

The Inadequacy of Consumer Protection in the UAE: The Need for Reform

A thesis submitted for the degree of Doctor of Philosophy

By

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July 2013

Acknowledgements

Firstly, I would like to direct my gratitude to my parents and my wife and my family for their continual support and encouragement during my study.

Secondly, I especially would like to give my gratitude to the all UAE students spiritual father His Highness Sheikh Mohammed bin Rashid Al- Maktoum, the Prime Minister and Vice President of the United Arab Emirates, and Ruler of Dubai.

Thirdly, I would not be able to have the opportunity to continue my study without the financial support from Dubai Police Headquarters to which I am very grateful, and I especially would like to direct my gratitude to Dubai Police General Commander, Lieutenant General Dhahi Khalfan Tamim. I would like also to pass my gratitude to Major General Khamis Mattar AL-Mazeinah, Dubai Police's Deputy Commander General.

Finally, I would like also to thank my supervisor, Dr. Federico Ferretti, for his guidance, suggestions and encouragement during the entire process. I am also indebted to those individuals who took the time and effort to read parts of my thesis, pointing out shortcomings and giving comments and suggestions for further improvements, namely Dr. Mohammed Bader Alewa and Dr. Khalid Al-Hassan. I am, however, solely responsible for any remaining errors and omissions.

Declaration

This thesis has been written entirely by the candidate. It has not been accepted in any previous application for a degree. The work on which the thesis is based has been done entirely by the candidate. All quotations have been distinguished by quotation marks and the sources of information specifically acknowledged.

Abstract

This thesis addresses the consumer protection regime in the United Arab Emirates (UAE) against damages posed by defective industrial products, unfair business practices and misleading advertising. Nowadays, unfair and deceptive practices such as the selling of defective or sub-standard goods, the charging of exorbitant prices, misrepresentation of the efficacy or usefulness of goods, and negligence as to safety standards have become rampant. Accordingly, it has become necessary to promote the development and refinement of statutory measures, even in developed countries, to make producers/traders more accountable to consumers.

This thesis examines the legal grounds on which consumer protection stands within the newly enacted legal framework for consumer protection in the UAE. In addition, this thesis elaborates upon relevant regulations provided by UAE legislators as well as related laws in selected Arab countries. It further investigates the adequacy of administrative authorities' measures in the UAE, and explains whether respective administrative rules are capable of compensating consumers for material and physical damages incurred. It also explores the inadequacies of the administration's measures and rules, and highlights the importance of integration between administrative bodies in achieving a sufficient level of protection for consumers.

The findings of this thesis are based on a detailed review of specific issues in consumer protection models in the Shari'a law and the United Kingdom (UK) model. Thus, it will refer to solutions devised by Islamic Shari'a law and the UK legal system to provide more comprehensive protection to consumers and strengthen their position in relation to that of traders.

The study suggests that there is a need to amend the consumer protection in the UAE. It indicates a need for the unified, effective and meaningful implementation of consumer protection legal and administrative procedures in the UAE, and emphasizes that the non-governmental consumer protection association must be given a wider and legal role in supporting the governmental bodies. These findings may help in improving the current consumer protection regime in the UAE as well as reducing infringements committed by traders.

This thesis concludes by making recommendations for drafting a comprehensive set of rules in the UAE in the hopes that such recommendations will contribute effectively toward the development of a consumer protection regime in the UAE.

Table of abbreviations

ADFCA	Abu Dhabi Food Control Authority
ADR	Alternative Dispute Resolution
AED	United Arab Emirates Dirham
ASA	Advertising Standards Authority
BCP	Bureau of Consumer Protection
BIOA	British and Irish Ombudsman Association
BPG	Brand Owners Protection Group
BSI	British Standards Institution
CA	Consumer Association
CAB	Citizens Advice Bureau
CNC	Consumer National Council
CPA	Consumer Protection Act
CPD	Consumer Protection Department
CPR	Consumer Protection Regulation
CPUTR	Consumer Protection from Unfair Trading Regulation
CQE	Community Qualified Entities
DED	Department of Economic Development
DTI	Department of Trade and Industry
EEA	European Economic Area
EU	European Union
FSA	Financial Services Authority
GBP	Great British Pound
GCC	Gulf Cooperation Council
GCCSO	Gulf Cooperation Council Standardisation Organisation

GDP	Gross Domestic Products
GLO	Group Litigation Order
HAC	Hearing Aid Council
LACORS	Local Authorities Coordinators of Regulatory Service
LBP	Lebanese Pound
MENA	Middle East and North Africa
MOE	Ministry of Economy
MOH	Ministry of Health
NGOs	Non-Governmental Organizations
OECD	Organization for Economic Co-operation and Development
Ofcom	Office of Communication
OFT	Office of Fair Trade
Ofwat	The Water Services Regulation Authority
PBUH	Peace Be Upon Him
TSO	Trading Standard Officer
TSS	Trading Standard Services
UAE	United Arab Emirates
UK	United Kingdom
UN	United Nation
USD	United States Dollar
UTCCR	Unfair Terms in Consumer Contracts Regulations
WTO	World Trade Organization

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Chapter One

Consumer Protection: The New Old Dilemma

1.1 Introduction

It has been nearly fifty years since President Kennedy delivered the first presidential special message to Congress on protecting consumer interests.¹ Since then, the consumer protection field has continued to receive a great amount of attention among scholars due to the changing nature of the roots for consumer protection. In 1960, the economist Margret Hall wrote that the consumer sector during the 1950s was marked by several features, including “growth in consumers’ real income and the emergence of mass ‘middle class’ purchasing power ... a rapid growth in the demand for consumer durable goods, such as motorcars, radios and televisions sets ... the development of hire-purchase.”² Hadfield, Howse and Trebilcock, however, have attributed the need to protect consumers to the increase in cross-border transactions. They further assert that the technological changes in production and distribution precipitated an explosion in the variety and scope of products, services and commercial transactional forms and that the growth in products advertised through the new medium of television changed the nature of the traditional consumer marketplace.³

Apparently, all of these situations created an imbalance in the marketplace because of unequal bargaining power between parties. One party (the seller) knows everything about the

¹- See Pitofsky, R. (1977), *Beyond Nader: Consumer Protection and the Regulation of Advertising*, Harvard Law Review, Vol. 90, No. 4, pp. 661–701.

²- See Hall, M. In Warwick, G. and Ady, PM. (eds), 1962, *The British Economy in the Nineteen-fifties*, Oxford, Clarendon Press, pp 429–457.

³- See Hadfield, G. Howse, R. and Trebilcock, M. (1998), *Information-Based Principles for Rethinking Consumer Protection Policy*, Journal of Consumer Policy, Vol. 21, No. 2, pp 131–169. p 131; Pitofsky P., 1977, Op. Cit., p 662.

product or service that he or she is going to sell, while the other party (the consumer) does not know much or anything about the product or service that he or she is going to buy. This weak position of consumers in the marketplace imposes pressure on governments, non-governmental consumer bodies and concerned institutions to intervene to restore the balance between the traders and the consumers.⁴

Furthermore, the massive development in production technology and distribution methods introduced other types of difficulties, such as contract prior information, misleading advertising, unfair terms and practices, and monopolies. All of these facts have encouraged governments to protect consumers at a national level. Consumer protection issues are considered an old dilemma in developed countries, because, since 1962, new legislative systems or amendments to prior regulatory schemes have been enacted in most developed countries.⁵ The aim of these national or regional policies was often to protect weaker market participants (i.e., consumers). Consumer protection policy seeks to safeguard consumers' legal, economic and safety concerns. Moreover, consumer policy establishes a legal framework that encourages consumer participation in markets.⁶

Consumer protection is a new field in the Arab world, as there was no initiative to introduce specific legislation concerning consumer protection, and the term “consumer” did not appear in any Arab country's legislation until 1992⁷ to meet the international movement toward consumer rights.⁸ In the United Arab Emirates (case study) Consumer Protection Law No. 24 was enacted in 2006, which was considered a milestone that introduced several provisions to

⁴- See Rabah, G. (2011), *Qanon Hemaiyat Al-Mustahlik Al-Jadeed*, 2nd edition, Manshorat Zain, p 15.

⁵- See Al-Bustawesi, I. (2011), *al-Maso'liyah Un al-Gheish Fi al-Sela' 'dirasah muqarenah bain alfiqh alislami wa alqanoon altejari'*, Egypt, dar al kutub alqanoniyah, pp 22–25.

⁶- See Wahlen, S. and Huttunen, K. (2011), *Consumer policy and consumer empowerment: Comparing the historic development in Finland and Germany*, International Journal of Consumer Studies, Vol. 36, No. 1, pp 1–8, p 1.

⁷- The first Arab country to enact legislation on consumer protection was Tunisia in 1992, which adopted from French legislation. See: Ibrahim, A. (2007), *Hemaiyat Al-Mustahlik 'Dirasah Muqarenah'*, First edition, Manshorat al-Halabi, p 46.

⁸- For more see 1.7 International and Regional Organizations Dimension of Consumer Protection in this Thesis.

protect consumer rights and create a form of supervisory system in UAE markets to deter rogue traders.⁹ The UAE's movement came after huge external and internal pressures on the government to take serious steps to deal with the increased amount of commercial fraud¹⁰ and the dramatic rise in commodities prices.¹¹

1.2 Aim of the Thesis

This thesis investigates consumer protection regulations enforcement in the UAE and focuses on civil, criminal and administrative remedies in the consumer protection area. The study mainly highlights the role of the UAE government in strengthening the current legislations and the concerned administrative agencies in fighting violators of consumer rights in the UAE markets. It also questions whether the current UAE consumer protection law provides adequate mechanisms for protecting consumer rights and interests. Furthermore, the thesis will attempt to investigate the sufficiency of penalties in forcing rogues traders to comply with the law and deterring them from continued infringements. In addition, this study will examine the first source of law in the UAE – namely, Shari'a law – and will examine whether the current implementation of Shari'a law in the consumer protection field can serve as a possible solution and prospective model for the UAE.

Moreover, this thesis will enable the UAE to gain benefit from the United Kingdom's long experience in this field, in order to provide a clear view of the current situation of consumer

⁹- See Sa'ad, N. (2008), *Malameh Hemaiyat al-Mustahlik Fi Majaal al-Etimaan*, 1st edition, dar al-jamaa al-gadida, p 10.

¹⁰- In 2006, the European Commission Taxation and Customs Unions revealed that 84% of the counterfeit goods seized on the European borders were imported through China and the UAE. This included cigarettes, medicines, foodstuffs, and other electronic devices. See: European Commission Taxation and Customs Unions, (2006) *Summary Of Community Customs Activities on Counterfeit and Piracy, Results at the European Border-2006*, Available at http://ec.europa.eu/taxation_customs/resources/documents/customs/customs_controls/counterfeit_piracy/statistics/counterf_comm_2006_en.pdf, Accessed date 12/01/2010.

¹¹- See Abu-Amro, M. (2011), *Mujaz Ahkam Qanoon Hemaiyat Al-Mustahlik*, 1st edition, Lebanon; Beirut, Alhalabi Legal Publication, pp 5–30.

protection there. It is worth mentioning here that this thesis is not a pure comparative study between the UAE jurisdiction and other jurisdictions globally. This is due to the fact that the UAE recently introduced a separate law that handles consumer protection issues; thus, it is difficult to compare it (the UAE Regime) with advanced legislations in this area, such as the UK model. This study will examine the UK model on consumer protection and on specific issues, and discuss how the UAE can get benefit from the UK's long experience. Undoubtedly, enforcement of the consumer protection law cannot be made on the sole basis of provisions of the law but rather must be based on analysis of the strengths and weaknesses of the UAE consumer protection law in operation at its various levels, as well as adopting a successful system that may lead to significantly strengthening the implementation of consumer protection law provisions. Therefore, this thesis also will assess the level of consistency between UAE enforcers who are directly involved in combating the activities of traders involved in stocking, facilitating, selling or distributing infringing products into the channels of commerce, and whether they enforce consumer protection adequately. It is hoped that the proposed reforms of some UAE provisions on consumer protection and the recommendations at the end of this thesis will be regarded as a modest attempt to contribute toward strengthening the enforcement of consumer protection law in the UAE.

1.3 Methodology

The thesis based on a variety of approaches in order to achieve the above-stated objectives of this thesis. In terms of gathering data, this thesis relies on archival materials, court judgments and archive documents within the concerned authorities that enforce consumer protection law. Moreover, the thesis depends on several Arab publications on several matters of consumer protection and various studies on consumer protection under Islamic teaching,

which are considered a main source of legislation in the UAE.¹² Furthermore, the thesis relies on court judgments delivered by either the UAE Federal Court of Cassation or Dubai Court of Cassation, and these judgments are published on a periodical basis by the judicial administration. Other judgments delivered by lower courts have been obtained from the courts' administrators, which are not subject for publication except for the purpose of research and newspapers reports of the judgments. Moreover, the researcher wrote letters to various federal and local bodies in the UAE that deal with consumer protection issues in various forms, especially the enforcement and implementation of the law, in order to obtain the relevant documents and gain a true overview in this field.

In terms of comparison, this thesis will refer in some cases to the Egyptian consumer protection law due to its influence on all other regional consumer protection laws, including UAE consumer protection law.¹³ In addition, there will be some indication of other Arab legislation, such as the Omani, Egyptian, Lebanese, Algerian and United Kingdom consumer protection laws, which are in step with the new common understanding of consumer protection in general.¹⁴ The reason behind relying on comparative methodology is that it will "identify solutions to specific or novel legal problems already encountered in other jurisdictions".¹⁵ Despite there will be no sustained comparative analysis with the UK model per se; however, particular attention will be paid to misleading advertising, unfair terms, remedies, jurisdiction, Alternative Dispute Resolution (ADR), injunctions and cross-border

¹²- Act 7 of the UAE Constitution states that Islamic law 'Shari'a law' is the main source of legislation.

¹³- After the formation of the federation, the UAE looked towards Egypt for the drafting of its major codes. Egyptian legal experts thus heavily influenced the legislative process in the UAE. Even today, many years after the formation of the federation, UAE courts will look to Egyptian authorities for guidance on matters that are unclear in UAE laws. The fact that many judges sitting in UAE courts are Egyptian adds to this formula. However, it is not correct to assume that the UAE codes are copies of the Egyptian codes or that the Egyptian authorities will apply indiscriminately. The UAE's legislation definitely differs from that of Egypt when it comes to particular details. For more See; Al-Tamimi, E. (2003), *Practical Guide to Litigation and Arbitration in the United Arab Emirates*, 1st edition, Kluwer Law International, Arab and Islamic Law series, p 5

¹⁴- See Bu-Dali, M. (2006), *Hemaiyat al-Mustahlik Fi Alqanoon Almuqaren 'dirasah muqaranah ma alqanoon alferanci*, Dar alkitab alhadith.

¹⁵ See Hutchinson, T. (2006), *Researching and Writing in Law*, Second Edition, Sydney, Lawbook Co, p 106.

enforcement. The reason behind covering these certain fields is that it has not been covered adequately under the new enacted law or the fact that it causes a serious threatens to consumers.

The thesis also relies on statistics produced by international and private institutions on commercial fraud and the selling of counterfeit goods and their harmful effect on the UAE economy, because currently there are no accurate official measures of the extent of counterfeit goods sales and some official estimates are confidential. Nevertheless, the statistics cited are still used as they are the best available, even though they are subject to several limitations, including the possibility that the institutions' estimates may be partial or overstated and lack clarity regarding the methodology by which the estimates were prepared.¹⁶

Consumer protection is an attractive area for scholars in the Arab world because it has been neglected by the legislatures; however, the focus of academic writing has remained mostly limited to discussion of the development of consumer protection legislation in developed countries and the general guidelines of Shari'a law in the consumer protection field because there was no single codified consumer protection law in the Arab region.¹⁷ In terms of the development of consumer protection legislation, Al-Sayed M. Omran has indicated in his study the inadequacy of Egyptian legislation and other Arab countries to provide consumers with sufficient protection during the formation of a contract by comparing it with the French legislation, and concluded that it is necessary to enact separate legislation on consumer protection.¹⁸ In terms of Islamic teachings, one of the leading studies was conducted by Ramadan Al-Sharnubasi, who put old scholarly books into easier contexts to make them more

¹⁶ - See Ibrahim, K. (2007), *Hemaiyat alMustahlik Fi al-Mua'malat al-Elctroniyah*, Egypt, aldar aljameiyah. pp 313–315; Ibrahim A., 2007, Op. cit, pp 582–584; Rabah G., 2011, Op. cit, pp 189–191.

¹⁷ - See Abdah, M. (2002), *Hemaiyat al-Mustahlik fi al-fiqh al-eqtesadi al-islami*, 1st ed, Majdalawi press; Hamaish, A. (2004), *Hemaiyat al-Mustahlik Min Mandhoor Islami*, U.A.E: Sharjah, Sharjah University press; Al-Qaysi, A. (2002), *al-Hemaiyah al-Qanoonyah II-Mustahlik 'dirasah fi alqanoon almadani wa almuqaren'*, 1st edition, aldar alelmiyah aldawliyah, Jordan; Amman.

¹⁸ - See Omran, A. (1986), *Hemaiyat al-Mustahlik athn'a takween alaqed*, Egypt: Alexandria, al-ma'arif press.

understandable for readers, putting definitions of each element of consumer protection in an Islamic perspective. In his study, Al-Sharnubasi covered all of the issues related to consumer protection that were covered under Islamic divine sources, the Holy Quran and the Sunna,¹⁹ but he covered the subject from descriptive approach.²⁰ It is important to bear in mind that there are very limited studies on consumer protection in the UAE as the consumer protection area was covered in UAE legislation through civil and commercial codes.²¹ Few legal scholars have examined the new UAE legislation on consumer protection. Some, though, have mentioned UAE consumer protection in general by describing it as a fundamental element in establishing more trusted markets in the UAE.²²

Nevertheless, there have been some studies on e-commerce legislations in the UAE. One of these studies has covered the history of e-commerce legislation in the UAE and the need for legislation to cover consumer rights in such fields.²³ None of these scholars, however, has analysed the adequacy of the enforcement measures of consumer protection legislations in the UAE from a legal and practical perspective. Therefore, this study seeks to address this gap and explore comprehensively whether consumer protection and practices adopted by UAE judicial authorities and administrative enforcement agencies are adequate to protect consumer rights and raise their confidence in the UAE markets. The study also focuses on the available remedies for consumers as well as the challenges and obstacles facing the enforcement of this law. It also concentrates on the importance of consumers' role in enforcing consumer protection law and fighting rogue traders through increased consumer awareness.

¹⁹ - Such as Usury, Monopoly, Fair contract, fraudulent sales, the cases of weights and measuring and supervisory system under the Islamic Teachings.

²⁰ - See Al-Sharnabasi, R. (2009), *Hemaiyat Al-Mustahlik fi Al-fiqh Al-islami*, 1st edition, AlAmanah.

²¹ - Ibrahim K., 2007, Op. Cit, pp 44–45.

²² - Abu-Amro M., 2011, Op.Cit, p 29; Sa'ad N., 2008, Op. Cit, p 9.

²³ - See Al-Hassan, K. (2009), *Consumer Confidence in E-commerce: The Need for Reform in the UAE*, a PhD thesis, University of Aberdeen.

1.4 Thesis Structure

The main aim of this thesis is to analyse the current legislation and administrative enforcement measures to provide the UAE with the best model possible as well as improve such measures in order to stimulate consumer confidence and encourage consumers in the UAE to play a more positive role in the adequate implementation of consumer protection laws in the UAE.

The introductory chapter illustrates the necessity of and rationale for providing consumers with sufficient protection. The chapter also highlights the importance of consumer protection at the international and regional levels.

Chapter Two investigates the current state of consumer protection in the UAE by covering the legal aspects of protection. The chapter begins by presenting an overview of the UAE's historical, political and legal background; it then highlights the importance of consumer protection in enhancing the economic development of the UAE. The chapter also reviews the bulk of laws provided by the UAE government to promote a consumer state and examines some old legislation—namely, the concept of middlemen (exclusive agencies) and their effect on the implementation of consumer protection laws in the UAE. The chapter highlights points of weakness in the UAE's consumer protection laws and identified ways in which to tackle such weaknesses.

Chapter Three investigates the second element of enforcing consumer protection in the UAE: the role of the administrative authorities. The chapter illustrates whether the administrative system has a clear strategy and works consistently to deal with threats that weaken consumers' confidence. The chapter discusses the role of all concerned authorities at both the federal and local levels and provides an overview of the administrative enforcement measures and mechanisms to tackle the continuous infringement of consumer protection laws. The

chapter evaluates the roles and progress of the concerned administrative authorities in the UAE that enforce and protect consumer rights; it argue why administrative remedies and measures are essential in enforcing consumer protection law and whether the current actions being taken by the concerned administration are effective against acts of infringement. Finally, the chapter examines the role of the Consumer Protection Association and its effectiveness and adequacy in representing consumers in the UAE.

Chapter Four explores the Islamic model for consumer protection, including consumer protection under Islamic Shari'a law (the first source of law in the UAE) and whether the current implementation of Shari'a law can serve as a possible solution for the existing UAE model. The chapter first reviews the origins of Shari'a law and the distinction between the primary and secondary sources of Shari'a law. It then summarises the four legal schools under Shari'a law and investigates why Shari'a law concentrates on consumers and what sort of protections are provided. Moreover, the chapter explores whether Shari'a law provides an economic supervisory body to implement teachings provided by Shari'a and what sort of conditions and requirements must be placed on personnel who work in this establishment. The chapter concludes with an examination of how successful the practical application of the *Hisba* system²⁴ has been in Saudi Arabia.

Chapter Five examines the UK model in the consumer protection field in terms of the available legal framework in specific areas and administrative actions to benefit from the UK's long experience in this field.²⁵ The chapter investigates the consistency between the

²⁴ - The Islamic institution of the *Hisba* has been generally understood as one seeking to ensure correct economic and commercial practices among Muslim communities. See Memon, M. (1985), *Review of Public Duties in Islam: The Institution of the Hisba*, by Ibn Taymiya; Muhtar Holland (trans.), International Journal of Middle East Studies, Vol. 17, No. 1, pp. 141-142. For more information see; 4.7 Economic Supervisory System (Hisba) under Shari'a Law in this thesis.

²⁵ - Alan Conroy recently described the UK consumer protection regime as follows: "What we have in the UK is without a doubt one of the most powerful, flexible and comprehensive regimes for consumer protection in the world. See; *Is Consumer Protection Failing?*, published by Local Government lawyer, available at

administrative bodies and the structure of enforcement in the country. The study illustrates the benefits of self-regulation in enhancing consumer rights and the unique right under the UK model to withdraw and have cooling-off periods. The chapter also investigates the legal remedies available within the UK model for consumer protection and how easy it is to seek redress through litigation. Furthermore, the chapter describes available alternative dispute resolutions in the UK model, focusing on the ombudsman model and how this Alternative Dispute Resolution (ADR) mechanism makes it possible to tackle some difficulties mentioned in the UAE model. Finally, the chapter examines the effective role of consumer protection associations as supporting bodies in the UK and the effectiveness of the role of the media in raising consumer awareness.

