

# Let the Seller Beware! Jordan: from Caveat Emptor to Caveat Vendor

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Most of us are aware of the concept of caveat emptor or “let the buyer beware”, which is practically known as “sold as is”. In other words, the concept of caveat emptor serves as a warning to consumers that they are without recourse to the vendor if the product does not meet expectations.

## Introduction

Until recently, the only protection provided to consumers under Jordanian law was the concept of hidden defects where the vendor shall be held liable if the product was sold with a hidden defect. Indeed, vendors were still able to exclude themselves from liability for hidden defects.

Finally, the Consumer Protection Law (Law No. 17 of 2017) (the “Law”) has been passed in Jordan with the aim of preventing retailers from gaining an unfair advantage over consumers. The provisions of the Law require that vendors adhere to their responsibilities towards consumers to ensure that vendors and consumers are bargaining from a much more equal position.

The Law, as with any other consumer protection regulation, regulates private law relationships between individual consumers and retailers, as well as service-providers. Specifically, the Law addresses a wide range of matters, including but not limited to product liability, privacy rights, unfair trade practices and misrepresentation.

Misrepresentation or false advertising is often the main cause of consumer complaints. Prior to the enactment of the Law, the consumer had the right to bring a claim against a false advertiser for fraud pursuant to the Criminal Law (Law No. 16 of 1960). The claim required to establish that (i) the advertiser made false representations regarding the product; (ii) these representations were made with the advertiser’s knowledge or negligent failure to discover the falsehoods; and (iii) the consumer relied on the false advertisement and was harmed as a result. However, due to the difficulty in proving an advertiser’s dishonesty, prosecutors seldom relied on this legal route.

However, with the enactment of the Law, prosecutors in Jordan may commence lawsuits in respect of false advertisements or other unfair and injurious consumer practices in a much more straightforward manner.

## Who is covered by the Law?

Article 2 of the Law stipulates that consumers include any natural or juristic persons that acquire a product whether in return of consideration or otherwise, for direct or indirect use or ownership.

The Law sets out the definition of ‘Consumer’ and stipulates that it does not include an individual who acquires the service or product for the purpose of resale. Therefore, the Law does not apply in the event of a dispute between vendors.

## What is the scope of the Law?

The Law provides the consumer with effective protection from a vendor’s by:

1. Providing the consumer with correct and necessary information with regard to the product or

- service prior to purchase;
2. Ensuring that the products are safe and fit for purpose meaning that the products must fulfil the intended purpose of their use;
  3. Delivering the products and services in a timely manner;
  4. Focusing on safety and quality and ensuring that the products and services are compatible with the applicable technical standards;
  5. Providing after-sale services; and
  6. Refraining from publishing misleading or inaccurate advertisement of the products or services.

Further to the above, it should be noted that the Law, renders any agreement or provision (i) limiting consumers' rights arising pursuant to the Law or (ii) limiting or waiving the vendor or the service provider's liability from its obligations; as null and void.

### **Additional Considerations**

Further to the obligations imposed on the vendor, the Law lists certain contractual terms which should be deemed prejudicial and ultimately rendered null and void, these terms include those that:

1. Lead to inequality between the rights of the consumer and the obligations of the vendor;
2. Waive or limit the statutory obligations or the responsibilities of the vendor;
3. Include a waiver of the consumer's statutory rights;
4. Entitle the vendor to amend the terms or terminate the contract at its sole discretion;
5. Impose a penalty clause on the consumer that is disproportionate to the damage suffered by the vendor;
6. Impose early terminate compensation that is disproportionate to the damage suffered by the vendor;
7. Waive the consumer's right to seek redress to the court or any alternative means of dispute resolution; and
8. Exempt the supplier from providing after-sale-services or guaranteeing the provision of replacement parts to the consumer unless such condition was added to the contract in handwriting by the consumer.

Additionally, the Law called for the formation of the Consumer Protection Bureau, which shall promote consumer protections, help consumers make better choices in the marketplace and receive consumer complaints.

### **Conclusion**

The aim behind the enactment of the Law is self-explanatory; to protect the consumer from unjust trade practices. Vendors are less likely to find a loophole that could possibly limit their liability and allow further profit-making mechanisms whilst taking advantage of consumers' lack of information and bargaining power. Ensuring the welfare of the consumer is a major step towards creation of confidence within the market and encouraging inward investment in Jordan. We consider that the Law is a significant landmark for these reasons.