⁾ The principal effect of withdrawal for the electronic consumer is the obligation to return the goods or product, or to relinquish the service, without being required to bear any penalty or charge other than the costs associated with returning the goods where applicable. ⁽³⁸⁾ Exercise of the right presupposes that the goods were received in conformity with the agreed specifications and free from defects attributable to the supplier. The consumer must therefore return them in the same condition, without damage or deficiency caused by use and without partial destruction or material alteration of their characteristics.

The consumer's obligation to preserve the goods requires the care of an ordinarily prudent person, and the consumer is responsible for loss resulting from failure to exercise that care. ⁽³⁹⁾ In principle, the electronic contract is effective and produces its legal consequences, including transfer of ownership. If the goods perish in the consumer's possession after delivery by the professional trader, without fault or negligence attributable to the trader, the loss may fall upon the consumer and the practical possibility of exercising withdrawal may thereby be extinguished.

Where the goods perish while in the consumer's possession, exercise of the right of withdrawal may become impossible. Withdrawal within the statutory period ordinarily requires reversal of the contract and restoration of its effects, including return of the goods to the trader. If the goods have perished at the consumer's risk, restoration to the pre-contractual position is impossible and the contract remains binding on both parties, with the option of withdrawal falling away.

A further question concerns fruits, proceeds, and additions generated by the goods while they are in the consumer's possession: does the consumer retain them, or must they be returned to the supplier when withdrawal is exercised? ⁽⁴⁰⁾

³⁷⁰ Mansour Hatem Mohsen and Israa Khudair Mazloun, *op. cit.*, p. 67.

³⁸⁰ Tariq Qadri and Diablo Mohammed Najib, *Electronic Commerce between Reality and Expectation*, Academic Publishing Center, 2022, p. 265.

³⁹⁰ Jihad Mahmoud Abd Al-Mabdi, *The Consumer's Right to Withdraw from a Contract Concluded by Electronic Means: An Analytical Study in Light of European Trends and National Legislation*, Al-Mahmoud Center for Distribution of Legal Books, 1st ed., 2025, pp. 271-272.

⁴⁰⁰ Ahmad Sabri Kazim Abd Al-Saadi, *op. cit.*, p. 91.

The answer may be found in Article (1165) of Iraqi Civil Code No. (40) of 1951, which provides that: "A possessor in good faith owns all fruits received and all benefits obtained during the period of possession." ⁽⁴¹⁾

In this respect, the law distinguishes between a possessor in good faith, who receives or obtains the thing believing that he or she is entitled to possess it as owner and therefore acquires its fruits, and a possessor in bad faith who knows that the thing is held without entitlement and therefore does not acquire the fruits and must return them together with the goods. Thus, where a consumer receives property capable of producing fruits or profits—for example, a vehicle rented to others by the hour or day during the withdrawal period—and subsequently exercises the right of withdrawal, the result depends on good or bad faith. A consumer acting in good faith may retain the fruits and benefits as permitted by law, whereas a consumer acting in bad faith who has derived such benefits must return them in addition to the goods. ⁽⁴²⁾

Another issue concerns allocation of the risk of loss before the parties have fully performed their contractual obligations. Does the risk fall on the trader or the consumer where the subject matter of the contract perishes because of an external cause or force majeure?

Article (179)(1) of the Iraqi Civil Code provides: "1- If the subject matter of a commutative contract perishes while in the possession of its owner, the contract is rescinded whether the loss results from the owner's act or from force majeure, and the owner must return the counter-performance received." Thus, where the goods perish before the trader delivers them to the consumer, the trader bears the risk and must return what was received from the consumer. Article (179)(3) of the same Code further provides: "3- If the sold property perishes in the seller's possession before the purchaser takes delivery, the loss is borne by the seller and nothing is due from the purchaser." ⁽⁴³⁾

French law likewise applies the general rules governing risk of loss caused by an external event. Where the goods perish after the consumer has received them and possession has passed to the consumer, the risk may fall upon the consumer provided that the loss is attributable to the consumer or to an external cause for which the trader bears no responsibility.

⁴¹⁰ Iraqi Civil Code No. (40) of 1951.

⁴²⁰ Ahmad Sabri Kazim Abd Al-Saadi, *op. cit.*, p. 93.

⁴³⁰ Iraqi Civil Code No. (40) of 1951.