Chapter Six of this thesis provides a prospective consumer protection model for the UAE. The chapter concentrates first on an assessment of UAE, Islamic and UK models on consumer protection. It then highlights actions required for dealing with potential risks facing consumers of the UAE, including personal safety, the right of cancellation, unfair terms and practices, misleading advertising, and jurisdictional protection. The chapter assesses the consistency of the government's role and legal protection and mention the importance of engaging Islamic teaching to educate consumers to promote and enhance their position as an essential element in the fight against rogue traders. Furthermore, the chapter discusses the importance of changing the situation in services disputes. The chapter focuses on the available solutions, ideas and recommendations that could contribute toward improving consumer confidence in UAE markets by benefiting from recent developments in the consumer protection field in the UK and other Arab legislation without contradicting the value of Islamic Shari'a.

http://www.localgovernmentlawyer.co.uk/index.php?option=com_content&view=article&id=12385%3Ais-consumer-protection-failing&catid=190&Itemid=122, accessed date 20/11/2012.

Chapter Seven summarises the major arguments raised in this thesis and offers suggestions and recommendations to the government that reflect the need for reforming the current consumer protection regime in the UAE in order to enhance consumer confidence in the UAE markets. Finally, some suggestions and recommendations are provided to advance the research in the relevant area.

1.5 The Concept of Consumer Protection

Consumer protection is one of the main areas of contemporary legislation that has gained much attention in developed countries.²⁶ This protection is based on defending consumers against unscrupulous practices of sellers in all stages of production, supplying and distribution.²⁷ Therefore, Bourogoignie has described consumer law as not impartial, as its function is to reinstate the balance between powerful businesses and vulnerable consumers.²⁸ Because of its partiality, it is highly imperative to identify the ‘consumer’ who is subject to this protection. The importance of providing a clear definition of the ‘consumer’ is to remove all ambiguity in identifying the boundaries of the protected persons that may lead to the misuse of these legal advantages, in which case the actual implementation of the law will be delayed. Cases often tend to be more concerned with identifying whether the claimant is under such protection or not, when such cases should be more concerned with the actual

²⁶ - See Macaulay, S. (1979), *Lawyers and Consumer protection laws*, Law and Society Review, Vol. 14 No. 1, pp 115–171, pp 116–124.

²⁷ - See Averitt, N. and Lande, R. (1997), *Consumer Sovereignty: A Unified Theory of Antitrust and Consumer Protection Law*, Antitrust Law Journal, Vol. 65, pp 713–756, pp 713–716; Al-Hassan K., 2009, Op. Cit., p 61.

²⁸ - Bourogoignie (1988), cited in Stuyck, J. (2000), *European consumer law after the Treaty of Amsterdam: consumer policy in or beyond the internal market?*, Common Market Law Review, Vol. 37, No. 2, pp 367–400, p 369.

protection of consumer rights, which has led to the need for enacting appropriate legislation to preserve the interests of consumers²⁹.

Due to the requirements of this study, the researcher will examine and cover three models – the UAE model, Shari'a law, and the UK model – and will explore the definition of the 'consumer' in each.

In Islamic countries, the term 'consumer' has been defined by jurists in accordance with Shari'a law. Khalaf³⁰ has defined a 'consumer' as "any person who acquires any item through purchasing for the purpose of consumption or using".³¹ This definition has been approved by many Muslim jurists and considered as a fundamental structure for creation of any new definition of the term 'consumer'.³²

The UK has provided various definitions for the 'consumer'. Article 2 of Consumer Protection from Unfair Trading Regulations 2008 defines consumer as "any individual who in relation to a commercial practice is acting for purposes which are outside his business".³³ Whereas, S. 20 (6) of Consumer Protection Act 1987 has defined 'consumer' as follows: (a) in relation to any goods, any person who might wish to be supplied with the goods for his own private use or consumption; (b) in relation to any services or facilities, any person who might wish to be provided with the services or facilities otherwise than for the purposes of

²⁹ - See Abdul-Rahman, H. (1978), *Fikrat al-Qanoon – baheth fi ta'areef alqanoon wa asasuh*, dar al-Fiker al-Arabi, p 29; Mosa, A. (1982), *alhemaiyah alqanoniyah llmustahlik fi almamlakah alarabiya alsoudiyah*, 1st edition, published by Institute of Public Administration, p 3; Khan K. and Aftab, S. (2000), *Consumer Protection In Islam: The case of Pakistan; monopoly control authority*, Vol. 39 issue 4, Blackwell Publishers Ltd, University of Adelaide and Flinders University of South Australia, pp 484– 485.

³⁰ - An Egyptian Judge is one of the famous authors who have made many contributions to the field of consumer protection.

³¹ - See Khalaf, A. (2008), *'al-hemaiyah al-jena'aiyah ll-mustahlik' fi majal adam al-ekhlal bil'as'ar Wa hemaiyat al-munafasah Wa mane'a al-ihtekar*, Dar al-jame'ah aljadedah, p 20.

³² - See Ibn-Mandhor, J. "*Lessan al-Arab*", Dar Sader Beirut, Lebanon; Beirut, P10, p 504; Al-Zubaidi, M. (1984), *Taj al-Aroos*, Dar Libya ll-nasher wa al-tawzee'a, Libya; Benghazi, p 194; Al-Fairozabadi, M. "*al-Qamoos al-Muheet*", almat'ab'ah al-tijariyah, Egypt; Cairo. p 3, p 335; Anees, I., Ibrahim, M., Al-Zaiyat, A., Abdul-Qader, H. and Al-Najar, M. (2004), *al-Mu'ajem al-Waseet*, 4th editon, Maktabt al-shrooq al-dawliyah, P 2, p 991; Qalaji M. and Qanaibi, H. (1985), *Ma'jam Loghat al-Foqaha'a*, Dar al-Nofasa'a, Lebanon; Beirut, p 66.

³³ - Article 2 of the Consumer Protection from Unfair Trading Regulations 2008 (UK)

any business of his; and (c) in relation to any accommodation, any person who might wish to occupy the accommodation otherwise than for the purposes of any business of his.³⁴

According to these definitions, it seems that the main characteristics of consumer protection laws are that the consumer is a private individual acting in a private capacity, and the other party (trader) must act in the course of trade or business.

These definitions, however, have raised some controversy over who must be covered under the category of ‘consumer’. Views on this controversy are divided into three main parties.³⁵

The first party has merged consumers and citizens – in regard to benefits – where the benefit may be obtained by the consumer in his relation and dealing with other citizens or government agencies, hospitals, etc. in society. Although this definition is very simple and comprehensive, it has been criticised strongly by many legislators, as it has allowed many categories (e.g., producers, traders, professionals) to access such protection, which was supposed to be restricted to the citizens who purchase those products or services for the purpose of consumption or to satisfy their needs.³⁶

The second party has defined the ‘consumer’ as a person who attains unprofessionally consumed goods for personal use only. Although this definition has avoided the previous mistake by preventing professionals and traders from making use of this benefit, it also has been criticised because it concentrates on products without mentioning services and utilities. Moreover, this definition covers personal consumption and neglects family consumption.³⁷

³⁴ - S. 20 (6) of Consumer Protection Act 1987

³⁵ - Khalaf A., 2008, Op. cit. pp 21–23.

³⁶ - Ibid, p 21

³⁷ - Ibid, p 22

The third party has defined the ‘consumer’ as “Anyone who attains any goods or services, with or without a return in order to satisfy his personal or other’s needs”.³⁸ This definition has been applied in the UAE and was mentioned under the Consumer Protection Act 2006. This definition also has been criticised by many legislators and researchers for being very broad and not providing an exact definition of ‘consumer’; by using terms ‘anyone’ and ‘others’, it gives individual and legal persons of all categories (e.g., traders, producers, professionals, government bodies) the capacity to access such protection.³⁹

It can be concluded from the debate, that there are some similarities amongst the definitions of ‘consumer protection’ under these three models which concentrate on that there are three elements to identify the protected person. They are as follows:

- 1- Any person who receives, uses and purchases goods and services.
- 2- The subject of consumption goods and services.
- 3- The main purpose of purchasing goods and services is to satisfy personal or others’ needs and not for commercial purposes.

1.6 The importance of Consumer Protection

Norman Silber said:⁴⁰

“Modern Methods of Marketing during the early part of the Twentieth century made all traditional consumer skills for evaluating quality and economising on price wholly inadequate”.

³⁸ - See Article 1 of UAE Federal Consumer Protection Law No. 24 for 2006

³⁹ - Ibrahim A., 2007, Op. Cit., pp 19–20; Abu-Amro M., 2011, Op. Cit., pp 38–39; Al-Hassan K., 2009, Op. Cit., p 18.

⁴⁰ - See Silber, N. (2006), *From the Jungle to The Matrix: The Future of Consumer Protection in Lights of its Past* in Winn, J. ‘*Consumer Protection in the Age of Information Economy*’, Abingdon, Oxon, GBR, Ashgate Publishing Limited, p 15.

In terms of Islamic teachings, Shari'a law has played an essential role in all daily activities, including politics, contracts, business and social issues. Shari'a law has encouraged people to do fair business, and this encouragement relies on one of the most important principles in Shari'a law, *Al Asle Al-Ebaha*, according to which the basic rule of Islam is that everything is permitted except those things that are expressly forbidden.⁴¹ Most Muslims consider Shari'a law as a main source of guidance for many complicated issues that appear in Islamic societies, among which are problematic issues related to commercial and business sections.⁴² Hence, through its supervisory and regulatory role, Shari'a law has provided guidelines based on divine principles established by God or mentioned by Prophet Mohammed Peace Be Upon Him [PBUH],⁴³ which must be obeyed and exercised by adherents to achieve aims of those guidelines.⁴⁴ Consumer protection was one of those issues that has been dealt with by Shari'a law since 1,400 years ago.⁴⁵ Shari'a law has clarified most issues related to consumer protection starting with a clear definition of the term 'consumer' and followed by an indication of the legitimate evidence that proves the importance of such sections in Shari'a law.⁴⁶

In terms of the global trend, the serious international move towards providing consumers with sufficient protection dates back to the middle of the last century. As mentioned in the introduction, in 1962, President Kennedy emphasised the fundamental rights of consumers, namely the right to safety, the right to information, the right to choose and the right to be heard. Therefore, the existence of new policies on consumer protection must ensure and involve the protection and assurance of these four elements for adequate protection of

⁴¹- See Mancuso, S. (2007), *Consumer Protection in E-commerce Transactions: a First Comparison between European Law and Islamic Law*, Journal of International Commercial Law and Technology Vol. 2, No. 1, pp 1–8, p 4; Hamaish A., 2004, Op. cit, pp 19–24.

⁴²- Al-Sharnubasi R., 2009, Op. Cit., pp 8–16.

⁴³- Muslims usually, when mentioning Prophet Mohammed, follow his name with "Peace Be Upon Him".

⁴⁴- Khan K. and Aftab S., (2000), Op. Cit.

⁴⁵- See Al-Omer, F. (2003), *Muqademah Fi Tareekh al-Iqtasad al-Islamy Wa Tatawouroh*, Islamic Research and Training Institute, Vol. 62, pp 11–22; Alsharnubasi R., 2009, Op. Cit., p 25; Al-Bustawesi I., 2011, Op. Cit., p 7.

⁴⁶- See Chapter Four, 'Consumer protection under Islamic Shari'a Law: Can Shari'a law be a possible solution?'

consumers.⁴⁷ A number of factors may be regarded as reasons for such movement in favour of consumers. The development in production and distribution techniques and different types of contracts in goods and services may result in general lack of information on the consumer side that affects consumers' to make prudent shopping decisions.⁴⁸

Hence, there is a need to look more closely at the considerations which justify the pursuit of a policy designed to promote relationships between producers and consumers. The next section will indicate the perspectives of both parties' (i.e., consumers and businesses) on consumer protection.

1.6.1 Consumer Justification

There are different rationales behind offering adequate consumer protection. Meglena Kuneva has emphasised consumers' weak position in commercial transactions by stating that *“Consumers should be empowered to make informed choices about the goods and services that they purchase. Their interests should be promoted and defended, particularly in view of the increasing complexity of the markets in which they operate”*⁴⁹. Therefore, due to the complexity of the markets and production methods, the consumer being less informed, his weak position in bargaining power, and his inability to seek adequate redress, deserves such protection.

In terms of the right to be informed, previously, the responsibility was on the consumer and the retailers in the traditional market where both parties were considered to be equal, as none of them had an advantage over the other due to the simplicity of production methods⁵⁰.

⁴⁷- Stuyck J., 2000, Op. Cit., p 369.

⁴⁸- See Weatherill, S. (1997), *EC consumer law and policy*, University of Michigan, Longman, p 60; Bourgoignie, T. (1992), *Characteristics of consumer law*, *Journal of Consumer Policy*, Vol. 14. No. 3, pp 293–315, pp 301-303.

⁴⁹- See *The European Consumer Centres Network 2007 Annual Report*, (2008), published by the Office for Official Publications of the European Communities, Luxembourg, available at: http://ec.europa.eu/consumers/redress_cons/docs/annual_report_ecc_2007.pdf, Accessed date: 10/01/2012.

⁵⁰- See Bader, O. (2008), *Hemaiyat al-Mustahlik Fi al-Ta'qed al-Elcteroni*, 1st edition, dar al-jame'ah al-jadedah, pp 17–23; Rabah G., 2011, Op. Cit., 2011, pp 11–17.

Therefore, consumers bore the burden of ensuring that they were happy with their purchases. This was described under the rules of *caveat emptor*, which in Latin means “Let the buyer beware”. Under such a principle, buyers take all responsibility on any goods and products they purchase and the seller is not held responsible for any defects in the products. However, the only exception is if the seller actively conceals latent defects or otherwise makes material misrepresentations.⁵¹ Accordingly, the *caveat emptor* principle restricts the government and incapacitates a law from providing the consumer with protection.⁵²

Consequently, the imbalance between buyers and sellers or suppliers in terms of the available information related to a specific product plays an important role in justifying the claim for empowering consumers’ position in the marketplace. Edward Rubin has pointed out that such an imbalance in the available information could demolish the efficiency of the deal between the parties.⁵³ He supported his argument by describing a trader who passes off imitation shoes as better-quality ones, in the full knowledge that they will deteriorate quickly. On the other hand, the buyer without such information or knowledge will end up paying more money for a poor-quality product. This limited availability of information strengthens the position of one party against the other.⁵⁴

However, this rule has been reformed recently with the massive development of production and trading technology. The new trend is towards a strong desire to protect consumers and encouraging governments to introduce new laws to protect consumer rights and strengthen their position in the markets. This new trend was due to the fact that consumers have been placed in a position that can be described as being under the mercy of traders who are

⁵¹ - See Buchanan, J. (1970), *In Defence of Caveat Emptor*, University of Chicago Law Review, Vol. 38, pp 64–73, pp 64–66.

⁵² - See Mykitiu, R. (1998), *Caveat emptor: direct-to-consumer supply and advertising of genetic testing*, Clinical & Investigative Medicine, Vol. 27, No. 1, pp. 23–32, pp 30–31.

⁵³ - See Rubin, E. (2006), *The Internet, Consumer Protection and Practical Knowledge*, in Winn, J. (Consumer Protection in the Age of ‘Information Economy), Abingdon, Oxon, GBR: Ashgate Publishing, p 37.

⁵⁴ - Ibid

powerful, very well organised and more knowledgeable about the products or goods they sell.⁵⁵

Abu-Amro has pointed out that the issue of consumer protection revolves around one feature – namely, the nature of the purchases. He described the position of a consumer while purchasing as that of one who makes purchases in the dark.⁵⁶ He based his view on the fact that the consumer during his purchase is unaware of whom he is dealing with (i.e., whether the seller is reputable or disreputable, trusted or fraudulent), which may lead consumers to receive low-quality goods or services.⁵⁷

Therefore, regulating this field will establish a balance between the notion of caveat emptor and the seller's obligation to inform the buyer with sufficient and adequate information on the products, goods or services, whether or not the consumer knows anything about the items purchased, bearing in mind that the trader, while participating in the commercial transaction, is acting as a professional regarding the goods or services.⁵⁸

The freedom to decide to enter a contract is a vital issue; however, in commercial transaction, many factors may affect the consumer's decision, which renders the notion of caveat emptor invalid as an excuse for traders to hold consumers responsible for their choices. Examples of these factors are distance selling and contracting, misleading advertising, and unfair business practices. In distance selling, for instance, the traders conduct their business outside their business premises, which could affect consumers' ability to assess the quality of goods and the legality of the terms included. Another factor that may affect consumer decisions is misleading advertising, which could hamper consumers' ability to distinguish between true and false adverts. The following section will explain some factors that affect consumers and

⁵⁵ - Wahlen S. and Huttunen K., 2011, Op. Cit., p 2.

⁵⁶ - M. Abu-Amro, 2011, Op. Cit., pp 47–52.

⁵⁷ - Ibid, p 52.

⁵⁸ - See Kotowitz Y. and Mathewson, F. (1979), *Advertising, Consumer Information, and Product Quality*, The Bell Journal of Economics, Vol. 10, No. 2, pp 566–588. pp 568–569.

indicate how these factors might affect consumers' desire and reduce their confidence in the market.

1.6.1.1 Misleading Advertising

Misleading advertising is an element of risk that would affect consumers' decision while purchasing a product and potentially lead to lower confidence in the market. It was defined under section 2 (2) of The Control of Misleading Advertisements Regulations 1988: *“if in any way, including its presentation, it deceives or is likely to deceive the persons to whom it is addressed or whom it reaches and if, by reason of its deceptive nature, it is likely to affect their economic behaviour or, for those reasons, injures or is likely to injure a competitor of the person whose interests the advertisement seeks to promote”*.⁵⁹

Unfortunately, there is no similar definition or specific law in the legislation of most Arab countries in general, and the UAE legislation in particular, to regulate misleading advertising⁶⁰ even though the revenue from adverts in the Arab world increased last year to \$4.6B USD in 2009 according to a report introduced by Dubai Press Club.⁶¹

Advertising plays an essential role in consumers' decisions when choosing which products or services they want. Advertising is often a method of introducing new information on goods, products, and services to consumers in order to arouse their desire. There are various means of advertising include TV, newspapers, brochures, magazines, messages sent via mobile phone, and Internet.

⁵⁹ - See Reg 2 (2) of the The Control of Misleading Advertisements Regulations 1988.

⁶⁰ - Abu-Amro M., 2011, Op. Cit., pp 29–30; Ibrahim A., 2007, Op. Cit., p 180.

⁶¹ - See Dubai Club Press, *Advertisement Revenue in the Arab World Reach \$4.6 Billion*, published in 17/04/2010 available at: <http://alroya.com/node/69818> , accessed date 5/1/2012.

A recent expenditure report by The Advertising Association/Warc indicates that the revenue from ads in the UK in the third quarter of 2011 was estimated at £3.8 Billion.⁶² Moreover, online advertising has become increasingly popular because, compared with other means of advertising, it is cheaper, does not require as much space, and is quicker to publish. All of these temptations are imposed by advertising through a variety of means, which is why the UK government as represented by the Office of Fair Trade, Local Weights and Measures Authority in Great Britain,⁶³ along with the Advertising Standard Authority, strictly prohibits any trade practices that are deceptive in their nature. Misleading advertising is one of main forms of such unfair practices. The main reason behind providing all of these departments and agencies with such legal power is to assure consumers' right to be informed adequately and to prevent any acts that violate such rights.⁶⁴

Accordingly, there were various justifications for attempts at regulation. One of these reasons has focused on misleading advertisements impact on social and cultural impact and its damaging effect on consumers' vulnerabilities in the marketplace, in an effort to achieve truth in advertising.⁶⁵ Another justification of the need for regulating advertisements is to assure an adequate level of market information. This approach focuses not on deception per se, but rather on the extent to which ads lead consumers to make costly mistakes in a particular market.⁶⁶ In other words, this means that regulation might be concerned not only with

⁶²- See The Advertising Association/Warc, 2011, *UK advertising spend sees growth as economy stalls*, published in 12/12/2011 available at: http://www.adassoc.org.uk/write/Documents/UK_ad_spend_sees_growth_as_economy_stalls.pdf, accessed date 15/01/2012.

⁶³- See Reg 2 of the Business Protection from Misleading Marketing Regulations 2008.

⁶⁴- See Bartle, I. and Vass, P. (2007), *Self-Regulation with in the Regulatory State: Toward a new regulatory paradigm?*, Public Administration, Vol. 85, No. 4, pp 885–905, pp 885–887.

⁶⁵- See Reich N. and Micklitz, H. (1980) *Consumer Legislation in the European Community Countries: A Comparative Analysis*, New York, Van Nostrand Reinhold Inc., p 41.

⁶⁶- See Beale, H., Craswell, R. and Salop, S. (1981), *The Efficient Regulation of Consumer Information*, Journal of Law and Economics, Vol. 24, No. 3, Consumer Protection Regulation: A Conference Sponsored by the Center for the Study of the Economy and the State, pp. 491-539, pp 513-532.

prohibiting deception but also with making ads informative, for example, through required disclosure and the lifting of barriers to the use of advertising in particular industries.⁶⁷

1.6.1.2 Unfair Terms and Practices

The development of large-scale enterprise with its mass production and distribution made a new type of contract inevitable – the standardized contract. A standardized contract, once its contents have been formulated by a business firm, is used in every bargain dealing with same product or service. The primary rationale behind imposing legal controls over unfair terms and practices is that they cause a significant imbalance in the parties' rights and obligations under the contract, to the detriment of consumers. This shift was due to the fact that some traders were used to running their businesses on a 'take it or leave it' basis with individual consumers, and consumers need to protect themselves against this power.⁶⁸

The meaning of 'unfair terms' was indicated under the Unfair Terms in Consumer Contracts Regulations 1999 (UTCCR) regulation 3 – that any terms included by the seller or supplier are unfair that were not discussed or negotiated with consumers and caused a significant imbalance in the parties' rights and obligations arising under the contract.⁶⁹

'Unfair practice' was defined under the Consumer Protection from Unfair Trading Regulations 2008 (CPUTR) regulations 2-7 as any act, omission, course of conduct, representation or commercial communication (including advertising and marketing) by a trader which is directly connected with the promotion, sale or supply of a product to or from consumers, whether occurring before, during or after a commercial transaction (if any) in

⁶⁷ - This approach has influenced the European Court of Justice in (GB-INNO-BM v CCL 1990) where it has struck down the national restriction on price advertising on the basis that it denies the consumer access to certain kinds of information which may be justified by mandatory requirements concerning consumer protection.