If, however, the consumer has not yet received the goods and they perish while still in the trader's possession, the risk of loss is borne by the trader alone. ⁽⁴⁴⁾

It is also worth noting that former Article L. 121-16 of the French Consumer Code recognized the consumer's right to return a product for replacement, or to return it and recover the price paid. Under that provision, the consumer could choose between replacement and reimbursement according to which option better served the consumer's interest, particularly because the consumer generally bears the costs of returning the product when electing to return it.

2- The Consumer's Obligation to Bear the Costs of Returning the Goods to the Trader

As explained above, when the consumer withdraws from a contract already concluded, no compensation or charge is payable merely because withdrawal has been exercised, except for expenses that are a natural and direct consequence of exercising the option, namely the amounts incurred in returning the goods to the trader and delivering them to the trader's place of business. These may include shipping, transportation, and insurance costs. ⁽⁴⁵⁾ If exercise of the right of withdrawal itself required compensation, the rationale for recognizing the right would be undermined. At the same time, the trader should not be burdened with the costs of return where the trader has committed no fault and has not breached contractual obligations merely because the consumer chooses to exercise the right of withdrawal. ⁽⁴⁶⁾ In practice, these costs may be significant where the consumer has entered into a distance contract over the Internet with a foreign trader established in another country.

The parties may consequently be subject to different legal systems. The Internet, through advanced technologies and cross-border communication services, facilitates contracting between parties located in different states, reflecting its international character and its capacity to transcend political and geographical borders. ⁽⁴⁷⁾ Former Article L. 121-20(1) of the French Consumer Code provided

⁴⁴⁰ Ata Saad Hawas, *Consumer Withdrawal from a Distance Contract*, Dar Al-Jami'a Al-Jadida, 2025, pp. 203-204.

⁴⁵⁰ Mansour Hatem Mohsen and Israa Khudair Mazloum, 'Withdrawal from Contracting in the Electronic Consumer Contract: A Comparative Study,' *Al-Muhaqqiq Al-Hilli Journal for Legal and Political Sciences*, No. 2, Second Year, 2009, p. 68.

⁴⁶⁰ Alaa Qashi, *op. cit.*, p. 348.

⁴⁷⁰ Amanj Rahim Ahmad, *Consumer Protection within the Scope of the Contract: A Comparative Analytical Study*, Al-Matbouat Company for Distribution and Publishing, 1st ed., 2010, p. 358.

that the consumer had seven full working days within which to exercise the right of withdrawal without being required to state reasons or pay penalties, apart from the costs of return. ⁽⁴⁸⁾

This provision indicates that French law attributed a retroactive effect to withdrawal insofar as the parties were to be restored to their prior position. When the consumer exercises the right, the goods must be returned, which necessarily involves expenditure for repackaging, shipment, and delivery to the trader. If the consumer must return the goods in the condition in which they were received and through a comparable delivery method, the expenses associated with that process are the return costs contemplated by Article L. 121-20 of the French Consumer Code. ⁽⁴⁹⁾

Several reasons are advanced for placing the costs of returning the goods on the consumer:

First, it is logical for the consumer to bear the costs of returning the goods to the trader where the trader has committed no fault and has properly performed the contract. It would therefore be inequitable to require the trader to bear costs generated solely by the consumer's choice to withdraw. Requiring the consumer to bear those expenses contributes to fairness and contractual balance between the parties.

Second, requiring the consumer to bear return costs promotes balance in the relationship between the trader and the consumer. The consumer is granted a right to withdraw without having to provide reasons; allocating the direct costs of return to the consumer helps prevent abusive exercise of the right to the trader's detriment.

Third, placing the return costs on the consumer reinforces the seriousness of the right of withdrawal and encourages consumers to use it when the goods or product genuinely do not meet their needs, rather than as a matter of convenience without consequence.

Fourth, return expenses are generally viewed as limited enough not to deter the consumer from exercising the right. Some writers argue that bearing such costs encourages the consumer to act with greater care and deliberation before withdrawing, particularly where the value of the goods is low. ⁽⁵⁰⁾ This approach

⁴⁸⁰ Ahmad Issam Mansour, *Legal Protection in the Electronic Contract: A Comparative Study*, Dar Al-Jami'a Al-Jadida, 2019, p. 295.

⁴⁹⁰ Ahmad Sabri Kazim Al-Saadi, *op. cit.*, p. 98.