⁶⁸ - See Ramsay, I. (2007), *Consumer law and policy 'text and Materials on regulating consumer markets'*, 2nd edition, Hart Publishing, p 157.

⁶⁹ - See Reg 3 of the Unfair Terms in Consumer Contracts Regulations 1999.

relation to a product and containing false information and which is therefore untruthful and likely to impair the average consumer's freedom of choice or conduct significantly in relation to the product concerned through the use of harassment, coercion or undue influence.⁷⁰

Hence, from previous definitions, information failures provide a central rationale for the regulation of unfair terms and trading practices. Particular sources of such failures in this context are false and misleading claims, markets where sellers lack incentives to provide consumers with accurate information or to make consumers aware and negotiate contract terms with them.⁷¹

This explains the necessity of government involvement in issues such as unfair terms and practices, due to the harmful impacts of these unjust acts on consumers' decisions while purchasing products or entering into contracts.

1.6.1.3 Monopoly and Price Control

Another risk faced by the consumer in the marketplace is that of monopolies or 'cartels', which can be defined as "*an agreement reached between traders, sellers or suppliers not to compete with each other*".⁷² There is a difference between cartels and monopolies as the latter is committed by single entities that control a market where a good or service is purchased. However, both of these acts are classified as the strongest acts in anti-competitive activities.⁷³

In *Business Ethics*, DeGeorge claims that the free market as such rules out monopolies. His argument is that competition is a necessary condition of economic efficiency, low costs, and

⁷⁰ - See Regs 2–7 of the Consumer Protection from Unfair Trading Regulations 2008.

⁷¹ - I. Ramsay, 2007, *Op. Cit.*, p 269.

⁷² - See Dick, A. (1996), *When Are Cartels Stable Contracts?*, *Journal of Law and Economics*, Vol. 39, No. 1, pp 241–283, pp 241–243.

⁷³ - See Issacharof, S. (2002), *Gerrymandering and Political Cartels*, *Harvard Law Review*, Vo. 116, No. 2, pp 593–648, pp 617–620.

most importantly (market) freedom; monopolies are by definition anti-competitive; therefore, monopolies are unable to provide efficiency, low cost or market freedom.⁷⁴

Such action represents a threat to consumers because it allows some businesses to control prices as they wish, without consideration of the negative impact of such acts on consumers. It takes the form of price fixing, market-sharing, bid-rigging and the limitation of production and supply agreements among competing companies.⁷⁵ This type of agreement has a negative impact on the transparency of marketplaces by hiding such important information. Levenstein and Suslow have indicated that there apparently is concern that these acts may not just exert power in their own product markets, but may impact the overall economy as well.⁷⁶

A leading scholar of the subject, Edwin Mansfield,⁷⁷ believes that perfect competition requires four conditions: product homogeneity,⁷⁸ relatively small buyers and sellers⁷⁹, mobile resources,⁸⁰ and perfect information.⁸¹

⁷⁴- See DeGeroge, R. (1995), Cited in DeMarco, C. (2001), *Knee Deep in Technique: The Ethics of Monopoly Capital*, Journal of Business Ethics, Vol. 31, No. 2, pp 151–164, p 152; Averitt A. and Lande R., 1997, Op. Cit., p 717.

⁷⁵- Al-Hassan K., 2009, Op. Cit., p 60.

⁷⁶- See Levenstein, M. and Suslow, V. (2006), *What Determines Cartel Success?*, Journal of Economic Literature, Vol. 44, No. 1, pp 43–95, p 43.

⁷⁷- See Mansfield, E. (1997), *Microeconomics: Theory and Applications*, 9th edition, Norton & Company. pp 248–249.

⁷⁸- Mansfield describes product homogeneity as follows: Perfect competition requires that the product of any one seller be the same as the product of any other seller. This is an important condition because it makes sure that buyers do not care whether they purchase the product from one seller or another, as long as the price is the same. Note that the product may be defined by a great deal more than the physical characteristics of the good.

⁷⁹- According to Mansfield: Perfect competition requires each participant in the market, whether buyer or seller, to be so small, in relation to the entire market, that he or she cannot affect the product's price. ... Of course, if all producers act together, changes in output will certainly affect price, but any producer acting alone cannot do so.

⁸⁰- In this regard, Mansfield states: Perfect competition requires that all resources be completely mobile. In other words, each resource must be able to enter or leave the market, and switch from one use to another, very readily. More specifically, it means that labour must be able to move from region to region and from job to job; it means that raw materials must not be monopolized; and it means that new firms can enter and leave an industry.

⁸¹- Mansfield describes perfect information as follows: Perfect competition requires that consumers, firms, and resource owners have perfect knowledge of the relevant economic and technological data. Consumers must be aware of all prices. Labourers and owners of capital must be aware of how much their resources will bring in all possible uses. Firms must know the prices of all inputs and the characteristics of all relevant technologies.

The elimination of these elements, and the proliferation of false information, whether imperfect or incomplete, as well as insufficient resources, are some of the risks that support consumers' calls for a regulated marketplace and justify the need for consumer rights to be protected. The next section will present traders justification on unnecessary of consumer protection regulations and consumers ability to decide within such competitive market.

1.6.2 Business Justification

After exploring the consumers' perspective and justifications for consumer protection, it is important to describe the other party involved in the commercial operation: the trader and supplier. It is legal for merchants and traders to have some commercial guarantees in such competitive business scales. They are entitled to establish whatever guarantees they wish to provide and that suit their businesses. Their claim is that the markets are competitive and that such an environment can offer consumers all of the information and contracts terms they may need concerning the products, goods or services they would like to purchase. The businesses attribute their claim to the fact that in a competitive market, sellers who have more attractive and better terms are encouraged to disclose all related terms, and any dishonesty would be evident.⁸²

Moreover, other experts have argued that consumers are not always the weaker party in commercial transactions; the development of technology has enabled most consumers to have full knowledge about the products they would like to purchase, and in some cases business

Moreover, in its purest sense, perfect competition requires that all of these economic decision-making units have an accurate knowledge of the future together with the past and present.

⁸² - Rubin E., 2006, Op. Cit., p 38.

may lose their revenues through competitors' malicious advertisements or consumers who provide misleading information.⁸³

However, in the researcher's view, the presumption that some consumers know more than traders does not mean that they (consumers) do not need a sufficient protection. In the market, the traders are more prepared mentally and financially to handle legal matters than consumers. Thus, consumer protection regulation is not the enemy of traders who act fairly and who respect the collective interests of consumers.

1.7 International and Regional Organizations Dimension of Consumer Protection

Due to its serious consumer interest and cross-border nature, consumer protection has been considered by different international and regional organisations. There are several reasons for considering international and regional initiatives. The increase in cross-border consumer transactions and the use of goods and services imported from abroad has been encouraged by advertising and sales promotion across national borders and by the development of international information and communication systems, such as cable and satellite television and the spread of online shopping.⁸⁴ This makes the consumer's position even more precarious, particularly with regard to the choice of applicable law and competent jurisdiction in the event of a dispute.⁸⁵ The following section will present a brief summary of these international and regional efforts and initiatives.

⁸³ - Ibrahim A., 2007, Op. Cit., pp 284–285; Rabah G., 2011, Op. Cit., p 32.

⁸⁴ - Bourgoignie T., 1992, Op. Cit., pp 302-303.

⁸⁵ - Ramsay I., 2007, Op. Cit., p 39; Al-Hassan K., 2009, Op. Cit., p 77.

1.7.1 The United Nations

One of the aims of the United Nations is to facilitate cooperation in economic development.⁸⁶

The idea of the UN Guidelines for Consumer Protection was originated in the late 1970s, when the Economic and Social Council recognised that there consumer protection was strongly linked to social and economic development.⁸⁷ These efforts aimed to correct social inequalities and create a balance between collective and individual concerns that result from the economy's rapid growth. The UN General Assembly, after extensive discussions and negotiations, adopted the guidelines by consensus in 1985 under Decree 347/39.⁸⁸

These guidelines represent an international framework for governments, particularly those of developing countries, to use in developing and strengthening consumer protection policies and legislation. The guidelines are also intended to assist the international community to develop consumer protection policies and promote further international cooperation in this area.⁸⁹

The UN Guidelines for Consumer Protection continue to be a very valuable tool in national policy development, and in the design and implementation of consumer protection legislation. It is crucial to apply these guidelines as a dynamic process, adapting to conditions as they change.⁹⁰ The extension of the guidelines to include sustainable consumption provides an important opportunity both to update consumer protection policies in order to include environmental protection and sustainable development, and to strengthen the linkage

⁸⁶ - See O'Brien, P (2012), *How and why trade can enhance economic development*, Remarks by the Legal Counsel of the United Nation, meeting on "Trade Law as a Means to Promote Economic Growth" - New York: 7/02/2012, available at: http://untreaty.un.org/ola/media/info_from_lc/2_POB%20AALCO-UNCITRAL%20workshop.pdf, accessed date 10/02/2012.

⁸⁷ - Abu-Amro M., 2011, *Op. Cit.*, p 6.

⁸⁸ - Ibrahim A., 2007, *Op. Cit.*, p 38.

⁸⁹ - See United Nation, (2000), *Consumer protection under a liberalized trade system in selected countries of the ESCWA region*, Economic and Social Commission for Western Asia, New York, NY, p 1.

⁹⁰ - See Boddewyn, J. (1989), *Advertising Self-Regulation: True Purpose and Limits*, *Journal of Advertising*, Vol. 18, No. 2 (1989), pp. 19–27, p 27.

between consumer interests and sustainable consumption, thereby stimulating national policymaking in order to promote more sustainable consumption.⁹¹

1.7.2 The European Union

One exemplary effort focused on regulating markets and creating a balance between consumers and traders is in the European Union (EU), which has introduced different mechanisms to protect consumers' rights.⁹² The first initiative was the signing of the Maastricht Treaty in 1992, which aimed to remedy the discrepancy between the economically motivated decision to complete the internal market as well as address the persisting differences among national regulations governing production, training, and access to markets.⁹³ Article 153 of the treaty emphasised consumers' right to be informed, be educated, and organise themselves in such a way as to protect their security and interests.⁹⁴ In addition, even when rules of consumer protection are not present in some legislation or when the protection is inadequate, member states are not prevented from maintaining or introducing more stringent protective measures, bearing in mind that these measures must be compatible with the treaty.⁹⁵

Moreover, in the EU, regulating a specific area involves passing laws that take different forms of regulation and vary in their power and effects. Laws in the EU have generally taken the form of directives, conventions and regulations. A convention is a form of control agreed to by and negotiated among member states, whereas a directive is passed by an authorised body with no authority to apply the directive directly or to apply its provisions to a state.

⁹¹- Ibrahim A., 2007, Op. Cit., pp 38–43; Abu-Amro M., 2011, Op. Cit., p 7; Rabah G., 2011, Op. Cit., pp 22–23.

⁹²- See Maclachlan, P. (1999), *Protecting Producers from Consumer Protection: The Politics of Products Liability Reform in Japan*, Social Science Japan Journal, Vol. 2, No. 2, pp. 249–266, p. 258; Ramsay I., 2007, Op. Cit., p. 39.

⁹³- See Scharpf, F. (1994), *Community and Autonomy Multilevel Policy-Making in the European Union*, European University Institute, Working Paper RSC No. 94/1.

⁹⁴- Article 153 of Maastricht Treaty 1992.

⁹⁵- Ibrahim A., 2007, Op. Cit., p. 47.

Therefore, a directive needs to be implemented by each member state through separate legislation. Thus, in the case of a directive, a trader or consumer must check the available law on consumer protection as it might vary from one member state to another due to differing views and perspectives, which could result in different laws on consumer protection. Conversely, a regulation is directly enforced on a member state once it is adopted and does not need separate legislation by each member state.⁹⁶ Accordingly, the EU has introduced a considerable number of legal tools to regulate consumer protection in different areas, such as consumer debt, liability for defective products, safety of toys and ‘doorstep selling’, which benefit and safeguard consumers. In addition, some conventions and regulations (e.g., Brussels Convention and Brussels Regulation) have been used to form the consumer protection legal framework in the EU.⁹⁷

The prominent part of the EU policies, and the one destined to the consumers, is the subject of permanent upgrades being in the centre of certain consultations at all levels, from the competent institutions to civil societies, passing to the directly involved associations. Therefore, all of these efforts have resulted in tackling different challenges and issues related to consumer protection and have created a sort of unification in legislation on most issues that arose in the field of consumer protection.⁹⁸

1.7.3 The Gulf Cooperation Council

The UAE, as a member of the Gulf Cooperation Council (GCC), has worked with neighbouring countries to present some initiatives aiming to enhance consumer confidence on

⁹⁶ - Al-Hassan K., 2009, Op. Cit., pp. 77–79.

⁹⁷ - See Micklitz, H. and Weatherill, S. (1993), *Consumer policy in the European community: before and after Maastricht*, Journal of Consumer Policy, Vol. 16, No. 3–4, pp. 285–321, p. 291.

⁹⁸ - See Bostan, I., Burciu, A. and Grosu, V. (2010), *The Consumerism and Consumer Protection Policies in the European Community*, Theoretical and Applied Economics, Vol. 4, No. 4, pp. 19–34, p. 23.

the regional markets. Also, the GCC Council has produced some initiatives to promote consumer protection in the regime.

In its 29th meeting in Muscat on October 21, 2002, the Committee of Commercial Cooperation approved establishment of the Commercial Fraud and Counterfeiting Commission. At its 31st meeting in Kuwait on Oct 12, 2004, the name was changed to the ‘Consumer Protection Commission’ as the consumer is the main axis of the commission.⁹⁹

The committee decided at its 32nd meeting in Riyadh, Saudi Arabia, on May 31, 2005, to annually celebrate the first day of March as a day of consumer protection in Gulf countries. Since 2005, the Committee has been trying to write appropriate legislation for consumer protection to provide consumers a strong legal basis to deter offending traders.¹⁰⁰

Moreover, the Committee of Commercial Cooperation has established a Gulf Cooperation Council Standardisation Organisation (GCCSO) by the Council’s decision at its 23rd session in Doha, Qatar, in December 2002. The aims set by the Commission include formulating, adopting and deploying a unified Gulf standardisation for goods and products, and unifying the different standardisation systems and activities in the Arabian Gulf countries. Other aims include monitoring their implementation and commitment to cooperation and coordination among standardisation authorities in the member states which contribute to the development of product and service sectors, encouraging trade among member states and securing and preserving consumer rights.¹⁰¹

⁹⁹ - Ibrahim A., 2007, Op. Cit., pp 46–47.

¹⁰⁰ - See *Gulf Cooperation Council Standardization Organization* available at: <http://www.gcc-sg.org/indexecba.html?action=Sec-Print&ID=410&Lg=>, Accessed date 12/01/2012.

¹⁰¹ - See “Gulf Cooperation Council Standardization Organization”, 2012, Op. Cit.

However, there has been no practical implementation of these efforts on the GCC markets and they are far from consumers' ambitions.¹⁰² Ibrahim has argued that the council faced various obstacles that lessened their efforts to enhance consumers' confidence in the regime market, and among the main obstacles are the unstable condition of the regime and the fact that half of the member countries lack a specific law for consumer protection.¹⁰³

1.8 Conclusion

As the discussion in this chapter has shown, market power has expanded globally through the widespread use of new technology in production and means of communication. These developments have posed a threat to consumers' interests due to their weak position in commercial transactions as compared with that of traders, who are professionals. Striking a balance between consumers' interest and businesses' interests in the market is the issue under discussion. It is a dilemma concerned with reaching the right equilibrium between both parties in order to enhance confidence in the market, a balance that would keep both consumers and businesses interested and satisfied. Different initiatives have been undertaken by international and regional organisations to support the governments by providing guidelines that can be used as a starting point for a codified and unified legislation covering all consumers with similar protections.

As Frank Knight observed, 'the market as a whole is dependent upon an outside organisation, an authoritarian state ... to provide a setting in which it can operate at all'.¹⁰⁴ Thus, the state role should not be seen as an alternative to the market but as an essential part of it.¹⁰⁵

¹⁰² - Rabah G., 2011, Op. Cit., p 32.

¹⁰³ - Ibrahim A., 2007, Op. Cit., pp 46–47.

¹⁰⁴ - See Knight, F. (1924), *Some Fallacies in the Interpretation of Social Cost*, The Quarterly Journal of Economics, Vol. 38, No. 4, pp 582–606, p 606.

¹⁰⁵ - Hutchinson similarly comments that without a state 'willing or able to define and protect property rights, enforce and prevent involuntary transactions, maintain a circulating medium, curtail monopoly and anti-

Therefore, it is vital for the state to establish and enforce regulations whereby the market would be operated based on transparency of information, consistency of implementation instruments, equality between consumers' interests and traders and adequacy in redress mechanisms.

The next chapter will discuss the current situation in the UAE and the government response to the global trend towards restoring consumers' rights, legal channels for seeking redress, and legal instruments to ensure equality between consumers and traders.

competitive behaviour, there is no market in any real or meaningful sense'; for More See: Hutchinson, A. (1997), *Life After Shopping: From consumers to citizens*, in Ian Ramsay (ed.), *Consumer Law in the Global Economy*, Aldershot, Dartmouth and Ashgate, p 31.

Chapter Two

United Arab Emirates Experience on Consumer Protection: The Legal Framework

2.1 Introduction

Since the late nineties, the United Arab Emirates led other countries in the Middle East to implement an advanced legal framework to regulate and improve the protection of consumer interests in the market of goods and services circulating within the economic system in the state as a part of the international community.¹ The underlying incentive aimed to achieve two objectives. The first was to boost the illustrious reputation of the UAE as an elite country in the region in the field of business and open markets. The second was to legitimise consumers' position, which was non-existent because it was an unregulated traditional market, in order to attract foreign investors and tourists.² For these reasons, the UAE government had been taking every opportunity to make the UAE markets an ideal location for safe and trusted commercial transactions, whether in traditional or electronic form.³

However, there were other different reasons that motivated the UAE to take steps to boost the commercial markets, particularly with adequate protections and a comprehensive legal framework. The first reason was the general global trend towards strengthening consumer

¹ - See Zobair, Y. (1999), *Doing business in The United Arab Emirates*, Thunderbird International Review, Vol. 41, No. 2, pp 215-229, p 215. See also; 1.7 International and Regional organizations dimension of consumer protection in this thesis.

² - See Wallman, M. (2010), *Consumer protection in the UAE*, published by Al Tamimi & Company, available at <http://www.tamimi.com/en/publication/publications/section-1/law-update-may-2010/consumer-protection-in-the-uae.html>, accessed date 20/08/2011.

³ - Ibid

protection legislation especially in developing countries.⁴ Second was the increasing number of online buyers in the UAE, which has encouraged businesses to consider conducting e-commerce as a vital place to promote their products and services. This fact became clear when in 2008 more than 64% of the population in the UAE was estimated to have the ability to trade online, which is why it is important for businesses to undertake online selling as part of their income expansion plan in the absence of regulations facilitating this field.⁵ This situation has motivated experts to call for the UAE government to introduce a set of rules covering this dynamic field for businesses to protect consumers. Al-Hassan has indicated that the absence of comprehensive legislation in UAE has weakened consumers' position and imposed pressures on governments and other concerned bodies to interfere in order to restore the balance between traders and consumers in online transactions.⁶ Finally, one of the main reasons was the lack of civil community and media to stand as a first line of defence for consumers' rights, enhancing their knowledge and representing their interests.⁷ All of these facts have rung alarm bells regarding the importance of providing consumers with a comprehensive legal framework that provides adequate protection to maintain their rights, health, money and trust in the market.

On the regional level, unfortunately, neighbouring countries in the Arab world were no better than the UAE in introducing laws to cover all issues related to consumer protection, such as services, misleading advertising, consumer redress and unfair terms.⁸ The Arab world has a

⁴- As discussed earlier, the UN has introduced International Guidelines to enhance consumers' legal position see 1.7 International and regional organizations dimension on consumer protection in this thesis.

⁵- See *United Arab Emirates*, <http://opennet.net/research/profiles/united-arab-emirates> accessed on 10/10/2009.

⁶- See Al-Hassan, K. (2009), *Consumer Confidence in E-commerce: The Need for Reform in the UAE*, a PhD thesis, University of Aberdeen. p 267.

⁷- See Morris, D. and Al-Dabgagh, M. (2004), *the development of consumer protection in Saudi Arabia*, International Journal of Consumer Studies, Vol. 28, No. 1, pp. 2-13. p 5.

⁸- See Ibrahim, A. (2007), *Hemaiyat Al-Mustahlik 'Dirasah Muqarenah'*, First edition, Manshorat al-Halabi. pp 575-590; Hamaish, A. (2004), *Hemaiyat al-Mustahlik Min Mandhoor Islami*, U.A.E: Sharjah, Sharjah University press. p 7

huge population (approximately 350 million in total), it represents a tremendous market for consumer. Apart from some laws which were enacted in countries such as the UAE, Egypt, Lebanon, Algeria and Oman, nevertheless, the growth in enacting legislation that facilitates markets and commercial transactions is too slow in most Arab countries.⁹

Therefore, in the absence of comprehensive consumer protection regulation, the legal doctrine of *caveat emptor* would be the main factor in determining what protections consumers get from the market.¹⁰ Consequently, restoring consumers' rights and empowering the principle of consumer sovereignty by introducing serious measures and up-to-date regulations is a necessity in the UAE market.¹¹

This chapter will begin by introducing a brief historical background about the UAE and the government system and judicial and economic situation in the country. Then, it will discuss the bulk of legislation introduced by the UAE government to protect consumers' rights. The chapter will indicate how fraud and unfair transactions are affecting the development of UAE economy. Then, it will examine the importance of civil and criminal judicial enforcement and proceed to examine the rules of evidence, procedure and litigation in both types of judicial remedies that have been implemented when consumer rights were infringed. The chapter will then look at civil and judicial remedies under consumer protection legislation and assess the legislation's strengths and weaknesses.

⁹ - See Al-Bustawesi, I. (2011), *al-Maso'liyah Un al-Gheish Fi al-Sela' 'dirasah muqarenah bain alfiqh alislamy wa alqanoon altejari'*, Egypt, dar al kutub alqanoniyyah. pp 33-34.

¹⁰ - See Salim, S., *Consumer Protection law of the UAE*. <http://www.hg.org/article.asp?id=4999>, accessed on 12/04/2009.

¹¹ - Consumer Sovereignty requires that the consumer be adequately and accurately informed and protected against unfair or misleading marketing techniques.

2.2 Brief Background of United Arab Emirates

2.2.1 Historical Background

For readers unfamiliar with the United Arab Emirates, it may be useful in this section to provide an overview of the nature of the UAE constitution and the general structure of its economic, political and judicial system to give a clear idea about how decisions and legislation are normally made in the UAE.¹² The UAE emerged in the early 1970s from a constitutional federation of seven emirates; Abu Dhabi (the federal capital city and seat of government), Dubai, Sharjah, Ajman, Umm al-Qaiwain, Ras al-Khaimah and Fujairah.¹³ The federation was formally announced on 2 December 1971, and the UAE was soon internationally recognized and joined the Arab League on 6 December 1971, the United Nations on 9 December 1971 and the Arab Gulf Cooperation Council in 1981.¹⁴

The political system of the UAE is based on the 1971 Provisional Constitution, which became permanent in May 1996, consisting of several articles delineating the freedoms, the relations between the member Emirates, the judiciary, and a declaration of Islam as the official religion and Arabic as the official language.¹⁵

2.2.2 Political System

The UAE enjoys a high degree of political stability and is the only state in the Arab world to have a working federal system that has withstood the test of time. The political influence and

¹² - See AlMudfa'ai, Y. (2008), *Zayed Wa Alemarat 'bena'a dawlat alitihad*, 1st edition, UAE; Abu Dhabi, published by Abu Dhabi Authority for Culture and Heritage, p 13; Heard-Bey, F. (2004), *From Trucial States to United Arab Emirates*, Motivate Publishing. pp 42-72.

¹³ - See Rabi, U. (2006), *Oil Politics and Tribal Rulers in Eastern Arabia: The Reign of Shakhbut (1928-1966)*, British Journal of Middle Eastern Studies, Vol. 33, No. 1, pp 37-50, p. 46

¹⁴ - See Abdulla, A. (2001), *al-Mubadarat wa al-Istejabat al-Defa'aiyah ledwalat al-Emarat al-Arabiya al-Mutahedah*, UAE: Abu Dhabi, p 25; Emirates institute of Diplomacy, (2003), *Qadhaiya Diplomasiyah*, UAE: Abu Dhabi. pp 22-32; Kanaan, N. (2008), *Al-nedham Al-dostoori Wa Al-siasyi li dawalt alemarat alarabiya almutahedah*, 3rd edition, Jordan-Amman, ethra llnasher Wa altawzee, p 107; Melamid, A. (1997), *The United Arab Emirates*, Geographical review, Vol. 87, No. 4, pp 542-545. p 542; Hamoodi, N. (2004), *Qiyam Dawalat Alemarat Alarabiya Almutahedah: Muzakerat Wa Dirassat*, UAE; Abu Dhabi, pp 109-114.

¹⁵ - Act 7 of the UAE Constitution states that Islamic law 'Shari'a law' is the main source of legislation.

financial obligations of the Emirates are reflected by respective positions in the federal government.¹⁶ The political system in the UAE is mixed between a federal and a local system, has been mentioned in Article 3 of the Constitution 1971, which stated that “*Emirates member exercise sovereignty over its territory and territorial waters in all matters that are not attributed to the union under this Constitution*”.¹⁷ According to this provision, the federal system grants specific powers to the federal government over the state and to the local authority over each emirate regarding the conduct of its internal affairs. The federal system includes the executive branch, which consists of the President, Vice President, and the Federal Supreme Council, composed of the Emirates' seven rulers.¹⁸ The Supreme Council of Rulers is the highest federal authority in the country: “It has the power to decide policy, enact regulations, elect the federal President and his deputy, admit new members to the federation, and appoint and dismiss the Prime Minister and the judges of the Federal Supreme Court”. This means that any attempt to enact new laws and regulations must first seek approval from the Emirates Rulers.¹⁹

However, the most important development in the UAE political system was declared in April 2007, when the UAE launched the 'UAE Government Strategy 2008–2010' for the years ahead, covering twenty-one topics in six different sectors, including social development, economic development, public sector development, justice and safety, infrastructure and rural area development. The main aim of this initiative was to re-evaluate and advance these

¹⁶ - See Ibrahim, A. (2004), *Abu Dhabi: tawheed al-emarah wa qiyam al-itihad*, UAE: Abu Dhabi, Markez alwatheq Wa albohooth, p 314; Andera, B. (2007), *The Political Culture of leadership in the United Arab Emirates*, annotated published by Palgrave Macmillan; Al-Ali, J. (2008), *Emiratisation: Drawing UAE nationals into their surging economy*, International Journal of Sociology and Social Policy, Vol. 28, No. 9-10, pp 365–379. p 366.

¹⁷ - Art 3 of the UAE Constitution 1971.

¹⁸ - See Al-Abed, I. and Hellyer, P. (2001), *United Arab Emirates: A New Perspective*, Trident Press, p 151.

¹⁹ - See Grant, J., Golawala, F. and Mckechinie, D. (2007), *The United Arab Emirates: The Twenty-First Century Beckons*, Thunderbird International Business Review, Vol. 49, No. 4, pp 507–533. p 509; Economist Intelligence Unit. (2006), *United Arab Emirates*, Country Profile, available at <http://www.eiu.com> , accessed date 26/1/2009.

sectors towards top global standards by facilitating better continuous cooperation between federal and local governments with increased efficiency, training, ministry empowerment, upgrading of services, improvement of civil service and legislation review.²⁰ Unfortunately, this strategy (2008-2010) did not include consumer protection within economic development, despite the issuing of a Consumer Protection Act being eight months before the strategy's release.²¹

However, the second cycle of the UAE Government Strategy for the years (2011-2013), released in 2010, did include consumer protection within economic development. It mentioned under the economy development section the assurance of consumer protection by developing policies to protect consumer rights.²² This was a positive sign for consumers in the UAE that governmental intended to change the current situation in the field of consumer protection.

2.2.3 Legal System

The UAE is basically a civil law jurisdiction heavily influenced by French, Roman and Egyptian law. The laws in the UAE have also naturally been influenced by Islamic teachings codified in the Shari'a and embodied in the civil and commercial law.²³

In the UAE, there are two divisions of judiciary – the Federal Judiciary and the Local Judiciary – as explained by Article 104 of the Constitution.²⁴ The Article has indicated that local judicial authorities in each of the emirates are responsible for all judicial affairs not

²⁰- See UAE Strategy, (2007), *Highlights of the UAE Government Strategy*, available at: <http://www.uaecabinet.ae/English/UAEStrategy/Documents/UAE%20Strategy%20Public%20Document%20-%20English.pdf>, accessed date 03/09/2009.

²¹ - Ibid

²²- See UAE Strategy, (2010), *Highlights of the UAE Government Strategy 2011-2013*, available at: <http://www.uaecabinet.ae/English/Documents/PMO%20StrategyDocEngFinV2.pdf>, accessed date 04/11/2010.

²³ - See Al-Muaini, A. (2009), *The Enforcement of copyright law in the United Arab Emirates*, PhD thesis, University of Aberdeen, p 11.

²⁴ - See Article 104 of UAE Constitution 1971

assigned to federal judiciary by the Constitution. Consequently, all judicial affairs fall under the jurisdiction of local authorities in each emirate, not under the federal judicial authorities. Article 105 of the Constitution allows transferring all or part of any emirate's judicial jurisdictions to the federal courts by a federal law upon that emirate's request.²⁵ The emirates of Abu Dhabi, Sharjah, Ajman, Umm al-Qaiwain, and Fujairah have transferred their judicial system to the UAE federal authority, whereas the emirates of Dubai and Ras al-Khaimah have retained their own systems, which are not part of the UAE federal authority.²⁶

Moreover, the judiciary in the UAE is also divided into civil and Shari'a. The civil judiciary looks into commercial, labour and criminal litigations, whereas the Shari'a judiciary looks into family disputes between wives and husbands, as well as some criminal cases referred from public prosecution.²⁷

With regards to consumer protection legislation, local courts are not obliged to apply consumer protection law No. 24 of 2006; however, in event of conflict between the federal consumer protection law and any other local law regarding consumers' matters, the federal consumer protection law will supersede local law. In the absence of any particular provision in the UAE consumer protection law, judges should apply applicable provisions within other codification of laws, such as claims of damage in the UAE civil code. If there are no applicable provisions in either federal or local law, then the judge must turn to the Islamic principles of Shari'a as found in the Shari'a law textbooks, as provided by Article 1 of the UAE civil transaction codes.²⁸

²⁵ - See Article 105 of UAE Constitution 1971

²⁶ - See Price, R. and Altamimi, E. (2004), *United Arab Emirates Court of Cassation, 1998-2003*, published by Brill.

²⁷ - See Tarbuck, A. and Lester, C. (2009), *Dubai Legal System 'creating a legal and regulatory framework for a modern society'*, Motivate Publishing, pp 7-8; E. Al-Tamimi, (2003), *Practical Guide to Litigation and Arbitration in the United Arab Emirates*, 1st edition, Kluwer Law International, Arab and Islamic Law series. pp 14-15.

²⁸ - See Article 1 of the UAE Civil Transaction Law No. 5 for 1985.

2.3 Importance of Consumer Protection to Economic Development

The United Arab Emirates has witnessed, in recent decades, massive economic developments that led it to become an attractive place for doing business.²⁹ The UAE has been transformed from a region of small sheikhdoms subsisting on pearling, fishing, herding, and agriculture to a modern state with a high per-capita income and substantial trade surplus.³⁰ Especially in the last decade, the United Arab Emirates is considered as one of the world's fastest-growing countries in investment, finance and tourism sectors.³¹

Its main two cities, Abu Dhabi and Dubai, are considered among the most prosperous cities not only at the local level but on regional and global levels as well. Both of these cities have taken serious steps to boost the economic, investment and tourism sectors in the country.³² Also, they have encouraged other emirates to follow their lead by reducing dependence on natural resource export and seeking new resources (non-oil sectors) for income.

For example, the government and the Abu Dhabi Chamber of Commerce and Industry have made strenuous efforts to attract private capital and increase direct foreign investments in the Emirate. As a consequence, the Abu Dhabi Investment Authority, which manages an estimated US \$627 Billion in assets, became the biggest of the sovereign funds.³³

²⁹ - Grant J., et al., 2007, Op. Cit., p 509.

³⁰ - See Khalaf, S. and Alkobaisi, S. (1999), *Migrants' Strategies of Coping and Patterns of Accommodation in the Oil-Rich Gulf Societies: Evidence from the UAE*, British Journal of Middle Eastern Studies, Vol. 26, No. 2, pp 271-298. pp 271-273.

³¹ - See Tourenq, C. and Launay, F. (2008), *Challenges facing biodiversity in the United Arab Emirates*, Management of Environmental Quality: An International Journal, Vol. 19, No. 3, pp 283-304, p 284; Balakrishnan, M. (2008), *Dubai – A star in the east: A case study in strategic destination branding*, Journal of Place Management and Development, Vol. 1, No 1, pp 62–91, pp 63–80.

³² - See Walters, T., Timothy, N., Kadragic, A. and Walters, I. (2006), *Miracle or Mirage: Is Development Sustainable in the United Arab Emirates*, Middle East Review of International Affairs, Vol. 10, No. 3, pp 77-88, p 78.

³³ - See The Sovereign Wealth Fund Institute (SWFI), (2010), *Fund Ranking*, available at <http://www.swfinstitute.org/fund-rankings/>, accessed date 25/10/2010.

Despite all of the economic positive facts mentioned above, many problems have emerged, such as economic openness, which led to an increase in the number of international companies providing goods and services under different conditions and policies, which led to an outbreak of counterfeit goods. For example, some products are imported by companies that do not meet the quality, safety, or performance standards to which consumers in the home country are used.³⁴

A recent study in the UAE examining the economic impact of counterfeit and illicit trade of some fake products³⁵ concluded that if more efforts had been made towards curbing trade in counterfeit during the years 1996–2005, it would have resulted in a non-oil GDP rise by USD \$1,726.9 Billion, and tax revenue rise by more than USD \$110 Million.³⁶ Mr. Omar Shtewi (Chairman of the Brand Owners Protection Group (BPG) and advisor for Nestlé Middle East) commented on this report by stating that “it shows where we stand in our fight against counterfeit products, our quest to fight illegal trade continues and we need the support of all bodies we are looking forward to seeing a real partnership and joint effort with the public sectors which includes all law enforcement agencies and authorities through the execution of governmental legislation, full implementation of the maximum penalties”.³⁷

Moreover, Omer Bu-Shuhab, Executive Director of Commercial Compliance and Consumer Protection in Dubai, has indicated that since the implementation of new consumer protection law, the number of infringement cases has increased 108% in the last three years. He added

³⁴- Grant J., et al, 2007, Op. Cit., p 514.

³⁵- (The study included product categories covering fast-moving consumer goods (tobacco, F&B, household products), automobile spare parts, cosmetics and pharmaceuticals).

³⁶- The study was carried out by Pricewaterhousecooper, which was commissioned by the Brand owners Protection Group (BPG). See Al-Tamimi and Company, (2008), Consequences of Counterfeit, Law Update, Altamimi and Company Advocates & Legal Consultants, UAE; Dubai, issue 202, p 21, available at: <http://www.tamimi.com/files/law%20updates/January2008.pdf> , accessed date 20/2/2009.

³⁷- Ibid

that this number gives a negative indication of the efficiency of laws enacted to protect consumers which need to be reviewed by the government.³⁸

Another problem was the rapid increase in the prices of fundamental goods as compared with the beginning of the year 2000. Some of these prices had doubled and services like transports and other utilities which have become much more expensive led to a negative impact on the UAE's overall economy, industry and consumers.³⁹

All of these reasons have placed huge pressure both on federal and local governments to take serious steps to ensure that consumers are receiving an adequate level of protection in the country. These steps were presented by enacting new laws and regulations and establishing federal and local institutions and authorities to monitor the implementation of enacted laws.

2.4 The Regime of Consumer Protection in the UAE

The consumer protection regime in the UAE is divided into two levels – federal and local – due to the legal framework in the UAE, which depends on the federal system, as discussed earlier.⁴⁰ Therefore, consumer protection has been covered under two scopes of authority. For instance, federal authorities are institutions, bodies and laws that follow the federal system of the country and that are applied in the Emirates which follow the federal system in the UAE.

³⁸- See Bu-Shuhab, O. (2012), *DED: 5.8 billion dirham loss of the local economy in the absence of control*, an article published by Emaratallyoum Newspaper, available at: <http://www.emaratallyoum.com/business/local/2012-02-23-1.462998>, accessed date 03/03/2012.

³⁹- In the same context, World Bank Chief Robert Zoellick has warned that global food prices have reached "dangerous levels" and that their impact could complicate fragile political and social conditions in the Middle East and Central Asia, Reuters, 15/02/2011, available at; <http://www.reuters.com/article/2011/02/15/us-worldbank-food-idUSTRE71E5H720110215>, accessed date 17/05/2011. See also; The Economist, (2008), *How to spend it 'A region awash with oil money has one or two clouds on the horizon'*, available at <http://www.economist.com/node/11088559>, accessed date 27/10/2010; Blakeney, M. (2004), *Enforcement of intellectual property rights: Challenges, Remedies, and Public awareness*, WIPO National Seminar on Intellectual Property for Faculty Members and Students of Ajman University, Ajman, May 5th and 6th, 2004, WIPO, IP.DUB/04/07. pp 2-12.

⁴⁰- See 2.2.2 the Political System of the UAE in this thesis

On the other hand, local authorities' institutions, bodies and laws which are applied in the Emirate follow the local system in the UAE and do not apply in other Emirates. The government of the UAE has provided consumers' with two sorts of protection – legal and administrative protection. The legal protection enforces consumer protection laws that came into force in 2006 and administrative protection allocates specific authority concerned with consumers' issues.⁴¹

Until 2006, there was no law on the local or federal level to settle issues, and challenges could arise between consumers and traders. Thus, most consumers' and traders' disputes were dealt with by different Articles in Civil and Penal Codes.⁴² Consequently, the judicial system in the UAE was unable to cope with the complexity imposed by different sorts of commercial transactions disputes, which resulted in its inability to solve and monitor all crimes committed by rogue traders.⁴³

Thus, it is necessary to describe the legal acts that been introduced by the UAE government to protect consumer rights. These laws will clarify all the procedures that give adequate power to administrative departments and authorities to implement those laws. These laws include many articles on various different issues related to prices, the consumers' rights, traders' responsibilities, supplier liabilities and penalties that would give a comprehensive view of consumer protection legitimacy in the UAE.⁴⁴

⁴¹- See Chapter Three: The Administrative Authorities' Role in Enforcement of Consumer Protection Law in this thesis.

⁴²- In Case No. 189 for 2004 (Delta Electronic company Ltd vs. Retiz lightning Establishment) 'Summary Circuit', the judge has delivered his judgment based on criminal lab evidence and Article 50 of the Evidence Act of the Civil and Commercial Transaction, and decided in respect to the Second and Third Defendants and the First Defendant, to obligate them jointly and severally to pay to the Claimant the amount of AED 10000 (10,000 UAE Dirham), and obligated them to pay the Lawsuit expenses and the amount of AED 1000 (1,000 UAE Dirham) as attorney professional fees in accordance with Article 133 of the Act of Civil Procedures, and dismissed all other requests/ unpublished cases.

⁴³- Consumer protection was treated previously by some legal articles under Civil and Penal code, which does not conform to the huge development in commercial processes and transactions. See; Ibrahim, K. (2007), *Hemayiat alMustahlik Fi al-Mua'malat al-Elctronyiah*, Egypt, aldar aljameiyah. pp 44-45.

⁴⁴- Al-Hassan K., 2009, Op. Cit., p 162.

Since 2006, two laws have come into force – namely, Federal Law No. 24 of 2006 regarding consumer protection and Local Law No. 2 of 2008 pertaining to food. These two new laws on both levels (i.e., federal and local) were implemented to cope with issues and disputes that may arise between consumers and traders. The provisions of these new laws were made flexible, according to a representative of the Ministry of Justices and Islamic Affairs. This flexibility leaves the law open for any future amendments to these articles depending on markets' needs.⁴⁵ It was clearly a wise step by the legislature to enact provisions that could be amended as needed, especially in a developing area such as commerce. Moreover, the introduction of these laws shows the UAE government's intention to establish a comprehensive set of laws to facilitate consumer daily transactions. Additionally, by issuing these federal and local laws, the government has clearly dedicated itself to ensuring the existence of legal control over consumer conflicts.⁴⁶

However, the question arises as to whether these newly enacted laws have covered commercial transaction from different aspects and provided consumers with a sufficient protection.

An analytical view of available laws in the UAE for handling commercial transaction issues related to consumer protection will be outlined below, followed by some provisions that address certain consumer issues, and ending with a criticism of the current legal framework in the UAE and a description of other obstacles that may decrease that effectiveness of these laws.

⁴⁵ - See Qudah, S., *E-business laws and regulation in the UAE*, see http://www.manabusinessguide.com/04_mena/036_038.htm, accessed on 14/10/2008.

⁴⁶ - Salim S., 2009, "Consumer Protection law of the UAE" Op. cit.

2.4.1 Federal Law No. 24 of 2006 on Consumer Protection

Enforcing new laws on consumer protection was the UAE government's main effort to ensure the necessary protection for consumers in light of the growing consumerism of the Emirati community.⁴⁷ The new law is a milestone in protection of consumers' basic rights against unfair trade practices and enhancing their ability to seek redress against such practices. Consumer Protection Act (CPA) No. 24 was passed in the UAE in 2006. Normally, the authority in charge starts applying the law three months after the date of its publication in the Official Gazette,⁴⁸ and the Executive Regulation was issued by the Council of Ministers as Decree No. 12 in March 2007.⁴⁹

Law No. 24 of 2006 covers issues related to the rights of consumers, responsibilities and liabilities and specifies penalties to be imposed on traders for selling substandard goods. Under the new law, a consumer protection committee is formed to monitor the prices of consumer goods. This committee is to be constituted under the chairmanship of the Minister of Economy and includes representatives of the Consumer Protection Societies. The formation of this committee and the determination of its powers will be decided by a resolution of the cabinet.⁵⁰

Moreover, in case of a crisis or extraordinary circumstances in the market leading to price hikes, the committee has to recommend procedures to curb such price increases and protect consumers' interests. The Consumer Protection Department (CPD) at the Ministry of

⁴⁷- Consumerism has risen in the UAE 122% during past years, from 144 billion AED in 2002 to 320 billion AED in 2007 according to a recent study published by the Department of Planning and Economy in Abu Dhabi in 2008. See Al-Aswaq Newspaper, (2008), *Dirasah; Iqtasad al-Emarat Muhadad Bil-ertefa'a 122% Fi Khamas Sanawat*, an article published by Al-Aswaq newspaper, 29/06/2008, available at; <http://www.alaswaq.net/articles/2008/06/29/16877.html>, accessed date 12/01/2011.

⁴⁸- Federal Law No. 24 of 2006 concerning consumer protection was issued on 13/08/2006 and stated that it will go into effect three months after its publication in the Official Gazette, 2006.

⁴⁹- The Official Gazette, 2007.

⁵⁰- See Article 2 of UAE Federal Consumer Protection Law No. 24 for 2006.

Economy (MOE) is mandated to supervise the implementation of the general policy for the protection of consumers in cooperation with the authorities.⁵¹

While Article 7 of the law requires that suppliers offering any commodity to consumers must prominently display on the cover of the commodity or on the packaging a label citing the particulars of the product, including date of production, or packing, net weight, country of origin, expiration date, components and specifications of product, etc. The supplier shall also prominently display the price of the product either on the label or at the place where the commodity is displayed. All information must also be written in Arabic.⁵²

Furthermore, the law states that the consumer shall have the right to receive a dated bill for the product with particulars such as price, type, etc. The law warrants the conformity of the product or the service provided to the consumer with the declared and approved standardized specifications. As per the law, the supplier is prohibited from displaying or promoting counterfeited commodities that would inflict damages or losses on consumers.⁵³

According to the new law, a consumer will be entitled to be indemnified against personal or financial damages in accordance with the general rules in force. Any agreement in contravention will be null and void.⁵⁴

⁵¹- See Article 3 and 4 of UAE Federal Consumer Protection Law No. 24 for 2006

⁵²- See Article 7 of the UAE Consumer Protection Law 2006; for example, the Algerian Legislator has taken same steps by enforcing laws imposing manufacturers to use Arabic language as a main language to write mandatory data on household products "Executive Decree No. 90/366 article 4" Consumption goods ""Executive Decree No. 90/367 article 5" Slaughtered poultry "Article 13 of The joint Ministerial Decree in 2/07/1995 which was amended by in 26/05/2001"; similarly, the EEC has emphasized the importance of language requirement by imposing laws that obligate the manufacturer to write the mandatory data, such as the specifications and components of goods and the severity of service, For more, see Alexandriduo, E. (1988), *Consumer Protection in the Greek Legislation*, Journal of Consumer Policy, Vol 11, No. 3, pp 347–359. pp 354-357; Al-Qaysi, A. (2002), *al-Hemaiyah al-Qanooniyah II-Mustalik 'dirasah fi alqanoon almadani wa almuqaren'*, 1st edition, aldar alelmiah aldawliyah, Jordan; Amman. pp 127-128.