⁵⁰⁰ Ata Saad Hawas, *op. cit.*, pp. 211-212.

cannot necessarily be characterized as unfair because no fault or breach is attributed to the trader; requiring the trader to pay return expenses in such circumstances would therefore be difficult to justify. The consumer who chooses to withdraw should bear the direct expenses resulting from that choice.⁽⁵¹⁾ Accordingly, the consumer bears the expenses generated by exercising the right of withdrawal, particularly those directly associated with returning the goods, so that the trader is not exposed to unwarranted loss.⁽⁵²⁾

Subsection Two: Effects of Exercising the Right of Withdrawal for the Trader under Iraqi and French Law

The principal effects arising from the consumer's exercise of the right of withdrawal are that the trader must reimburse amounts received from the consumer and, under some legal systems, the consumer's withdrawal from the principal contract also results in termination of contracts linked to the consumer transaction.⁽⁵³⁾

1- The Trader's Obligation to Refund the Price of the Goods or Service to the Consumer

The principal effect of withdrawal for the trader is the obligation to refund the amounts paid by the electronic consumer in exchange for the goods or service.⁽⁵⁴⁾ Exercise of the right of withdrawal causes the contract to be treated as though it no longer produces its intended effects, and the trader becomes obliged to refund the price of the goods or the consideration paid for the service that is the subject of the withdrawn contract within the period prescribed by law.

Because the consumer ultimately does not retain the product or service that formed the subject matter of the transaction, the consumer is entitled to recover the amount paid in exchange for the goods or service from which the consumer has withdrawn.

It is self-evident that the trader's obligation to refund the price of the goods or the service arises only where the trader has actually received payment from the

⁵¹⁰ Mohammed Mahdi Al-Saghir, *Consumer Protection Law: A Comparative Analytical Study*, Dar Al-Jami'a Al-Jadida, 2015, p. 366.

⁵²⁰ Hanan Boutros, *The Possibility of Consumer Withdrawal from the Electronic Contract under Syrian Legislation*, Master's Thesis, Higher Institute and Scientific Research, Business Law, 2012, p. 53.

⁵³⁰ Ahmad Issam Mansour, *op. cit.*, pp. 290-291.

⁵⁴⁰ Tariq Qadri and Diablo Mohammed Najib, *op. cit.*, p. 267.

consumer. If the consumer has not paid the price or consideration, there is no amount to reimburse. Where payment has been made, however, the trader is obliged to refund the full price of the goods or the full consideration for the service under the consumer contract from which withdrawal has been exercised. ⁽⁵⁵⁾

The amount that the trader must reimburse is the amount actually received from the consumer as the price of the goods or consideration for the service. Thus, if the consumer purchased the goods at a discount below the ordinary price, the trader is required to refund only the discounted amount actually paid and not the pre-discount price, so that withdrawal does not generate an unjustified loss for the trader.

Conversely, if the market value of the goods falls after conclusion of the contract, that decrease does not reduce the amount the trader must refund. Otherwise, withdrawal could harm the consumer and unjustly enrich the trader at the consumer's expense. The relevant figure is therefore the price or consideration agreed and actually paid at the time of contracting, without regard to subsequent increases or decreases in the market value of the goods or service. ⁽⁵⁶⁾

Iraqi Consumer Protection Law No. (1) of 2010 states in Article (1)(Fourth) that one of its purposes is "to preserve consumers' rights and prevent harm to them." Article (6) of the same Law also provides that the consumer has the right to obtain "all information relating to the protection of his rights and legitimate interests." ⁽⁵⁷⁾

The French Consumer Code provided in former Article L. 121-20-1 that the seller must reimburse the sums paid by the consumer within thirty days from notification of the consumer's withdrawal from the contract. If the seller refused to return those sums, criminal sanctions could apply under Article L. 121-20-10, including imprisonment for six months and a fine of EUR 7,500. ⁽⁵⁸⁾ The French Consumer Code thus emphasized the trader's obligation, upon exercise of the right of withdrawal, to reimburse the consumer within a maximum period of thirty days. Failure to comply with that period caused the sums owed to accrue interest calculated at the statutory rate then in force.

In addition, refusal by the seller to return amounts paid by the consumer for goods returned following exercise of the right of withdrawal constituted a violation

⁵⁵⁰ Ata Saad Hawas, op. cit., pp. 190-191.

⁵⁶⁰ Salem Youssef Al-Omda, op. cit., p. 391.