⁵³- See Article 8 of UAE Federal Consumer Protection Law No. 24 for 2006.

⁵⁴- Ibid, Article 16

The law also obliges the supplier to provide for repair, maintenance or service of the product after sale and replacement if a defect is found in the product within a specific time period.⁵⁵ Moreover, the new law on consumer protection has provided two of the essential conditions by stating that “No supplier shall conceal any goods or refrain from selling it intending to control the market price ... or to collect a higher price than that published”.⁵⁶ Furthermore, “... all suppliers shall promptly upon discovering any defect with harmful nature to the consumer when the goods or the service upon its proper use, may cause any harm in any way to the consumer, shall report that to the Directorate’s competent authorities.”⁵⁷

Furthermore, the law also confers legal capacity to CPD to represent the consumers before the Courts and any other body prescribed by law. Without prejudicing the rights of the parties to go to the Court, the department can also proceed with any settlement to protect the consumers’ interest.⁵⁸

Finally, consumer protection law provides penalties; those found guilty of violating the provision will face a fine of not less than 1,000 AED. In the case of a supplier or distributor failing to unequivocally warn against the hazards associated with the use of a commodity or service causing damages, the penalty will be not less than 10,000 AED.⁵⁹

2.4.1.1 Critical Points

Although many scholars agree that the UAE legislation on consumer protection is a milestone in serving the interests of the consumers in protecting their basic rights against unfair trade

⁵⁵ - Ibid, Articles 12 and 13

⁵⁶ - Ibid, Article 14

⁵⁷ - Ibid Article 15

⁵⁸ - See Article 17 of UAE Federal Consumer Protection Law No. 24 for 2006

⁵⁹ - Ibid, Article 18

practices,⁶⁰ other scholars like M. Bu-Dali, A. Ibrahim, M. Obaidat and K. Ibrahim have criticised the interference in the authority of Consumer Protection Department by the concerned ministry. This is because Article 22 has given the concerned authority the power to suspend any provisions of the CPA at any time, which could be misused by officials in a way that would weaken transparency, impair the force of law, or apply it against a particular class or a certain segment of people. They emphasised that giving such authority to the judicial system as a neutral body would enhance transparency.⁶¹

Furthermore, although Article 16⁶² of CPA has organized an adhesion contract to attain balance between traders and consumers, some governmental institutions and some private institutions like banks remain beyond the scope of this legislation. The Economist Adel Al-Rashed has argued that there are some banks and other utility establishments that have given themselves the right to invent and impose charges on consumers without restriction and for very marginal services; recently, some have even created charges for non-existent services. A good example is provided by Al-Rashed: because the Central Bank has abandoned its supervisory role⁶³ on the pretext of giving the consumer the right of choice without interfering in the relationship between the two parties, other banks have been encouraged to increase their fees with unfair terms. He added that the individual consumer's weak negotiating position, and even total absence of any voice, in such standardized contracts for

⁶⁰- See Bader, O. (2008), *Hemaiyat al-Mustahlik Fi al-Ta'qed al-Elcteroni*, 1st edition, dar al-jame'ah al-jadedah. pp 24-25; Ibrahim K., 2007, Op. Cit., p 330

⁶¹- See Bu-Dali, M. (2006), *Hemaiyat al-Mustahlik Fi Alqanoon Almuqaren 'dirasah muqaranah ma alqanoon alferanci*, Dar alkitab alhadith. p 691; Ibrahim A., 2007, Op. Cit., pp 584-585; Ibrahim K., 2007, Op. Cit., p 330.

⁶²- Article 16 of Consumer Protection Act stated that the Consumer shall be entitled to compensation against personal or financial damages according to the applicable general rules, provided that any contradictory agreement shall be considered void.

⁶³- Although there is a legal provision under Law No. 10 for 1980, concerning establishing the central bank and monetary system and organization of the banking profession. See Article 3 Para 4 of Federal Law No. 10 for 1980, which states the responsibility of Central bank to organize the banking profession, develop and monitor the effectiveness of the banking system and in stay accordance with the provisions of the law.

goods and services has negatively affected consumers.⁶⁴ According to a recent study, the unfair charges have led to an increase in banks' profits to 8.8 Billion AED in one year.⁶⁵

Furthermore, there are conflicts between Article 14 of the consumer protection law, which prohibits monopoly, and Article 5 of the Commercial Agency No. 18 of 1981.⁶⁶ According to the latter provision, local agency laws prohibit the importation and sale of brand name food products by any agent other than the principal agent.⁶⁷ Abdul-Mone'm Ibrahim⁶⁸ and Ahmed Abu-Isma'eel,⁶⁹ experts in the consumer protection field, have argued that there is ambiguity concerning the role of law as there is an obvious contradiction between the consumer protection law and commercial agency law, and there is clear evidence in the UAE that if a commercial agency legally controls, sells, produces, distributes and exports goods or services without fair competition, then that would harm the consumers' rights of choice.⁷⁰

Moreover, in case of monopoly, the Regulations describe various different circumstances that are considered to be cases of forbidden monopolies. These include the following: selling goods or services below cost for the purpose of creating a state of monopoly in the market, which would damage consumers; and the formation of alliances by more than one provider, which harms the national economy as well as consumers and agreements. The regulations

⁶⁴ - See Al-Rashed, A. (2011b), *Rusoom al-Bank wa Jehat Okh'ra*, An article published in Emaratallyoum Newspapers, 08/02/2011, available at: <http://www.emaratallyoum.com/opinion/2011-02-08-1.353165>, accessed date 8/2/2011.

⁶⁵ - This study was carried out by Al-Fajer Securities (AFS), a premier brokerage specialized in dealing with securities in the United Arab Emirates. The firm is regulated by the Emirates Securities & Commodities Authority (ESCA), and is a member of the Abu Dhabi Securities Exchange (ADX), and the Dubai Financial Market (DFM).

⁶⁶ - See Article 5 of the Commercial Agency Law No. 18 of 1981, which states that the Principal shall be allowed to have one agent in the state as a one territory one agent in each emirate, or in a number of emirates, provided that distribution of the relevant goods and services shall be restricted to the agency area.

⁶⁷ - Zoubir, Y. 1999, Op. Cit., pp 223-224.

⁶⁸ - Ibrahim A., 2007, Op. Cit., p 114.

⁶⁹ - See Abu-Isma'eel, A. (1985), *Assol Al-iqtisad*, dar al-nahdhah alarabiyah, Egypt; Cairo, p 85.

⁷⁰ - In the UAE, 50 traders are controlling the UAE markets and consumer protection department fails to stop their illegal acts; See ; *Agents will continue to control the food market in the UAE*, an article published by Emaratallyoum in 07/10/2009, available at; <http://www.emaratallyoum.com/local-section/2009-10-07-1.1368>, accessed date 15/02/2010.

also set out factors that must be taken into account when deciding if there has been an increase in prices. These include the national inflation rate, the prices for the relevant goods or services over past periods, and comparison with prices in neighbouring states. Al-Rashed has pointed out that the government failed to set a sufficient, unified and strict set of criteria to face monopolies in the UAE. He indicated that when the Consumer Protection Department made investigations into price increases, the supplier was required to justify such increases with various acceptable reasons for increases, such as increases in the cost of raw materials or other costs, such as transportation costs rather than stated in the law.⁷¹

Moreover, regarding judicial proceedings, Ahmad Suroor has argued that a judicial proceeding in consumer protection does not differ from other criminal procedures but rather the difference is in the process of crime detection and investigation. Suroor added that whenever the procedures were clear and obvious, it would lead to a quick resolution of disputes and encourage consumers to claim their rights.⁷²

2.4.2 Federal Law No. 4 of 1979 on Suppression of Fraud and Deceit in Commercial Transaction

Another law was approved by the UAE government to achieve justice and fairness in trade transactions and provide consumers with necessary protections. The Federal Law No. 4 of 1979 (with its amendments in 1984) promulgated on the Suppression of Fraud and Deceit in Commercial Transactions.

⁷¹- See Al-Rashed, A. (2011a), *Labud Min Kaser al-Ehtekar*, an article published in Emaratallyoum newspaper, available at; <http://www.emaratallyoum.com/opinion/2011-03-14-1.367617>, accessed date 20/06/2011.

⁷²- See Suroor, A. (1981), *al-Waseet 'Shareh Qanoon al-Aqubat al-Aam'*, dar alnahdhah alarabiyah, Egypt; Cairo. p 146; Ibrahim A., 2007, Op. Cit., p 270.

The law consisted of 13 articles that laid out the crimes of commercial swindling and their stipulated punishments. Article 1 provided for punishing any person who deceives or proceeds to deceive his contracting counterpart by any means whatsoever.⁷³ However, some scholars have argued that the responsibility for such acts should be extended to include the person and even the means of media or television that is used to publish such false and misleading advertising if it is proved not to have taken the necessary precautions to avoid misleading or false advertising, which was taken from the French law on December 27, 1973, which prohibits false and misleading advertising.⁷⁴

Article 2 incriminates any person who manipulates or proceeds to manipulate human or animal foodstuffs, drugs, agricultural crops, natural products or any other materials made for sale, and who launches or offers them for sale. The punishment is worse when such materials are harmful to human or animal health.⁷⁵

Moreover, Article 3 incriminates any person who acquires in bad faith foodstuffs, drugs, agricultural crops, products or other manipulated materials. The punishment is worse when such materials are harmful to health.⁷⁶ The UAE legislature criminalised these acts committed by the offender, if those counterfeit goods and products were prepared and intended for sale or dealing on the grounds that these counterfeit items are unsuitable for

⁷³ - See Article 1 of Suppression of Fraud and Deceit in Commercial Transaction No 4 of 1979.

⁷⁴ - See Al-Jundi, H. (1986), *al-Hema'iyah al-Jena'iyah Il-Mustahlik*, 1st edition, Dar alNahdhah al-Arabiyyah. pp. 19-21; M. Al-Mutairi, (2007), *Al-Hemayah al-Madaniyah Ll-Mustahlik Fi al-Qanonain al-Musrei Wa al-Kuwaiti*, Thesis presented for PhD degree at Ain Shams University, pp 112-113; Al-Saeed, M. (1999), *al-Jra'em al-Iqtesadiyah al-Mustahdathah*, almarkez alqawmi ll-bohoth alijtema'iyah wa aljena'eiyah, Egypt; Cairo, p 511; Qrwah, A. (1999), *al-Hema'iyah al-Tashre'iyah Il-\mustahlik fi Musar*, Egypt; Cairo, p 43; Romano, C. (2005), *Comparative Advertising in the United States and in France*, Oxford U Comparative L Forum 1 at ouclf.iuscomp.org. Accessed date 20/10/2009; Houmodah, M. (1985), *Edarat al-Tasweeq*, 10th edition, Maktabt Ain Shamas, Egypt; Cairo, pp 318-319; Bu-Flaih, S. (2008), *Hemaiyat Haq al-Mustahlik Fi al-Ealam*, Paper presented in Forum titled 'almultaqa alwatani – hemaiyat almustahlik fi dhil alinfetaah aleqtasadi' held in Markez al-Oloum al-Qanoniyyah wa al-Edariyyah, Algeria 13-14 April 2008, p 18.

⁷⁵ - See Article 2 of Suppression of Fraud and Deceit in Commercial Transaction No. 4 of 1979; the same trend has been taken by the legislators in Sudan by enforcing special acts for goods and agriculture crops. See; (Sudan Penal Code 1991 articles 82)

⁷⁶ - See Article 3 of Suppression of Fraud and Deceit in Commercial Transaction No. 4 of 1979.

consumption. Thus, if these counterfeit goods and material were not intended for consumption, they are not criminalised.⁷⁷

Furthermore, Article 4 prohibits imports of manipulated or decomposed foodstuffs, drugs, agricultural crops or natural products. The Minister of Economy has the authority, pursuant to this Article, to order the destruction of such materials at the expense of the importer thereof, if the importer fails to re-export them by a date specified by the Minister.⁷⁸ Mohammed Bu-Dali has argued that this authority shall be deliberated by the courts, which have a certain degree of latitude in determining suitable resolution of such cases.⁷⁹

Article 5 authorized the Ministry of Economy and Commerce to regulate several matters relevant to the law with which this Article deals specifically.⁸⁰ Article 6 of the law determines that officers in charge vested with the authority to prove that the crimes were committed in violation of the provisions of this law.⁸¹

Articles 7–13 deal with procedures and methods to be followed, and the means by which crimes committed in violation of this law can be proved, as well as measures, punishments and confiscation in cases determined by the law.

Despite this Act dealing with cases of fraud and deception on food, medicine, cosmetics and personal care, and other materials that usually are consumed on an ongoing basis, the law has imposed weak penalties compared to the severity of the violation,⁸² as these crimes concern public health and safety and could affect the country's economy. Article 2 of the law stated

⁷⁷ - Bu-Dali M., 2006, Op. Cit., pp 318-319.

⁷⁸ - See Article 4 of Suppression of Fraud and Deceit in Commercial Transaction No. 4 of 1979

⁷⁹ - Bu-Dali M., 2006, Op. Cit., p 319.

⁸⁰ - See Article 5 of Suppression of Fraud and Deceit in Commercial Transaction No. 4 of 1979

⁸¹ - Ibid, Article 6

⁸² - Ibrahim A., 2007, Op. Cit., p 294.

that “Punishable by imprisonment for a term not exceeding two years and a fine of not less than 500 AED (85£) and not exceeding 10,000 AED (1,693£) or either of the two penalties:

- 1- Any person engaged in fraud or scams on foods for human or animal drugs or medical or agricultural crops or natural products, or any other materials intended for sale.
- 2- Any person selling foods for use of human or animal drugs or medical or agricultural crops or natural products or other materials with the knowledge of containing fake elements...”⁸³

2.4.2.1 Critical points

This federal law includes an article that, though general, could potentially handle misleading advertising and bad faith in consumer contracts; however, it was not principally designed to deal with consumer contracts and did not address consumers in particular in any of its provisions. Some scholars argue that this law is confined to dealing with fraud in goods and does not include services that could be prone to fraud and deception by traders.⁸⁴

Al-Hassan argued that although this federal law contains some basic articles handling fraud in goods, medicines and agricultural crops, the few articles related to fraud are not effective in raising issues of fraud and dishonesty that affect consumers in different fields, such as online transactions.⁸⁵

Moreover, the problem of monitoring the application of this law in Emirates that follow a local system would reduce this law’s effectiveness, as in some Emirates the trading of goods

⁸³ - See Article 2 of Suppression of Fraud and Deceit in Commercial Transaction No. 4 of 1979

⁸⁴ - See Ba-jubair, A. (2001), *al-Khadamat Wa Aqood al-Ietha’an*, an article published in Asharq Al-Awsat Newspaper, 12/02/2001, issue No. 8112, available at; <http://www.aawsat.com/leader.asp?section=3&article=25842&issueno=8112>, accessed date 25/01/2011; Al-Rashed A., *Labud Min Kaser al-Ehtekar*, 2011, Op. Cit.

⁸⁵ - Al-Hassan K., 2009, Op. Cit., p 183.

and counterfeit medicines is popular in public places without any restrictions.⁸⁶ Essm Al-Tamimi has argued that although the UAE's legislation can be described as the best in the region and although it developed tremendously over the past few years, the effectiveness of its legal acts was limited to certain Emirates.⁸⁷

2.4.3 Local Law No. 2 of 2008 on Food Law

Local Law No. 2 was enacted to give the Abu Dhabi Food Control Authority (ADFCA) autonomy and independence to clarify their objectives, which included protecting humans against food-related hazards and ensuring the safety and quality of food intended for human consumption, and conducting studies and research necessary to maintain food safety.⁸⁸

In 2008, Law No. 2 Pertaining to Food within the Emirate of Abu Dhabi was officially published, which led the Emirate of Abu Dhabi to be the first on the local level to have a separate law in the area of food safety. Provisions of the law give the Authority adequate power to supervise markets and issue rules and regulations on all cases regarding food matters within the Emirate of Abu Dhabi. The new food law emphasizes consumer protection and ensures the safety of food, whether imported or traded within the domestic market, in the Emirate of Abu Dhabi, as well as the responsibility of food inspectors and the private sector in ensuring the highest standards of food safety.

The new local food law included 20 articles covering various different aspects, such as definitions, general provisions, implementation and responsibilities of officers in charge and

⁸⁶ - Al-Muaini A., 2009, Op. Cit., p 140.

⁸⁷ - See Al-Tamimi, E. (1999), *Current UAE copyright law and how it compare with WTO's TRIPs agreement and the Berne convention*, The Journal of World Intellectual Property, Vol. 2, No. 3, pp 371-391, pp 377-382.

⁸⁸ - Abu Dhabi Food Control Authority (ADFCA), (2010), the official website of the ADFCA, available at: <http://www.adfca.ae>, accessed date 20/10/2010.

penalties.⁸⁹ Article 1 of the food law covers the definition of all essential elements and provides an outline of the food law within the Emirate of Abu Dhabi, including food, food label, consumer, food business operator, advertisements, etc.⁹⁰

Article 2 spells out the role of the Abu Dhabi food law to protect consumers and regulate activities pertaining to food handling.⁹¹ Articles 3 and 4 prohibit the starting of a food business within the Emirate of Abu Dhabi unless a licence has been obtained and all of the decision and regulations issued by the concerned authority are followed.⁹²

Article 5 emphasized that all food establishments must ensure the sanitations of their food handlers.⁹³ Moreover, Article 7 indicates the responsibility of food business operators to ensure food safety and quality for consumption and their legal and civil obligations for the performance of subordinates and employees as specified in the law.⁹⁴

Article 8 prohibits the handling of adulterated food or any harmful or deteriorated food as well as any food containing pork, pork products, or any alcoholic components without prior permission.⁹⁵ Articles 9–13 mention the responsibilities of the officer in charge, the General Director and the Board of Directors to improve the role of the authority and to examine all imported food consignments received via the Emirate borders.

Article 14 gives authority to the General Director of ADFCA to revoke business licenses in case of violations based on the recommendation of the food control inspector.⁹⁶ Article 16

⁸⁹ - Ibid

⁹⁰ - See Article 1 of the UAE Food Law 2008.

⁹¹ - Ibid Article 2

⁹² - Ibid Articles 3 and 4

⁹³ - Ibid Article 5

⁹⁴ - Ibid Article 7

⁹⁵ - Ibid Article 8

⁹⁶ - Ibid Article 14

indicates the penalties that can be imposed on violators, stating that “without prejudice to any stricter penalty specified in any other law:

- 1- A penalty of a minimum period of three month imprisonment and/or a fine of minimum thirty thousand dirham and not exceeding two hundred thousand dirham, in cases where harmful food has been intentionally handled
- 2- A penalty of a minimum period of two months imprisonment and/or a fine of minimum twenty thousand dirham and not exceeding hundred and fifty thousand dirham, in cases where adulterated food has been intentionally handled
- 3- A penalty of a minimum period of one month imprisonment and/or a fine of minimum fifteen thousand dirham and not exceeding a hundred thousand dirham, in cases where food containing pork or its products or any alcohol has been handled without prior permission
- 4- A penalty of a fine minimum of ten thousand dirham, in cases where food is promoted or marketed in a manner that may mislead the consumer
- 5- A penalty of a fine minimum of five thousand dirham, in cases other than those mentioned above”.⁹⁷

2.4.3.1 Critical Points

Despite the strength of this law, which is considered the only law concerning food in the country, the scope of application of the law is limited to the Emirate of Abu Dhabi and has no validity in other Emirates. Some scholars argue that the main reason for weakening the role of food law is the inability of concerned authorities in other Emirates to apply this law due to the lack of collaboration between Abu Dhabi Food Control Authority and the Consumer

⁹⁷ - Ibid Article 16

Protection Department, in particular, and the lack of coordination between authorities in different Emirates in general.⁹⁸

Another point is that Article 14 of the food law gives the Director of Abu Dhabi Food Control the authority to close any establishment and revoke the business license of any traders in the case of a violation based on a report presented by the officer in charge, without transferring the issue to the court. Such authority was not given to the Minister of Economy under Consumer Protection Law Article 20, which gave the concerned Minister the power to close the establishment for one week. Then, the Minister in charge has to transfer the issue to the court.

2.4.4 If Fake Goods Severely Affect Consumers, Are There Severe Sanctions?

Under normal circumstances, the consumer may lose his money and seek a refund or exchange of the product; however, in some cases, the use of counterfeit goods (in the case of pharmaceuticals and cosmetics) may lead to certain and direct damage to consumer health. As in consumer protection regulations, one of the main areas of protection is to maintain consumers' health and safety.⁹⁹ Unfortunately, the UAE consumer protection law did not contain acts that would strength the punishment of the infringing party if such infringement led to the consumer's disability, disease or death.

⁹⁸ - See A'iyesh, H. (2010), *Khobar'a Uoa'kedon Dha'f al-Raqabah ala al-Aghaziyah Uteeh Il-Tujar al-Talaob bi-bia' al-Luhoom al-Mustawradah*, an article published in ALGhad Newspaper, 22/11/2010 available at; <http://www.alghad.com/?news=543103>, accessed date 21/01/2011; Al-Hamad, M. (2010), *The Second Arab Forum for the protection of Consumers from fraud and counterfeiting*, a Forum held in Riyadh; Saudi Arabia in 10 October, 2010, available at; <http://www.customs-apf.gov.sa/content.aspx?id=38>, accessed date 15/12/2010; Al-Shamsi, N. (2011), *Iqtasad Wahed ,, Watan Wahed*, an article published on EmaratalYoum Newspaper, 15/02/2011, available at; <http://www.emaratalyoum.com/opinion/2011-02-15-1.356324> , accessed date 15/02/2011; Ibrahim A., 2007, Op. Cit, pp 345-346.

⁹⁹ - Bu-Dali M., 2006, Op. Cit., pp 325-326.

In contrast, some Arab legislation on consumer protection has stressed the importance of including in their legislation severe sanctions to handle unscrupulous traders, and this is divided into three levels:¹⁰⁰

- 1- If the counterfeit goods or medical products have caused injury, disease, or an inability to work.

Legislators here did not mention any percentage of disability or type of disease and did not distinguish between whether the consumer has to buy the goods or others. In this case, Algeria has imposed a punishment of imprisonment for a period of no less than two years and not exceeding ten years and a fine no less than twenty thousand and no more than two hundred thousand Algerian dinars.¹⁰¹ In Lebanese legislation, the punishment is imprisonment for a period of no less than one year and no more than three years and a fine not exceeding seventy-five million Lebanese pounds (LBP).

- 2- If the counterfeit goods or pharmaceuticals have caused incurable disease or permanent disability.

The Algerian legislature did not require the intention of the offender in causing such harm to the consumer; it required only that the offender intended to sell to the consumer these goods and products which led to the harm.¹⁰²

- 3- If the counterfeit goods and medical products have caused the death of the consumer.

Legislators in Algeria and Lebanon have stressed this case; the Algerian legislation has set a punishment for the offender that may be as much as a death sentence, whereas the Lebanese

¹⁰⁰ - See Article 432 of Algerian Penal Code No. 156/66 for 1966; Article 110 of the Lebanese Consumer Protection Law No. 659 of 2005.

¹⁰¹ - See Bu-Sqaiah, H. (2001), *Qanoon al-Aqubat Ala Dhawa' al-Mumarasat al-Qadha'iyah*, 1st edition, matboa'at aldewan alwatani ll-ashghal altarbawiyah, p 101.

¹⁰² - Bu-Dali M., 2006, Op. Cit., p 325.

legislature has set the punishment of the offender at imprisonment for no less than three years and no more than ten years and a fine not exceeding one hundred and fifty million LBP.¹⁰³

The legislature in the UAE did not include such conditions under the new law for consumer protection, which can be used to criminalise traders' acts that have a direct effect on consumer rights for safe food and medicine and would reduce the number of infringements. This sort of provision will fall under the authority of the judicial system and will give them the latitude in determining suitable resolution.

2.5 Legal Processes and Remedies to Protect Consumer

In order to stop the infringing party from continuing his infringement activities or the possibility of occurring damages that have very serious effects on consumers' health, safety and money, the UAE consumer protection law has provided several precautionary measures to maintain consumers' rights. It is well known that in order for legal action to be successful, evidence, manufacturing equipment and any items used to produce counterfeit goods and products must be seized in a fast and effective manner.¹⁰⁴ In addition, the current consumer protection law sets forth procedures that should be adopted by the disputing parties in order to seek for legal action. Even the authority in charge that has the legal capacity to represent the consumers must follow the same procedures as the consumer.¹⁰⁵ In this section, the researcher will divide remedies into two types: civil and criminal remedies. The civil remedies introduced by compensation and the criminal remedies are divided into two types: (1) principle penalties, which include punishments that involve deprivation of freedom and

¹⁰³ - Article 110 of the Lebanese Consumer Protection Law No. 659 of 2005.

¹⁰⁴ - Suroor A., (1981), Op. Cit., p 146.

¹⁰⁵ - See Husni, M. (1989), *Shareh Qanoon al-Aqoubat 'al-Qism al-Aam'*, 1st edition, dar alnahdhah alarabiyah, Egypt; Cairo, p 689; Khalaf, A. (2008), *al-hemaiyah al-jena'aiyah Il-mustahlik "fi majal adam al-ekhlal bil'as'aar Wa hemaiyat al-munafasah Wa mane'a al-ihtekar*, Dar al-jame'ah aljadedah. pp 198-221.

financial sanctions; and (2) accessory penalties, which include punishments such as precautionary measures which involve the closure of establishments, the revocation of trade licenses and the dissemination of convictions.¹⁰⁶ The following sections will analyse those types of civil and criminal remedies mentioned in UAE legislation concerning consumer protection at the federal and local level and assess whether these sanctions and liabilities can provide true deterrent actions.

2.5.1 Civil Remedies under Consumer Protection Regulations

The civil remedy for infringement of consumer protection regulation for an affected consumer is compensation. The most common claim in damages for infringement is related to the loss or bad affect that the consumer suffered. The aim of this remedy is to remedy the damage caused to the injured party by paying sufficient compensation for the damage and loss suffered. Under UAE civil transaction law, it is not necessary to prove that the defendant intended to cause loss in order for compensation to be awarded for actual damages suffered.¹⁰⁷ Therefore, compensation for damages will be awarded for infringement of consumer protection law even if the defendant proves that, at the date of infringement, he was unaware that such action could infringe consumer rights or breach consumer protection regulations.¹⁰⁸ Here, the legislature takes into account the fact that the actual damages were a

¹⁰⁶ - See Mustafa, M. (1979), *al-Jara'em al-Iqtisadiyah Fi al-Qanoon al-Muqaren*, Part 1, 2nd edition, matba'at jamea't alqaherah, p 142; Ibrahim A., 2007, Op. Cit., pp 289-298.

¹⁰⁷ - It is sufficient for the applicant claiming compensation to show that the defendant violated a legal obligation to take reasonable care. See; Al-Tamimi and Company, *Law of Tort in the UAE*, Legal Briefings, Al-Tamimi & Company Advocates & legal Consultants, Dubai, available at; www.tamimi.com/files/Legal%20Brochures/LawofTort.pdf, Accessed date 10/11/2008, p 2.

¹⁰⁸ - See Article 282, UAE Transaction Law No. 5 for 1985.

direct result of the defendant's actions. Therefore, according to legislation in the UAE, civil remedies apply whenever the provisions of consumer protection regulations are infringed.¹⁰⁹

To obtain civil remedies, the plaintiff must prove wrongful acts and damages as well as a direct connection between the wrongful act and the damages or losses.¹¹⁰ Thus, the basic rule is that whoever causes a loss to any person through an act of infringement is liable for compensating the damage he caused.¹¹¹ More specifically, in the UAE, the awarding of compensation in civil claims depends on three elements. The first element is a wrongful act, which means exercising certain prohibited acts or omissions stated in the law.¹¹² Therefore, falseness in descriptions, the selling of counterfeit goods or products, misadvertising and fault in the performance of services can all be considered as wrongful acts.¹¹³

The second element is that of damages, which are generally assessed according to the amount of loss suffered by the plaintiff, including for instance loss of money and material damages, provided that the loss was a direct result of the person who committed the wrongful act.¹¹⁴ Article 283 of the UAE civil transactions law¹¹⁵ states "if the harm is direct, it must unconditionally be made good, and if it is consequential there must be a wrongful or deliberate element and the act must have led to the damage". Based on the latter provision, the Dubai Court of Cassation stated that it can distinguish between damages payable for 'direct' loss and those payable for consequential loss, which requires a stronger element than

¹⁰⁹- Al-Tamimi and Company, *Law of Tort in the UAE*, Op. Cit., p 2.

¹¹⁰- See Article 124 and 282-298, Tort section in the UAE Civil Transaction Law No. 5 for 1985.

¹¹¹- See Article 282, UAE Civil Transaction Law No. 5 for 1985.

¹¹²- It can be local or federal law or international conventions and agreements that the UAE is a member. See Article 124, UAE Civil Transaction Law No. 5 for 1985; Saleh, N. (1991), *Hemaiyat al-Mustahlik Fi al-Tashreea al-Ardoni 'dirasah tahliliyah muqaranah'*, manshorat zahran, Jordan; Amman, pp 46-47.

¹¹³- Some scholars distinguish between wrongful acts by using fraudulent methods and equipment that led to criminal remedies and civil fraudulence which exist by the professional or trader keeping silent. For more See; Al-Zaghred, A. (2007), *al-Hemaiyah al-Madaniyah Min al-De'aiyah al-Tejariyah al-Kathebah wa al-Modhalalh*, dar aljame'ah aljadeedah, pp 58-59; Ibrahim A., 2007, Op. Cit., pp 54-55; Al-Jundi A., 1986, Op. Cit., pp 17-19.

¹¹⁴- Article 292 of UAE Civil Transaction Law No. 5 of 1985. It can be a domestic laws or international conventions and agreements that the UAE is a member.

¹¹⁵- No. 5 of 1985

negligence, and so the plaintiff is required to prove a “malicious” element on the part of the defendant at the time the offense was committed, which may be a difficult burden for the offender seeking to be discharged.¹¹⁶

The third element is the relationship between the wrongful act and the damage suffered by the plaintiff; there should be a direct connection to the injury caused or loss to person or property, regardless of whether or not the act or omission constitutes a crime or was caused by a breach of contract.¹¹⁷ Bear in mind that a claim for damages in tort is founded upon a violation of a legal obligation by a party that causes loss to another, whereas a claim for damages in contract is founded upon a breach of contractual obligation by one party under the terms of that contract, such as a trader who has refused to accept a return, provide a refund or even comply with an agreed contract.¹¹⁸

Moreover, in cases where a wrongful act was committed by a person constituting a criminal act and the court delivered a conviction at a Criminal Court, the result would be useful in a subsequent civil claim for tort because a conviction will be considered as conclusive evidence proving that the person has committed the wrongful act, which will enable the other party to use this verdict as evidence to claim for damages in the civil claim for tort. The court will order compensation in cases where damages occurred and the amount of compensation shall recover the damages that occurred and restore the suffered party to the position that he would have been in if no wrong had been committed.¹¹⁹

However, the effectiveness of civil remedies has been limited by the fact that some consumers’ victims will not pursue court action as they cannot afford the costs of litigation

¹¹⁶ - See “Law of Tort in the UAE”, Op. Cit. p 4.

¹¹⁷ - Article 282, UAE Civil Transaction Law No. 5 of 1985.

¹¹⁸ - Ibid, Article 124

¹¹⁹ - Ibid, Article 292

nor the length of time that it will take to receive a verdict of resolution or compensations.¹²⁰ Additionally, the burden of proof will be on the consumer; apparently, no legal provision for legal assistance by the concerned authority is contained in the UAE consumer protection regulations to deal with the issue of evidence, the consumer's loss and the act committed by the infringer. Another fact that would limit the effectiveness of civil remedies is that the UAE consumer protection regulations do not include any provisions regarding class actions which might reduce the time, length, and even number in cases of numerous consumers having similar cases or their rights being infringed by one trader.¹²¹

2.5.2 Criminal Remedies under Consumer Protection Regulations

The criminal remedies in the UAE regulations on consumer protection have provided two main sorts of penalties in cases of rights being infringed by rogue traders. Principle and accessory penalties were provided under federal and local regulations for the infringement of consumers' rights. This section firstly will investigate the elements of crime in consumer protection infringement in order to determine the punishment. Then, it will indicate the types of penalties mentioned under federal and local regulations on consumer protection and will assess whether these penalties are adequate to deter traders from exercising such infringing acts or not.

Firstly, to apply criminal remedies to the defendant, his acts must include two elements. The first element is the *Actus Reus* (act of infringement), which the UAE Criminal Penal Code defines as “the material element of crime consists of a criminal act committed or omitted in violating of a law forbidding or commanding it”.¹²² However, by returning to UAE Consumer

¹²⁰ - Ibrahim A., 2007, Op. Cit., pp 277-279.

¹²¹ - Rabah, G. (2011), *Qanon Hemaayat Al-Mustahlik Al-Jadeed*, 2nd edition, Manshorat Zain. p 191.

¹²² - Article 31, UAE Penal Code No. 3 of 1987.

protection law most of the breaching acts stated in the UAE consumer protection law have to be exercised or committed by offenders; the law does not contain any provisions that include omissions acts which could be infringement. For instance, when a distributor of goods does not inform the consumer all required information, there is no act, though it still infringes consumer protection regulations. Even infringing acts in consumer protection regulations can be extended to cover preparatory acts.¹²³

The second element is *Mens Rea* (criminal intent or the moral element). The UAE Penal Code defines the moral element of the crime as consisting of “the intentions or the error, the intention exists when the offender’s will is to commit or omit an act which commission or omission is legally considered as a crime. Such intention must be aiming at producing a direct effect or any other effect which the law deems criminal and which the offender had expected to occur”.¹²⁴ UAE criminal legislation emphasises on the importance existence of the criminal intent of the infringing party in consumer protection cases as a main elements. Fayed, Ibrahim and Rabah have claimed that the UAE criminal legislation must be amended to reduce the influence of *mens rea* in consumer protection to ease the burden of proof. They argue that in consumer protection cases, criminal intention does not need to be proven as it already exists whenever the act of infringement occurs.¹²⁵

Secondly, within UAE regulations on consumer protection, there are two types of penalties for acts of infringement on consumer rights – principle and accessory penalties. The following subsection will analyse those types of criminal penalties addressed in the UAE regulations on consumer protection and assess whether these criminal penalties can provide true deterrents or not.

¹²³- Ibrahim A., 2007, Op. Cit., p 277; Al-Muaini A., 2009, Op. Cit., p 103.

¹²⁴- Article 38, UAE Penal Code No. 3 of 1987.

¹²⁵- See Fayed, O. (1991), *Al-Hemayah al-gnieyah Lihg al-Moualef ‘dirasah muqarenah’*, Egypt, Cairo. p 73; Ibrahim A., 2007, Op. Cit., pp 279-280; Rabah G., 2011, Op. Cit., pp 67-69.

2.5.2.1 Principal Penalties

The UAE consumer protection regulations provide different criminal principal penalties that vary according to the nature and amount of the infringing acts. The first principal punishment in Article 16 of the Local Food law within Emirates of Abu-Dhabi is Habs (confinement)¹²⁶ imprisonment and/or a fine between thirty thousand and two hundred thousand dirham, in cases where harmful food has been intentionally handled”. The judge has a certain degree of latitude in determining the appropriate penalty according to the nature and amount of the violation, whether the verdict is for imprisonment, a fine, or both penalties together. These penalties are for certain acts of infringement such as handling, exporting, and selling of harmful food.¹²⁷ In cases of recurrence of the infringement act by the same offender, the imprisonment penalty shall be increased to a period of no less than six months and a fine no less than four hundred thousand dirhams.

Another principle punishment for the infringing party shall be punishable by Habs and fine, which is “imprisonment for a period not exceeding two years and fine not less than five hundred and exceeding ten thousand dirhams or either of both penalties”.¹²⁸ These punishments are also for certain infringements such as the selling of defective goods and the forgery of seals, which are the standard weights and machines used to examine goods and products.

Reading through these principle penalties, it is apparent that imprisonment is commonly optional in most Arab countries’ laws regarding consumer protection¹²⁹ in spite of the fact

¹²⁶- Habs is a criminal punishment where the infringer is penalised with imprisonment of not less than one month and not exceeding than three years. See Article 69, UAE Penal Code of 1987.

¹²⁷- See Article 16 of Food Law No. 2 of 2008.

¹²⁸- See Article 1 of Suppression of Fraud and Deceit in Commercial Transaction No. 4 of 1979

¹²⁹- For more in Egypt, see; Consumer Protection Law No. 67 for 2006 Article 24 and Penal Code Articles 344, 345 and 346; In Sultanate of Oman, see; Consumer Protection Law No. 81 for 2002 Article 21; in Tunisia, see; Consumer Protection Law No. 117 for 1992 Articles, 32, 33, and 37.

that these infringements have a bad effect on public safety and the economy.¹³⁰ In contrast, other Arab and western regulations on consumer protection have emphasised the importance of imprisonment as a means to curb such infringements by making imprisonment of offenders obligatory.¹³¹

Some researchers have claimed that the main rationale for criminal sanctions is that the infringing act affects the public directly or indirectly; therefore, criminal sanctions are the only way to prevent these infringements.¹³² Dr. Ghassan Rabah argued that the new food law within Emirates Abu Dhabi provide more adequate protection for the consumer than the new consumer protection law and Act of Suppression of Fraud and Deceit in Commercial Transaction in the UAE. Dr. Rabah added that no severe penalties are included in the new federal consumer protection law and the fines mentioned in the latter law are very weak compared with the penalties in the local food law especially in that these infringements affect people's health and safety.¹³³

2.5.2.2 Accessory Penalties

The UAE consumer protection regulations include confiscation and destruction as a means of an accessory penalty with principle penalties, as well as the closure of the offending establishment and the publishing of the court judgement in a daily newspaper. The next sub-

¹³⁰ - See 2.3 Importance of Consumer Protection to Economic Development in this Thesis

¹³¹ - In Lebanon, see; Consumer Protection Law No. 659 for 2005 Articles 107-120 and In Algeria, see Consumer Protection Law 09-03 of 2009.

¹³² - See Wazeer, A. (1984), *Qanoon Hemaiyat al-Mustahlik Fi Dhel Qanoon al-Aqubat al-Iqtisadi Fi Muser*, manshorat aljam'aiyah almasriyah II-qanoon aljena'ai. p 186; Al-Muaini A., 2009, Op. Cit., p 112; Khalaf A., 2008, Op. Cit., p 198-199.

¹³³ - Court of Appeal in Dubai has decided to fine two workers at a Chinese restaurant because of their failure to follow the requirements of safety and hygiene which led to the deaths of two children due to food poisoning, with twenty thousands dirhams. Court upholds verdict in food poisoning case, Lotus Gardens Restaurant Company v. Chelsea & Nathan D'souza [2009] 15044 (unpublished case); See also Rabah G., 2011, Op. Cit., p 189.

sections will illustrate those accessory penalties to give a comprehensive overview of their effectiveness.

Confiscation and Destruction:¹³⁴ In all cases of consumer protection infringement, all counterfeit and fake consumer goods, household products, automobile spare parts, cosmetics and pharmaceuticals which are the subject of the offence should be confiscated and destroyed.¹³⁵ In addition, the authorities should confiscate the manufacturing equipment and deceives used in infringing activities which are not useful for any other purpose.¹³⁶ The UAE legislation has given the court the authority to provide suitable deterrent action against offenders through the confiscation of manufacturing equipment and the disposal of goods and products in violation.¹³⁷

Closure:¹³⁸ The court must order the closure of the establishment used by convicted persons according to the UAE Act on Suppression of Fraud and Deceit in Commercial Transaction for a period not exceeding six months.¹³⁹ In contrast, under the Egyptian law on consumer protection, the court is not required to order the closure of the establishment where the infringement was committed by a convicted party unless a recurrence has occurred.¹⁴⁰ Khalaf and Othman have defended the trend of Egyptian legislators by stating that the closure of the establishment would harm other parties who did not interfere or participate in the

¹³⁴ - In UAE and Egypt legislation, confiscation would be used as an accessory punishment on convicted person and obligatory in case that the item or product that was confiscated is subject to public interest. See; Egypt Penal Code Article 30 Para 1 and 3; UAE Penal Code Article 82 of 1987.

¹³⁵ - See Article 14 Para 4 and 6 of the Food Law; Articles 19-20 of UAE Federal Consumer Protection Law No. 24 for 2006; Article 9 of Act of Suppression of Fraud and Deceit in Commercial Transaction No. 4 of 1979

¹³⁶ - The Court of Appeal has ordered that the confiscation and destruction of any infringing equipment belongs to the country, which has the right to destroy those equipments without any compensation. For more, see Ibrahim A., 2007, Op. Cit., p 306 -307; Khalaf A., 2008, Op. Cit., p 205.

¹³⁷ - The Court of Appeals here ordered the confiscation and destruction of the material based on the public interest and as a precaution measure. See; Khalaf A., 2008, Op. Cit., p 205.

¹³⁸ - Closure of the establishment means preventing the perpetrator from exercising the activity that was practiced before the closing.

¹³⁹ - See Article 10 of Suppression of Fraud and Deceit in Commercial Transaction No. 4 of 1979

¹⁴⁰ - See Article 24 of Egyptian Consumer Protection Law of 2006; Article 56 of Law No. 95 for 1945 concerning supply.

infringement act, which contradicts the principle of personal punishment.¹⁴¹ The Egyptian provision makes sense because the court will study all elements and the situation of the infringing party. Thereby, Egyptian courts have a certain degree of latitude in determining a suitable resolution.

Publication of the Verdict: The court shall decide upon whether or not to publish a summary of the court ruling of the conviction in one or more daily newspapers at the expense of the convicted party.¹⁴² However, such an act was not implemented clearly through media as most published verdicts in the UAE do not include names of individuals and establishments. Ibrahim pointed out that the missing role of the media in publishing clear judgments has a negative impact on consumers' awareness and a positive impact on rogue traders by not mentioning their name, which allows them to escape the criminal stigma.¹⁴³

In contrast, legislators in Egypt have obligated the convicted to publish court decisions on the front side of their shop until the end of their sentence.¹⁴⁴ However, in cases where the court only required a fine, the convicted party must publish the verdict for one month on the front side of the establishment.¹⁴⁵ Mustafa Muneer has defended the trend of Egyptian legislators by stating that the main aim of publishing the court verdict on the front of the establishment is to inform consumers about the background of the offender as part of their right of choice and their right to be informed.¹⁴⁶

¹⁴¹- See Othman A., (1978), *Shareh Qanoon al-Aqubat al-Iqtisadi Fi Jara'em al-Tamween*, dar alnahdhah alarabiyah, Egypt; Cairo, p 264; Khalaf A., 2008, Op. Cit., p 209.

¹⁴²- Article 9 of Suppression of Fraud and Deceit in Commercial Transaction No. 4 of 1979; The Decision of Court of Cassation in Dubai in the Case AlSharqiyah company vs. Alandalus Establishment [2004] 311 (unpublished case) has held that it is upon the convicted party (Alandalus Est) to publish the decision made by the court. Also the judgment in Case Addidas AJ vs. Ahmed Ibrahim [2006] 906 'Summary Circuit' has also obligated the convicted party (Addidas) to publish the court decision.

¹⁴³- Ibrahim A., 2007, Op. Cit., p 678.

¹⁴⁴- See Article 57 Para 2 of the Egyptian Law No. 163 for 1950 concerning obligatory pricing.

¹⁴⁵- Ibid Article 16

¹⁴⁶- See Muneer, M. (1992), *Jara'em Ist'emal al-Sultah al-Iqtisadiyah*, alhaiyah ala'mah II-kitab, p 322; Khalaf A., 2008, Op. Cit., pp 221-222.

2.6 Judiciary Role in Consumer Protection

In 2009, the Minister of Justice issued Decree No. 332 to establish the first instance of a federal court handling cases and conflicts concerning consumer protection. The Decree includes the establishment of courts in Sharjah and Umm Al-Qaiwain, Ajman and Fujairah that follow the federal system.¹⁴⁷

According to the Director of the Consumer Protection Department, about 95% of consumer complaints are resolved through the Department of Consumer Protection within the Ministry of Economy, while the remaining conflicts are settled by the Dispute Settlement Committee within the Ministry of Economy or by court.¹⁴⁸ Consequently, there are sort of adequacy in the role of the Department of Consumer Protection which is legally authorized to solve consumer disputes before refer it to the court.

However, the legislators in the UAE have given the judiciary some authority under consumer protection law to achieve a balance between the two parties.¹⁴⁹ This role has been minimized by the administrative bodies, in particular the Consumer Protection Department, by settling disputes within the department. The questions that arise in these circumstances are (1) how effective and fair can these settlements provided by the department be, and (2) is there a neutral body to monitor the role of the department?¹⁵⁰

¹⁴⁷ - See Ministry of Justice (MOJ), (2010), Decree No. 332 for the Year 2009 to establish first instance consumer protection courts, available at <http://www.elaws.gov.ae/EnLegislations.aspx>, accessed date 02/11/2010.