⁵⁷⁰ Iraqi Consumer Protection Law No. (1) of 2010.

⁵⁸⁰ Dalia Maazouz, *The Electronic Contract*, Academic Publishing Center, Sultanate of Oman, 2022, p. 127.

subject to investigation and verification by the competent authorities responsible for competition, consumer affairs, and fraud control. ⁽⁵⁹⁾ Tunisian Electronic Exchanges and Commerce Law No. (83) of 2000 similarly provided for the "return of all amounts paid within ten days beginning from the date the goods are returned or the service is withdrawn from." ⁽⁶⁰⁾ Syrian Electronic Transactions Law No. (3) of 2014 provides that, in cases in which withdrawal from the purchase is permitted, the seller must refund the amounts paid to the consumer upon receipt of the goods, within seven days unless otherwise agreed. ⁽⁶¹⁾

Under French Decree No. 301 of 2016, Article L. 221-24 of the Consumer Code, concerning distance contracts, requires the trader to reimburse all sums paid by the consumer, including delivery costs, without undue delay and no later than fourteen days from the date on which the trader is informed of the consumer's decision to withdraw. ⁽⁶²⁾

With respect to services, Article L. 242-15 of the French Consumer Code provides, in relation to distance contracts for financial services, that where the trader fails to refund the price in accordance with Article L. 222-15 governing reimbursement in such contracts, statutory interest becomes payable on the amount once the reimbursement period has expired. ⁽⁶³⁾

2- Termination of Contracts Concluded in Connection with the Contract from Which the Consumer Withdraws

Once the consumer withdraws from an electronic sales contract, the principal contract ceases to produce its effects and this consequence may extend to contracts ancillary to it rather than stopping with the principal transaction alone. For example, the purchase of goods or services may require the consumer to enter into a separate loan agreement in order to obtain funds to pay the purchase price; in that case, the loan agreement is linked to the electronic sales contract.

But for the sales contract, there would ordinarily be no reason for the financing agreement to exist. Accordingly, the loan contract should terminate as a

⁵⁹⁰ Karim Ali Salem Hashmawi, op. cit., p. 144.

⁶⁰⁰ Tunisian Electronic Exchanges and Commerce Law No. (83) of 2000.

⁶¹⁰ Syrian Electronic Transactions Law No. (3) of 2014.

⁶²⁰ Karim Ali Salem Hashmawi, op. cit., p. 144.

⁶³⁰ Salem Youssef Al-Omda, op. cit., p. 403.

consequence of the disappearance of the electronic sales contract.⁽⁶⁴⁾ Thus, exercise of the right of withdrawal from the principal contract directly affects dependent contracts and annexes, such as a consumer credit agreement.

Such credit may be granted by a third party for the purpose of paying the price of goods or services. This reflects the general principle that an accessory contract falls with the principal contract where the accessory agreement exists solely to finance the transaction from which the consumer has withdrawn.⁽⁶⁵⁾ Other examples include agreements entered into by the consumer to obtain services connected with the use of property under a timeshare arrangement, or contracts for long-term holiday products and services where the trader or a third party supplies those services pursuant to an agreement between the third party and the trader.⁽⁶⁶⁾

The French legislature provided in Article 311-12 that where payment of the price of goods or services is financed wholly or partly by credit granted by the supplier or by a third party under an agreement between that third party and the supplier, the consumer's exercise of the right of withdrawal terminates by operation of law the credit agreement specifically allocated to financing the transaction, without costs or compensation other than any permissible costs associated with opening the credit file.⁽⁶⁷⁾ The 2003 Palestinian Draft Law on Electronic Exchanges and Commerce likewise provided in Article (58) that where a purchase is financed wholly or partly by a loan granted to the consumer by the seller or by a third party under an agreement between the seller and the third party, the consumer's withdrawal from the purchase terminates the loan agreement without compensation.⁽⁶⁸⁾

French law thus treats the contract concluded by the consumer and the financing agreement as economically and legally interconnected. The disappearance of the principal consumer contract therefore entails the disappearance of the financing contract concluded for its purpose. This affords significant protection to the consumer because the credit agreement was entered into only to finance the distance contract. Once the contract that the consumer

⁶⁴⁰ Shahd Mohammed Khalifa Al-Kubaisi, Problems of the Right of Withdrawal from the Electronic Sales Contract: A Comparative Study, Master's Thesis, Qatar University, 2022, p. 92.