¹⁴⁸ - See Al-Nuaimi, H. (2010), *Mahakim Mutakhasesah liqhadhaiyah al-Mustahlkeen fi Abu Dhabi al-Aaam al-Hali*, an article publishe in Alittihad Newspaper, released on 02/03/2010, available at <http://www.alittihad.ae> , accessed date 6/11/2010.

¹⁴⁹ - Article 19 of the UAE Consumer Protection Law has stated that the court, in case of conviction with any of the crimes stipulated in the provisions of this law, may order, in addition to the stipulated penalties, the confiscation or damage of the product that forms the violation, material and tools used for production.

¹⁵⁰ - See 3.5 The adequacy of measures taken by administrative authorities to enforce consumer protection regulations in this thesis.

2.6.1 Who Can Bring a Proceeding?

Typically, the plaintiff is the consumer and shall be entitled to compensation against personal or financial damages according to the applicable general rules,¹⁵¹ whereas other parties are not given such authority to represent the consumer, such as the Consumer Association. Therefore, the only authority that can join the consumer in bringing legal action was the Consumer Protection Department, which was conferred authority by law to represent the consumer before the court or other body.¹⁵² Nevertheless, the law has given the consumer the right to dismiss any legal action: “the Claimant may give up the dispute by means of a declaration to his opponent or by means of an express statement in a memorandum duly signed by him or by his legal representative, while showing it to his opponent or presenting it verbally in the session and recording it in the report”.¹⁵³

2.6.2 Scope of Court Intervention

In this section, the researcher is focusing on the need for judiciary intervention in adhesion contracts. Government intervention must include all aspects of the consumption process in order to protect consumer rights. This begins with product quality, price and organizing, the circulation of goods and services in the market without deception and extends all the way to contracts.¹⁵⁴ As indicated previously, there is a serious need to protect consumers in standardized contracts due to their weak negotiating position and the discrepancy between the

¹⁵¹ - Article 16 of UAE Federal Consumer Protection Law No. 24 for 2006; See the Decision (No. 311 / [2004] Op.Cit.) of the Dubai court of first instance to accept the claim made by the Claimant and obligate the First Defendant to pay the Second Claimant the amount of AED "91,413" (Only Ninety One Thousand & Four Hundred Thirteen UAE Dirham) and obligates him to pay the reasonable amount of the expenses, and gave its orders to settle the Attorney professional fees on a "Clearing" basis, and to put down in writing the fact that the two Claimants have given up the dispute against the Second Defendant Court decisions has stressed on offender traders whether the claimant was a normal consumer or trader.

¹⁵² - Article 17 of the UAE Consumer Protection Law states that The Directorate shall have the legal capacity to represent the consumer before courts of law and any other authority as specified by the law

¹⁵³ - Article 111 of the Civil Transaction Law of 1985

¹⁵⁴ - French Scholar *Salleilles* has named this type of contract an ‘adhesion contract’ because the weak party joins this contract without discussion or adjustment. See Al-Qaysi A., 2002, Op. Cit., pp 32-37.

parties in terms of levels of knowledge about the contract's terms.¹⁵⁵ Therefore, one of the main areas in which the judicial must intervene in order to protect consumer rights is that of Unfair Contracts. It is well known that a normal contract is a legal, enforceable agreement between two or more parties with mutual obligations. The legal remedy for a breach of contract is cancellation or monetary compensation.¹⁵⁶

However, there are some contracts known as "adhesion contracts" that do not have the same conditions. What distinguishes these unfair contracts is that the party that has drafted the contract conditions has a greater advantage in the bargaining. This means that the party who has a bargaining advantage (i.e., the trader) leaves the other party (i.e., the consumer) with no other option than to either accept or reject the contract without any discussion or negotiation of those conditions because of his need for such goods and services, such as water, electricity, communication, insurance, etc.¹⁵⁷ Al-Sadah has alerted legislators on this type of contract in his book *Nadhariyat al-Aqid Fi Qawaneen al-Bilad al-Arabiyah* (Contract Theory in the Arab States), as he states that protection should be extended for consumer to cover his consent in contracts involving a weak party that accepts pre-conditions set by the professional without any discussion of the commodity or service required as this situation may establish a legal monopoly or might lead to encroachment on consumer rights.¹⁵⁸

¹⁵⁵ - Al-Rashed A., 2011, *Rusoom al-Bank wa Jehat Okh'ra*, Op. Cit.

¹⁵⁶ - See Al-Sanhori, A. (1998), *al-Waseet Fi Sharh Al-qanoon al-Madni al-Jadeed 'masader al-iltizam'*, 1st edition manshorat al-halabi al-hoqqiyah, Lebanon; Beirut. P1, p 153; Al-Hakeem, A. (1967), *al-Waseet Fi Nadhariyat al-Aqid*, Iraq; Baghdad. P1, p 81; Hejazi, A. (1981), *al-Nadhariyah al-A'mah LI-eltizam fqaan II-qanoon al-Madni al-Kuwaiti*, matboa'at jamea't alkuwait, P 1, p 263.

¹⁵⁷ - See Abdul-Baqi, A. (1984), *Droos Fi Masader al-Iltezam*, maktabat nahdhat maser, Egypt; Cairo. P 96; Al-Ahwani, H. (1992), *Masader al-iltizam 'al-Masader al-edariyah'*, dar al-nadhah al-arabiyah, p 79; Al-Attar, A. (1997), *Masader al-iltizam al-eradiyah fi qanoon al-mu'amalat al-madaniyah al-emaraty*, Matboat jam'at al-emarat, p 62.

¹⁵⁸ - See Al-Sadah, A. (1974), *Nadhariyat al-Aqid Fi Qawaneen al-Bilad al-Arabiyah*, dar alnadhah alarabiyah, p 120.

Nowadays, many institutions and companies rely heavily on adhesion contracts in-line with economic development,¹⁵⁹ as a consequence of circumstances surrounding this type of contract; the legislature in the UAE has legitimized judicial intervention to provide adequate protection for consumer consent.¹⁶⁰

Bandari and Abdul-Baqi have argued that although the civil law in Egypt and the UAE considered this type of adhesion contract to be acceptable in the same way as other Arab countries,¹⁶¹ they did not ignore that this type of contract is characterized by a particular disadvantage – namely, the great disparity between the parties to the contract. Accordingly, the legislature has added to adhesion contracts certain provisions designed to protect the weak party.¹⁶² The trend of legislation in the UAE conforms with the current development in the commercial transactions by avoiding or forbidding any terms or conditions that may prohibit consumers from seeking redress, which was reflected in the new consumer protection law.¹⁶³ Some experts have suggested that any sort of adhesion contracts must be approved by the concerned authorities, who must have sufficient authority to monitor this type of contract, and in cases where there is no such authority, the judge is required to intervene in order to provide the necessary protection.¹⁶⁴

¹⁵⁹- See Hamed, L. (1990), *Aqid al-Itha'an Fi al-Qanoon al-Madani al-Jaza'eri*, almu'a'sasah alwataniyah II-kitab, Algeria, p 10; Abdul-Baqi A., 1984, Op. Cit., p 135.

¹⁶⁰- There was a huge debate among scholars about the scope of protection and which adhesion contract should be involved under this protection; some scholars have adopted a narrow scope which includes a specific type of contracts, while other scholars have applied a wide scope to confer legal protection that extends protection to the largest number of consumers, see; Faraj, A. (1974), *Nadhariyat al-Aqed Fi Qawaneen al-Bilad al-Arabiyyah*, dar alnadhah alarabiyah. p 120; Marqis, S. (1956), *Nadhariyat al-Aqed*, Dar al-jame'ah al-musriyah, Egypt; Cairo, p 124; Al-Sanhori A., 1998, Op. Cit., p 1, p 245; Hamed L., 1990, Op. Cit., p 10.

¹⁶¹- (Art 100 of Civil Law of Egypt)(Art 145 of Civil Transaction UAE)(Art 100 of Civil Transaction Libya)(Art 101 of Civil Transaction Syria)(Art 172 of Civil Transaction Lebanon)(Art 81 of Civil Transaction Kuwait)

¹⁶²- See Bandari, M. (1998), *Hemaiyat al-Mustahlik fi Aqood al-Itha'an*, a paper presented in Forum title 'Consumer Protection in Shari'a and Law' held in Abu-Dhabi, 6-7 December 1998, p 68; Abdul-Baqi A., Op. Cit., 1984, p 99.

¹⁶³- Article 16 of the Consumer Protection Law has stated that the Consumer shall be entitled to compensation against personal or financial damages according to the applicable general rules, provided that any contradictory agreement shall be considered void.

¹⁶⁴- Article 10 of the UK Unfair Terms in Consumer Contracts Regulations 1999 imposes a duty on the Office of Fair Trading to seek an injunctions or undertaking against the use of unfair terms. For more, see Ramsay, I.

2.7 General Analysis of the Available Legal Framework

An issue of integration commonly occurs among federal and local legislations, which necessarily rely on each other. The policies and regulations that guide the response on consumer protection regulations infringements vary between federal and local bodies, even the processes followed by each Emirate differ from one Emirate to another.¹⁶⁵ In order to achieve sufficient application of consumer protection regulations in the UAE, there should be a clear delineation between local and federal roles, and an understanding of the need for effective channels of information flow to relevant authorities. Thus, there is a need to work on the integration of these roles to ensure that there is clear and effective provision of information for consumers to rely on when their rights have been infringed by a trader or department providing services of any kind.¹⁶⁶

Many countries have the same problem, and it has dealt with by creating a main organization that controls the issue of consumer protection with a standard procedure that prevents confusion for consumers; in the United States, for example, the Bureau of Consumer Protection (BCP) within Federal Trade Commission works to protect consumers against unfair, deceptive, or fraudulent practices in the marketplace. It also conducts investigations, sues companies and people who violate the law, develops rules to protect consumers, and educates consumers and businesses about their rights and responsibilities.¹⁶⁷ The BCP also collects complaints about consumer fraud and identity theft and makes them available to law enforcement agencies across the country.¹⁶⁸

(2007), *Consumer law and policy 'text and Materials on regulating consumer markets'*, 2nd edition, Hart Publishing. pp 194-195.

¹⁶⁵ - Ibrahim A., 2007, Op. Cit., p 579; Rabah G., 2011, Op. Cit., p 189.

¹⁶⁶ - Al-Muaini A., 2009, Op. Cit., p 159.

¹⁶⁷ - See Waller, S., Brady, J., Jillian, G. and Acosta, R. (2011), *Consumer Protection in the United States: An Overview*, European Journal of Consumer Law, available at; SSRN: <http://ssrn.com/abstract=1000226>. Accessed date 12/9/2011, pp 1-16.

¹⁶⁸ - Ibid

Another example of integration between authorities can be seen in the United Kingdom in the Office of Fair Trading, which acts at the federal level as the UK's official consumer and competition watchdog, with a remittance to make markets work well for consumers, and at a local, municipal level through Trading Standards departments.¹⁶⁹ The United Kingdom has established Local Authorities Coordinators of Regulatory Service (LACORS) to develop some degree of uniformity in enforcement between these levels.¹⁷⁰

2.7.1 Contradiction in Regulations

In terms of contradiction in regulations, Article 4 of the consumer protection law has indicated the establishment of a Consumer Protection Department and gave the department various responsibilities but primarily to work towards attaining fair competition and to combat monopolies.¹⁷¹ Additionally, Article 14 prohibits the concealing of any goods or refraining from sale of goods as a means to control the market; however, the role of the Consumer Protection Department has been minimised by another federal law that limits their efforts in combating monopoly by providing the legal capacity to traders to practice monopolies.¹⁷² Article 5 of Federal law No. 18 for 1981 on Commercial Agency Law imposes the principal to deal with only one agent at the state in importing goods, products and services.¹⁷³

Mohammed Abdah has argued that it would be better to grant the importation of some basic commodities to the concerned authority because otherwise the legislature could exempt food from commercial agency law. As the current agency law does not distinguish between basic commodities (e.g., rice, milk, and oil) and supplementary commodities. For example, the

¹⁶⁹ - Ramsay I., 2007, Op. Cit., pp 454-458.

¹⁷⁰ - Ibid, at p 349.

¹⁷¹ - Article 4 of UAE Federal Consumer Protection Law No. 24 for 2006.

¹⁷² - Ibid Article 14

¹⁷³ - Article 5 of Commercial Agency Law No. 18 for 1981.

government of Jordan has given the Ministry of Supply the authority to import sugar, rice and meat in order to prevent monopolies.¹⁷⁴ Moreover, in line with the same trend, Ibrahim Hantish has argued that the commercial agency law must contain a provision limiting commercial agencies' ability to refrain from granting goods and products because of their necessity to the whole community, otherwise the situation would be a sort of 'regulated monopoly'.¹⁷⁵ Al-Shamsi has stressed on Hantish's point by arguing that the current law legalizes monopolies and encourages unfair competition by exempting perpetrators from legal liability. He suggest that the Ministry of Economy, since it is the authority concerned with applying both laws, should raise a note to the Cabinet to add some provisions that would exempt certain categories of goods and products from commercial agencies law.¹⁷⁶ These views correspond with Islamic teaching on essential commodities since an entrepreneur dealing with essential commodities has a particular obligation towards the public.¹⁷⁷

Therefore, most scholars insisted that greater consistency in the laws laid down by the government without any contradictions would lead to more adequate and effective application of these laws.¹⁷⁸ This is particularly the case since it will not be possible for the UAE consumer protection law to contain all of the necessary provisions; moreover, in certain procedural matters, reference must be made to other laws.¹⁷⁹ Recently, on the same trend, the

¹⁷⁴- See Abdah, M. (2002), *Hemaiyat al-Mustahlik fi al-fiqh al-eqtesadi al-islami*, 1st ed, Majdalawi press. p 323.

¹⁷⁵- See Hantish, I. (2007), *Ta'therat Tatbeeq Qanoon Tandheem A'amal Al-Wokala' Al-Tejariyeen Ala Tanafosiat Al-Qetaa' Al-Tejari*, Palestine, Published by the Palestine Economic Policy Research Institute (MAS), p 48.

¹⁷⁶- Al-Shamsi, N. (2011), *Iqtesad Wahed,, Watan Wahed*, Op. Cit.

¹⁷⁷- See Khan, K. and Aftab, S. (2000), *Consumer Protection In Islam: The case of Pakistan; monopoly control authority*, Vol. 39 issue 4, Blackwell Publishers Ltd, University of Adelaide and Flinders University of South Australia, pp 484– 485. p 492.

¹⁷⁸- Hantish I., 2007, Op. Cit., pp 48-49; Al-Shamsi N., *Iqtesad Wahed ,, Watan Wahed* , 2011, Op. Cit. ; Rabah G., 2011, Op. Cit., pp 53-54.

¹⁷⁹- Al-Tamimi E., 1999, Op. Cit., p 385.

Minister of Justice has stated that “there is an urgent need for a review for current legislation and laws to keep pace with the changing situation in the State and to clear any ambiguity”.¹⁸⁰

2.7.2 Civil or Criminal Remedies

In terms of civil and criminal remedies, consumer protection law has included some sanctions in cases of consumer rights being infringed since those infringements have negative impacts on both the personal and national levels of the economy. Therefore, legal experts Ibrahim, Rabah and Abdah have insisted on ensuring that the current consumer protections should not depend on just a single sanction but rather a range of precautionary measures and civil remedies and, even more importantly, the current consumer protection law has to extend this protection to include adequate criminal sanctions such as fines and/or imprisonment. It will allow the court to impose true deterrent sentences against consumer rights infringers which ultimately will assist in reducing the number of infringements on consumer protection law.¹⁸¹

Furthermore, indicating the difference between civil and criminal remedies will help consumers to decide what kind of actions to pursue in order to seek for a redress. As discussed above, civil liability applies whenever the element of infringing consumer regulations is established; therefore, the damaged consumer (i.e., the plaintiff) in any sort of damage, such as loss of money, receipt of bad service, harmful impact on his health, can request compensation based on civil liability.¹⁸² However, the burden of proof will be on the

¹⁸⁰ - See Al-Dhahri, H. (2011), *Minister of Justice Statement at Zayed University*, Al-Bayan Newspaper, issue No 11298, available at <http://www.albayan.ae/across-the-uae/news-and-reports/2011-05-28-1.1445905>, accessed date 28/05/2011.

¹⁸¹ - Ibrahim A., 2007, *Op. Cit.*, pp 289-290; Rabah G., 2011, *Op. Cit.*, pp 75-76; Abdah M., 2002, *Op. Cit.*, p 334.

¹⁸² - See, for example, in the UK, the case of *Jarvis v. Swans Tours Ltd.* [1973] 1 Q.B. 233; [1973] 1 All E.R. 71 an English solicitor booked a holiday in Switzerland on the basis of a brochure which promised a welcome party on arrival, afternoon tea and cakes, a bar which would open several evenings a week and a charming owner who spoke English. There was no welcome party. The solicitor did not have the nice Swiss cakes he was hoping for; for tea, there were only potato crisps and little dry nut cakes. The bar was an unoccupied annex open only one evening a week, and the Swiss owner could not speak English. The Court of Appeals said the solicitor was

consumer (i.e., the plaintiff), who must provide the court with accurate evidence of the damage suffered as a result of infringement act.¹⁸³ Thus, in a modern fair trading framework, the main enforcement mechanism and the more appropriate and proportionate tool for non-serious breaches are civil sanctions.¹⁸⁴

On the other hand, if the consumer has been damaged seriously by using counterfeit goods, there should be more consideration of criminal remedies to tackle unscrupulous trading activities. Criminal liabilities and sanctions of consumer protection regulations infringements have raised some debate.¹⁸⁵ It would seem that some consumers would prefer more stringent civil remedies rather than an increase in criminal sanctions because the burden of proof would be higher and there is a *mens rea* (criminal intent) requirement in criminal actions, which may decrease the chance of successful criminal actions. In addition, consumers do not receive any direct pecuniary gain from criminal prosecutions because criminal fines accrue to the government.¹⁸⁶

In spite of these apparent disadvantages, there are several reasons why many other consumers may prefer criminal remedies and liabilities over civil remedies. Firstly, it is argued that sanctions serve to strengthen civil deterrence. Civil remedies alone have proved to be insufficient to deter potential violators, particularly those acting for the purpose of private financial gain and commercial advantage.¹⁸⁷ Bardach and Kagan claim that in some infringer's view, civil damages would be an additional cost of doing business; in other words,

entitled to be compensated for disappointment and distress, and he was awarded twice the cost of the holiday as damages. See also; (*Jackson v. Horizon Holidays Ltd.* [1975] 1 W.L.R. 1468; [1975] 3 All E.R. 92, C.A)

¹⁸³ - Article 1 of UAE Federal law of Evidence N. 10 for 1992; Al-Muaini A., 2009, Op. Cit., p 95.

¹⁸⁴ - Ramsay I., 2007, Op. Cit., p 355.

¹⁸⁵ - See Cartwright, P. (2001), *Consumer protection and the criminal law 'Law, Theory and Policy in the UK*, Cambridge University Press.

¹⁸⁶ - See Hampton, P. (2005), *Reducing administrative burdens: effective inspection and enforcement*, London, Treasury. p 23; Al-Muaini A., 2009, Op. Cit., p 98; Ramsay I., 2007, Op. Cit., pp 360-361

¹⁸⁷ - See Borrie, G. (1984), *The Development of Consumer Law and Policy: Bold Spirits and Timorous Souls*, Stevens & Sons Ltd, p 46; Ibrahim A., 2007, Op. Cit., pp 580-581.

the infringer of consumer protection law would pay civil damages while continuing the infringing activity and still earning profits on the venture.¹⁸⁸ The imposition of criminal liabilities and sanctions can serve to close this gap through substantial fines and/or imprisonment.¹⁸⁹

A second argument is that criminal penalties are a more effective deterrent than civil remedies such as compensation or injunction. This is a common justification for criminal sanctions; however, it rings particularly true given the rapid pace of the advance of modern technology that has made the production and marketing of counterfeit goods and products easier, cheaper, more complex, and more complicated.¹⁹⁰ For instance, an individual infringer of consumer law who engaged in unauthorised sales or sold fake and counterfeit goods and products may have insufficient funds to cover the damages of civil remedies, which can prove ineffective. Yet, criminal sanctions in the form of jail sentences and imprisonment can be imposed on consumer protection law infringers who are liable for large damages but have limited funds or resources.¹⁹¹ As Professor Shavell observes, “it is impossible to deter a person with no assets by the threat of monetary sanctions”.¹⁹²

Thirdly, it is argued that the imprisonment of consumer protection law infringers may ensure that they are no longer market participators. Civil remedies cannot stop the consumer regulation infringers from re-entering the market, even if the judge decides to have the infringing products and the manufacturing equipment destroyed or seized. By contrast, if

¹⁸⁸ - See Bardach, E. and Kagan, R. (1982), *Going by the Book: The Problem of Regulatory Unreasonableness*, Philadelphia, Temple University Press, pp 44-57.

¹⁸⁹ - See Haddock, D., Mschesney, F. and Spiegel, M. (1990), *An Ordinary Economic Rational for Extraordinary Legal Sanctions*, California Law Review, Vol. 78, No. 1, pp 1-51, p 50.

¹⁹⁰ - See Ball, H and Friedman, L. (1965), *Use of criminal sanctions in the enforcement of economic legislation: A sociological view*, Stanford Law Review, 17, pp 197-223, pp 214-215; Burgess, A. (2001), *Flattering Consumption: Creating a Europe of the consumer*, Journal of Consumer Culture, Vol. 1, No. 1, pp 93-117, p 105.

¹⁹¹ - Ibid, Ball and Friedman, 1965, Op. Cit., pp 197-198: 214.

¹⁹² - See, Shavell, S. (1985), *Criminal law and the Optimal use of Nonmonetary sanctions as a deterrent*, Columbia Law Review, Vol. 85, No. 6, pp 1232-1262, p 1237.

criminal sanctions are imposed against consumer regulations infringers in the form of imprisonment, then the violator is physically removed from the markets, and thus no longer represents a threat. Thus, criminal sanctions may be the most effective means of restricting unfair commercial acts and protecting consumer rights.¹⁹³ According to Barbara Wootton, “the contemporary extension of strict liability is not the nightmare that it is often made out to be ... its supposedly nightmarish quality disappears once it is accepted that the primary objective of the criminal courts is preventive rather than punitive”.¹⁹⁴

Only criminal penalties, with jail or the prospect of jail, may be forceful enough to restrain repeated offenders and may function as a suitable deterrent from further infringement.¹⁹⁵ The consumer may benefit by obtaining adequate compensation for the infringement of his rights, health and safety, whereas criminal punishment appears to bring benefits to the society as a whole.¹⁹⁶ However, providing criminal liabilities and sanctions would place an undue burden on the prosecution and judicial authority.¹⁹⁷

By examining the current state of UAE legislation on consumer protection, Food Law No. 2 for 2008, which was introduced by the local authority in the capital, Abu Dhabi, provides a wide range of civil and criminal remedies which shall be imposed on a person who commits infringement against consumers’ rights.¹⁹⁸ The UAE federal legislature should amend

¹⁹³ - Borrie G., 1984, Op. Cit., p 53; Ibrahim A., 2007, Op. Cit., p 581; Rabah G., 2011, Op. Cit., p 189 see also: *Tesco v. Nattrass* [1972] A.C.153, 194; [1971] 2 All E.R. 127, 151.