⁶⁵⁰ Lakhdar Daykha, The Consumer's Right to Withdraw from Contracting, Faculty of Law and Political Sciences, Echahid Hamma Lakhdar University, 2018, p. 36.

⁶⁶⁰ Mostafa Ahmad Abu Amr, *op. cit.*, p. 152.

⁶⁷⁰ Ahmad Issam Mansour, *op. cit.*, p. 293.

⁶⁸⁰ Palestinian Draft Law on Electronic Exchanges and Commerce of 2003.

originally intended to conclude is brought to an end through withdrawal, there is no longer a justification for maintaining the linked financing relationship.

Subsection Three: Effects of the Right of Withdrawal in Electronic Contracting under Iranian Law

Electronic contracts, like other contracts, give rise to legal effects and consequences for the contracting parties. Examining these consequences clarifies the scope of the parties' obligations and rights. The following discussion therefore addresses the effects resulting from use of the right of withdrawal in electronic contracting. ⁽⁶⁹⁾ The expansion of electronic space and the use of electronic tools have reduced geographical constraints and other practical barriers to contracting. ⁽⁷⁰⁾

Sub-subsection One: Effects of Electronic Withdrawal for the Consumer under Iranian Law

Exercise of the right of withdrawal in electronic contracting gives rise to several consequences, particularly the consumer's responsibility for the goods that are the subject of the contract, responsibility for use and enjoyment of those goods, compensation for damage or reduction in value caused by use, and the obligation to return the goods to the trader.

1- The Consumer's Responsibility for the Goods That Are the Subject of the Contract

In distance contracts concerning specified goods, the right of withdrawal can be exercised only while the goods remain capable of being returned and retain their material existence. Accordingly, withdrawal cannot effectively be exercised in relation to consumed foodstuffs or perishable goods once they have been consumed or have spoiled while in the consumer's possession. The consumer must also compensate the supplier for damage caused to the goods by the consumer's use, even where withdrawal is exercised within the statutory period.

⁶⁹⁰ Ali Moqaddam, Rights and Costs of Parties in Electronic Sales, Applied Legal Studies of Iran and International Law, Year 10, No. 37, Autumn 1396, p. 258.

⁷⁰⁰ Hamid Reza Agha Mohammadi and Abolfazl Bagheri, Electronic Commerce and Network Security, Chap Publishing Company, Tehran, 402, p. 55.

2- The Consumer's Responsibility for Use and Enjoyment of the Goods

One view holds that the consumer must return benefits obtained from use of the goods, or pay their value where restitution in kind is impossible. This view is based on the distinction between withdrawal and rescission: rescission ordinarily operates from the time it occurs, whereas withdrawal is said to have retroactive effect extending back to the date the contract was concluded, so that the legal relationship between the parties is restored to its pre-contractual position. ⁽⁷¹⁾

3- Compensation for Damage to the Goods

The consumer is responsible for any deficiency, defect, or damage affecting the goods during the period between receipt and exercise of the right of withdrawal. Under German law, this responsibility may be treated broadly enough to place even certain accidental losses on the consumer, although some legal scholarship argues that the consumer should not be placed in a worse legal position than a purchaser in an ordinary in-store sale. In this respect, the right of withdrawal is comparable to termination based on an option, because the effect of such termination is to restore the parties, so far as possible, to their pre-contractual position with respect to the subject matter itself rather than necessarily with respect to all benefits derived from it. Although the Iranian Civil Code does not expressly formulate this rule in these terms, it may be inferred from the opening part of Article (453) and from Article (286) concerning mutual cancellation (iqala).

4- Compensation for Reduction in the Value of the Goods Caused by Use

During the period between conclusion of the contract and exercise of the right of withdrawal, the contract is valid and effective, and the consumer, as owner of the goods, may use and benefit from them. The difficulty arises when the consumer uses the goods for a period and then decides to withdraw, leaving the supplier with an item whose market value and quality differ from those of the new goods originally sold. ⁽⁷²⁾ This issue is particularly relevant where the consumer seeks to exercise the right of withdrawal within the seven-day statutory period after using or damaging the product. It should also be noted that certain products identified

⁷¹⁰ Mostafa Elsan, op. cit., p. 180.

⁷²⁰ Mostafa Elsan, op. cit., p. 182.

and announced by the competent authorities cannot be returned once consumed or used in the manner specified by law. ⁽⁷³⁾

5- Return of Goods and Services

Article (37) of the Iranian Electronic Commerce Law of 1382 provides, in substance, that in every distance transaction the consumer must have at least seven working days within which to withdraw without incurring a penalty or providing a reason, and that the only cost borne by the consumer is the cost of returning the goods. ⁽⁷⁴⁾ The consumer is therefore required to return the goods and bear the direct costs of return. Such costs may include packaging, transportation, insurance, and taxes where applicable. These expenses are ordinary requirements associated with implementation of the statutory obligation to return the goods. Upon termination of the contract, ownership is restored to the former owner, while possession by either party pending actual restitution is treated as temporary custody. The basic principle is that each party is entitled to recover its property from the other. ⁽⁷⁵⁾ The right of withdrawal is accordingly exercised without stating reasons and without payment of penalties, apart from the expenses of returning the goods. ⁽⁷⁶⁾

Sub-subsection Two: Effects of Withdrawal from Electronic Contracting for the Trader under Iranian Law. Exercise of the right of withdrawal also requires the trader to reimburse amounts received from the consumer and may terminate contracts linked to the principal contract.

1- Reimbursement of Amounts Received by the Supplier from the Consumer

Article (38)(c) of the Iranian Electronic Commerce Law of 1382 provides that once the consumer exercises the right of withdrawal, the supplier must return the full amount received without deduction and at the earliest possible opportunity. Article (38) also indicates that the amount paid by the consumer does not itself generate a financial return while held by the supplier; accordingly, the consumer is not

⁷³⁰ <https://www.heyvalaw.com/web/articles/view/6124/%D8%AD%D9%82-%D8%A7%D9%86%D8%B5%D8%B1%D8%A7%D9%81-%D8%AF%D8%B1-%D9%82%D8%B1%D8%A7%D8%B1%D8%AF%D8%A7%D8%AF%D9%87%D8%A7%DB%8C-%D8%A7%D9%84%DA%A9%D8%AA%D8%B1%D9%88%D9%86%DB%8C%DA%A9%DB%8C.html>

⁷⁴⁰ Iranian Electronic Commerce Law of 1382.

⁷⁵⁰ Mostafa Najafi, op. cit., p. 119.

⁷⁶⁰ Nahid Parsa, op. cit., p. 117.

ordinarily entitled to claim interest merely for the period between conclusion of the contract or delivery of the goods and the date of withdrawal.

The issue is not always straightforward, however. The consumer's entitlement to compensation or a financial equivalent may arise in at least two situations.

First situation: where the consumer delays exercising the right of withdrawal because the supplier failed to perform the duty to inform or notify, the consumer may suffer substantial loss by being deprived for an extended period of the use of the sums already paid. Nevertheless, Article (522) of the Code of Civil Procedure cannot automatically be applied because the supplier's obligation to reimburse does not arise until withdrawal is declared; before that point there is no presently due monetary obligation in respect of which the supplier can be said to have delayed performance.⁽⁷⁷⁾

If, however, it is established that the consumer's delay in exercising the right of withdrawal resulted from the supplier's fault in failing to inform the consumer of the relevant rights, and that actual loss was caused as a result, the consumer may claim damages under the general rules of civil liability provided the legal elements of liability can be proved.

Second situation: where the consumer exercises the right of withdrawal within the statutory period and duly informs the supplier, but the supplier then refuses to refund the amount due or delays payment, Article (522) of the Code of Civil Procedure may be applied and compensation for delay in payment of a monetary debt may be claimed, provided the statutory conditions are satisfied.

2- Termination of Contracts Linked to the Principal Contract

A contract subject to withdrawal is often not concluded in isolation. The parties may arrange credit to finance the price of the goods or services, or enter into another agreement connected specifically with the principal contract. Once the principal contract is terminated, the secondary agreement may lose its purpose. Under Iranian law, the relevant result may be derived from the general rules, including the final part of Article (199), which is formulated in relation to assignment but is also capable of informing the treatment of other ancillary obligations. In any event,

⁷⁷⁰ Mostafa Elsan, op. cit., pp. 176-177.

under the principles of the Iranian Civil Code, termination of the principal contract extends to an accessory agreement whose legal purpose depends on the principal transaction and may therefore bring that secondary contract to an end. ⁽⁷⁸⁾

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