¹⁹⁴ - See Wootton, B. (1981), *Crime and the Criminal Law: Reflections of a Magistrate and Social Scientist*, 2nd edition, Stevens.

¹⁹⁵ - The Supreme Court of Canada in considering a similar situation has commented that: ‘Regulatory legislation involves a shift of emphasis from the protection of individual interests and the deterrence and punishment of acts involving moral fault to the protection of the Public and Society’s interest. While criminal offences are usually designed to condemn and punish inherently wrong conduct, regulatory measures are generally directed to prevention of future harm through the enforcement of minimum standards of conduct and care’. See; (*R v Wholesale Travel Group Inc.* [1991]3 SCR 154per Cory J)

¹⁹⁶ - Ramsay I., 2007, Op. Cit., p 357.

¹⁹⁷ - Article 7 of UAE Criminal Procedure Law No. 35 for 1992

¹⁹⁸ - This approach is known as “Responsive Regulation” or ‘Benign Big Gun’ which gave the regulator a range of enforcement mechanisms ranging from informal undertaking to injunctions and criminal sanctions. For more

Consumer Protection Law No. 24 for 2006 to strengthen criminal penalties significantly and provide the concerned authorities with sufficient precautionary measures to be able to act effectively.¹⁹⁹

2.7.3 Alternative Dispute Resolution

According to Hawkins and Thomas, “prosecution is a last resort and the overall goal is to achieve the objective of the legislation rather than sanction a breach”.²⁰⁰ The most obvious target for this part of the remedies is to reduce the delays in the enforcement process caused by the court, which are lengthy, subject to various procedures, and subject also to appeal proceedings, whereas alternative dispute resolution such as mediation offer speedy procedures to settle disputes.²⁰¹ Although the law has provided two ways for consumers to adjudicate disputes – courts and mediation – people prefer mediation over courts. The reason is that cases in the UAE federal court typically take more than 559 days, whereas in Tunisia they take 7 days, in Jordan 147 days, in Saudi Arabia 195, in Egypt 202, in Yemen 240, in Syria 270 and in Lebanon 721 days.²⁰² Therefore, UAE consumer protection laws have

see: Ayres, I. and Braithwaite, J. (1992), *Responsive Regulation: Transcending the deregulation debate*, Oxford, Oxford University Press.

¹⁹⁹- Ibrahim A., 2007, Op. Cit., p 581; Rabah G., 2011, Op. Cit., p 189.

²⁰⁰- See Hawkins, K. and Thomas, J. (1984), *Enforcing regulation*, edited by Keith Hawkins, John M. Thomas and Kluwer-Nijhoff; Distributors for North America, Kluwer Boston, Boston : Hingham, Mass., USA, p 23; Hawkins, K. (2003), *Law as Last Resort: Prosecution Decision-Making in a Regulating Agency*, Oxford: Oxford University Press.

²⁰¹- See Doyle, M., Ritters, K. and Brooker, S. (2004), *Seeking Resolution: the availability and usage of consumer to business alternative dispute resolution in the United Kingdom*, National Consumer Council, DTI, pp 5-6; Edwards, H. (1986), *Alternative Dispute Resolution: Panacea or Anathema?*, Harvard Law Review, Vol. 99, No. 3, pp 668-684, pp 669-670; Ramsay I., 2007, Op. Cit., p 234; Ibrahim A., 2007, Op. Cit., p 575; Rabah G., 2011, Op. Cit., pp 178-179.

²⁰²- See Al-Yosouf, Y. (2007), *Dirasat Halat Dowlat al-Emarat al-Arabiyyah al-Motahedah*, Published in Book *al-Fasad Wa-lhukm al-Saleh Fi al-Bilad al-Arabiyyah*, 2nd edition, markez dirasat alwehdah alarabiyyah. p 582; Middle East and North Africa (MENA) Development Report, (2003), *Better Governance for Development in the Middle East and North Africa: Enhancing Inclusiveness and Accountability*, The International Bank for Reconstruction and Development, ISBN 0-8213-5635-6, p 93.

contained a provision encouraging conflicting parties to refer their case to mediation in order to settle their disputes.²⁰³

Moreover, the Department of Consumer Protection has used mediation within the department to settle most disputes.²⁰⁴ Article 17 of the Consumer Protection Law has assigned mediation to employees in the Ministry of Economy to settle disputes between conflicting parties bearing in mind that its decision in this regard may be appealed to the Minister within fifteen days.²⁰⁵ Abu-Amro and Ahmed found that although the Ministry referred parties to mediation, it did not provide clear mechanisms to follow in the settling of cases, such as who is in charge of settling the case and which cases should be referred to mediation since the current consumer protection law did not contain any provision on the mechanism of mediation.²⁰⁶ A good example was provided by Lebanon Consumer Protection Law No. 659 for 2005, which identified the mechanism that must be followed by the Consumer Protection Department in cases referred to mediation:²⁰⁷

- Cases below three million LBP (7500 AED) must be referred to mediation;
- The mediator must be one or more neutral personnel at third grade or above in the ministry concerned;
- Mediator must call conflicting parties within three days of the date of approval to resort to mediation for a session;
- All parties in the dispute or their representatives must attend all mediation stages;
- Mediator can seek assistance of experts; and

²⁰³ - Article 17 of UAE Federal Consumer Protection Law No. 24 for 2006.

²⁰⁴ - Al-Nuaimi, H., 2010, *Mahakim Mutakhasasah liqhadhaiyah al-Mustahlkeen fi Abu Dhabi al-Aaam al-Hali*, Op. Cit.

²⁰⁵ - Article 17 of UAE Federal Consumer Protection Law No. 24 for 2006.

²⁰⁶ - See Ahmed, B. (2011), *United Arab Emirates*, Richard Clark (Ed), *The Dispute Resolution Review*, 3rd edition, Law Business Research Ltd, p 845; Abu-Amro, M. (2011), *Mujaz Ahkam Qanoon Hemaiyat Al-Mustahlk*, 1st edition, Lebanon; Beirut, Alhalabi Legal Publication. p 194.

²⁰⁷ - Articles 82-96 of Lebanese Consumer Protection Law No. 659 for 2005.

- Meditation must end in fifteen days from first session and can be extended to same period if all parties agreed;

A simple comparison on mediation between UAE and Lebanese consumer protection law shows the ambiguity in the mechanisms of the UAE legislation, whereas the Lebanese legislation has provided comprehensive provisions that cover mediation. Abu-Amro has argued that in mediation when procedures were clear and defined by the legislature, this encouraged party to take recourse to mediation as a speedy procedure that would preserve their rights in the short term; otherwise, consumers are less likely to pursue a resolution if it is costly and difficult to access.²⁰⁸ Dr. G. Rabah has argued that in the absence of regulations on ADR, there should be at least provisions which both parties can rely upon to handle this technique. He added that, nevertheless, mediation is one of the best and most successful dispute resolutions mechanisms for consumer protection conflicts as it would save time and costs for both parties in contrast with other formal methods of dispute resolution.²⁰⁹ From this standpoint, Dr. Rabah has insisted that UAE legislation on consumer protection must include provisions that would adequately cover mediation mechanisms or other types of ADR.²¹⁰

2.7.4 New Rules vs. Old Rules: The Power of Exclusive Agencies

The development of consumer protection in the UAE has encountered another legal obstacle – namely, the exclusivity that is enjoyed by some traditional agencies in trading with them. UAE laws protect traders strongly,²¹¹ which is considered as a barrier to the development of consumer protection regulations and a threat to consumers since the power of an exclusive

²⁰⁸ - Abu-Amro M., 2011, Op. Cit., p 191.

²⁰⁹ - Rabah G., 2011, Op. Cit., pp 178-179. For more See; In Mediation both parties have the opportunity to win, For more See: Lampe, M. (2001), *Mediation as an Ethical Adjunct of Stakeholder Theory*, Journal of Business Ethics, Vol. 31, No. 2, pp 165-173, p 170.

²¹⁰ - Ibid, at pp 178-180.

²¹¹ - Federal Law No. 18 of 1981 regarding organising the Commercial Agencies, Article 23.

agency can always be misused by rogue traders. Undeniably, these old rules were enacted before the concept of consumer protection was disseminated. With the application of the new regulations on consumer protection, immediate conflicts and inconsistencies occurred as a result of contradictions between the new and old rules. Although the UAE is a recognised area of free trade, an examination of available laws shows that the UAE has a law protecting traders who hold exclusive rights to import all types of goods or services for sale within the UAE. Therefore, Commercial Agency law might be a barrier and obstacle to implement these new regulations efficiently.²¹²

The UAE Commercial Agency Law²¹³ states that all imported goods²¹⁴ may only be imported with the consent of the exclusive registered commercial agent. If they are imported without his permission, the agent can object and export them again back from the UAE, and consequently the trader can claim for compensation for damages caused by the person or company who imported these products. The provisions of this law also apply if the consumer made an online transaction.

Questions may be raised regarding the relationship between the concepts in our study. The answer is that any trader who has exclusive agency can stop the supply of goods and providing of services legally as a result of a dispute between him and the government or other traders, or can insensibly raise the price of the products and cause a kind of legal monopoly. This could seriously affect the weaker party (i.e., the consumer), who will be under the mercy of the exclusive agents, whose main concern is to increase their profits and income.

²¹² - Hantish, I. 2007, Op. Cit., pp 7-11.

²¹³ - Federal Law No. 18 of 1981 regarding organising the Commercial Agency, Article 23.

²¹⁴ - An estimated 85 percent of retailed foods are imported or made locally with imported ingredients from foreign countries. See: Taha, M. and Manoukian, S. (2009), *United Arab Emirates Retail food sector 'UAE Retail Sector Report 2009'*, Published by Global Agricultural Information Network (GAIN), Report No. TC9039, Released on 12/27/2009.

There should be serious attempts by the government and legislators in the UAE to change the current situation because of its serious effect on the economy in general and consumers in particular. Al-Rashid has claimed that the UAE has been witnessing incredibly rapid growth in economic and commercial sector; however, this speedy growth was not met with concurrent developments in the relevant legislation that would enhance the commercial atmosphere and increase consumer confidence and trust in the UAE markets.²¹⁵

2.7.5 Other Major Obstacles

There are various other aspects that were not covered adequately by the legislature in the UAE regarding ADR, jurisdiction, unfair terms, unfair businesses practices, distance selling and misleading advertisements. As such, these days, due to the massive reliance of most UAE consumers on various types of transactions, whether with national or foreign sellers, cases may arise rapidly. Such transactions with foreign traders need more attention from the UAE legislature to cover issues, and problems may arise between consumers and traders in the case of disputes as current legislation on consumer protection contains no provisions on jurisdiction issues.²¹⁶

In terms of misleading advertising, Omar points out that advertising has played an important role in spreading consumerism in Arab countries as a result of satellite TV and an open trade market.²¹⁷ Zaid and Abu-Elenin,²¹⁸ Obid,²¹⁹ and Al-Rahmani²²⁰ have all indicated that

²¹⁵- See Al-Rashed, A. (2012), *Hal Yakfi al-Tahzeer*, an article published in Emaratalyom newspaper on 18/01/2012, available at; <http://www.emaratalyom.com/opinion/2012-01-18-1.453634>, Accessed date 20/01/2012.

²¹⁶- In the UAE, there are 3,777,900 Internet users able to trade online as of June/10, 78% of the population, according to International Telecommunication Union <http://www.itu.int/ITU-D/ICTEYE/DisplayCountry.aspx?code=UAE>, accessed on 1/12/2011.

²¹⁷- See Omar, A. (2000), *Globalization and consumption behaviour*, The Arab Future, Vol. 6, pp 71-89, p 89.

²¹⁸- See Zaid, A. and Abu-Elenin, F. (1995), *Children's consumption behaviour in the Arab Gulfcountries*, Social Affairs, Vol. 47 No. 12, pp 5-36, p 17.

advertising has played an important role in changing people's tastes and has been effective in spreading consumerism in developing countries and Arabian Gulf countries, particularly the UAE. Article 27 of the implementing regulation prohibits traders or any person from advertising a product or service by any means in a way that would confuse or deceive the consumer.²²¹ The legislature was very wise to include an article that has the potential of handling misleading advertising, especially by including the phrase "by any means" which could cover all types of commercial transactions. However, the law did not contain much guidance on the question as to whether advertisers are legally obliged to disclose material information. That is why it remains for the courts to draw a line between information that can be left out and information that must be disclosed. Hence, any confusion over how to interpret the provided article could be eliminated by including a list of examples clarifying what can be considered misleading; this would enhance the effectiveness of the implementation of the regulation too.

In terms of distance selling, the current regulation in Article 7 covers cases where the consumer is purchasing goods and products while in the market.²²² Al-Hassan has argued that this is clearly an article intended to deal with food on display in a traditional market where a consumer can inspect, touch and view the items. He also raises the important question of

²¹⁹- See Obid, S. (1997), *Consumption and modernization in the United Arab Emirates*, unpublished Master's Thesis, Ein-Shams University, Cario, p 171.

²²⁰- See Al-Rahmani, E. (1999), *Consumption in affluent societies: different approach*, Social Studies Journal, Vol. 27 No. 1, pp 27-48, p 42.

²²¹- Article 27 of the Implementing regulation for consumer protection No. 24 for 2006.

²²²- Article 7 of Federal Law No. 24 for 2006 has stated that "In accordance with the related laws and regulations, the Supplier, upon offering any Goods for sale, must undertake to affix label on the cover or package with the necessary information including the type, nature, contents, product's name, date of production or packing, net weight, country of origin, export country (if any), statement of use (if any) and date of expiry in addition to a detailed statement inside the package about the Goods contents, specifications, method of uses and risks and other information in the Arabic language according to the Executive Order of this law. If the use of Goods bears any risk, this must be written in an obvious way."

items purchased online – are they included within this article? In online transactions, the consumer cannot touch or see the item, so is he still under the protection of this law?²²³

Additionally, in the researcher's view, the regulations have another problem in regard to distance selling in regard to forcing the trader to refund or exchange only defective goods, as this may raise the following question: what if the trader offers the goods or products inside or outside the business premises in good condition; can the consumer return the goods if he later changes his mind? This situation is not clarified within the UAE regulations on consumer protection and needs serious attention by the legislature in order to be covered by adequate provisions.²²⁴

2.8 Conclusion

Since its independence, the United Arab Emirates has worked on developing all sectors in the country, including economic, political, social, legislative, commercial and judicial sectors, in order to become the economic hub of the Middle East and the Arabian Gulf region. To reach this goal, the UAE government on both local and federal levels has adopted new rules and legislation to attract investments and tourists and to comply with international trends in encouraging the concept of the free market, to secure consumer rights and to establish trusted and more confident markets based on fair trading practices.²²⁵ Before 2006, consumer rights were protected through some general provisions under the Constitution, the Penal Code, and the Civil Code; Commercial Transaction law was used to seek for redress.

One of the new issues that have recently gained attention from the UAE government is consumer protection as infringement of consumers' rights is a steadily growing problem that

²²³ - Al-Hassan K., 2009, Op. Cit., pp 175-176.

²²⁴ - Ibrahim A., 2007, Op. Cit., p 508.

²²⁵ - Al-Bustawesi I., 2011, Op. Cit., pp 22-25.

has deleterious effects on consumer safety and health and threatens the national economy. Prior to the enactment of the new consumer protection law, consumers were unable to seek redress as facing rogue traders was not permitted and their rights were not protected by legal provisions. Since the enactment of the Federal Law No. 24 for 2006 on Consumer Protection and its implementing regulations, serious attention there clearly been given by the government to secure consumer rights and punish rogue traders. Although these efforts were considered as a milestone in serving the interests of the consumers and protecting their basic rights against unfair trade practices and unscrupulous exploitation, these efforts remain insufficient and weak for various reasons.

Through analysing the current legislation on consumer protection, this chapter has revealed that the current legal framework still needs more work in order to address some issues that have not been handled adequately or mentioned at all.

Problems such as contradictions between old and new regulations and between federal and local laws have weakened the effectiveness of those regulations. Moreover, the penalties in the federal laws are weaker than those of their local counterparts: the federal law lacks investigation at certain stages of procedures, lacks the ability to compromise or resolve cases; lacks expertise at the judicial authority as it is considered a new field of litigation; and it lacks effective penalties and the burden of evidence. On the other hand, the civil procedures can be disadvantageous for consumers: civil court may take more time to reach to a decision; compensation could be insufficient compared to the damages suffered by the consumer; the burden of proof will be carried out by the plaintiff who must provide the court with evidence of the actual damages suffered; and finally there could be a lack of enforcement or a delay after the courts' verdict has been delivered.

Additionally, alternative dispute resolution methods were not given enough attention in the current legal framework. The current legislation has concentrated on mediation as a method

to settle consumers' disputes without mentioning what mechanism must be followed by the parties to reach a settlement. Moreover, there are other types of ADR that can be as effective as mediation, such as the use of an Ombudsman service.

There are other aspects that were not covered adequately under the current regulations on consumer protection in the UAE, such as misleading advertising, the right to withdraw, jurisdiction issue, and unfair terms and practices. These are some major aspects in consumer protection that did not receive adequate attention from the legislature of the UAE, which has affected consumers' rights negatively and weakens the efficiency of the legal regime on consumer protection in the UAE.

The next chapter will examine another part of consumer protection – the administrative authorities that implement consumer protection regulations as the UAE government has enacted new laws and established new agencies and departments at the local and federal levels that would preserve the rights of the consumers. This examination will allow assessing how successful those authorities were in enforcing consumer regulations to give a comprehensive view on the consumer regime in the UAE.

Chapter Three

Administrative Authorities' Role in Enforcement of Consumer Protection Law in the UAE

3.1 Introduction

The previous chapter discussed the UAE government's efforts to ensure adequate protection for consumers. The UAE legislature has enforced various legislations that could establish a trusted and more confident market where consumers' rights are respected by traders and persons in the business cycle. Consequently, a direct intervention from the public authorities was expected to foster the mobilization and institutionalization of the consumer protection movement. There was a demand for the establishment of public bodies responsible for promoting consumer interests alongside these new sets of regulations to monitor and secure the adequate application of the new consumer protection law. The objective, therefore, is to create an adequate legal and administrative environment by undertaking all possible ways to overcome the various obstacles that could affect consumers' rights.

To achieve this aim, the UAE government has introduced comprehensive mechanisms to protect consumers by involving government administrations and relevant organizations in applying and enforcing consumer protection law. The administrative procedures and remedies can reduce the costs and expenses paid by consumers to preserve their rights, by giving the consumers the option of effective judicial remedies.¹

¹- See Adamson, C. (1999), Complaint handling: its Rationale and function in well-managed companies, in R. John (ed), *The consumer Revolution 'redressing the balance'*, Hodder & Stoughton, p 138; Ibrahim, A. (2007), *Hemayat Al-Mustahlik 'Dirasah Muqarenah'*, First edition, Manshorat al-Halab. pp 319-320; Ramsay, I (2007), *Consumer law and policy 'text and Materials on regulating consumer markets'*, 2nd edition, Hart Publishing. p

Such efforts and procedures applied by the concerned departments and authorities tend to be more time-efficient than seeking remedy through the courts. Just like civil and criminal procedures, administrative procedures must be readily available and adequately offered in the UAE.²

This chapter will attempt to examine whether and how the administrative authorities and departments have succeeded in managing to reduce the number of infringements on consumers' rights. This chapter will analyse different UAE administrative departments and authorities that were established and given sufficient authority by law to enforce consumer protection law. The chapter will indicate the strengths and weaknesses of these efforts undertaken by the administrative authorities and departments. Finally, the conclusion will briefly discuss whether there is evidence that certain approaches adopted by administrative authorities and departments in the UAE have achieved a degree of success in the consumer protection field and provide adequate remedies.

3.2 The Administrative Regime of Consumer Protection

Consumer protection in the UAE is divided into two levels due to the UAE's legal framework, which depends on the federal system. Therefore, consumer protection has been covered under two scopes – federal and local authority. Firstly, federal authorities are those institutions, bodies and laws that follow the federal system of the country; federal laws are applied in those Emirates that follow the federal system. Secondary, local authorities are

454; Rabah, G. (2011), *Hemaiyat Al-mustahlik Al-jadeed 'al-Mabada', al-Wasa'el, wa al-Mulahagah*, 2nd edition, Lebanon; Beirut, Maktabat zain alhuqoqiyah. pp 169-170.

²- See Al-Tamimi, E. (1999), *Current UAE copyright law and how it compare with WTO's TRIPs agreement and the Berne convention*, The Journal of World intellectual property, Vol 2, No. 3, pp 371-391. p 374

those institutions, bodies and laws that are applied in those Emirates that follow the local system and not applied in the other Emirates.³

3.3 How are Administrative Authorities Involved in Applying Consumer Protection Laws?

In general, consumers have the right to receive advice and assistance from the administrative authorities when seeking redress for faulty products, or for injury or damage resulting from the use of faulty goods and services. The administrative authorities can provide an intermediate step between the formal, costly and stigmatizing action of criminal prosecution and the more informal means of advice and persuasion to get firms back into compliance.⁴ Therefore, the intervention of the administrative authorities needs to provide simple, affordable and fast procedures for settling complaints and providing the consumer with sufficient redress⁵ In the UAE, there are two types of administrative authorities that can take action without any recourse to the court and it is up to the discretion of the relevant government department to determine whether to pursue administration remedies.⁶ Both federal and local administrative authorities and departments were permitted to take action against any infringement in consumer protection law.

Complaints to the administrative department must be filed in writing with supporting documents attached; however, in cases of emergency, the administrative body can take action upon a verbal complaint. A formal complaint with supporting evidence and documents must be filed as soon as possible. The procedure after raids, seizures and obligation of fines is for

³ - See 2.2.2 the Political System of the UAE in this thesis.

⁴ - Ramsay I., 2007, Op. Cit., p 383.

⁵ - See Emiroglu, H. (2002), *Foods produced using biotechnology: how does the law protect consumers?*, International Journal of Consumer Studies, Vol. 26, pp 198–209. doi: 10.1046/j.1470-6431.2002.00250, p 204; Krämer, L. (1993), *On the interrelation between consumer and environmental policies in the European Community*, Journal of Consumer Policy, Vol. 16, pp 455- 467.

⁶ - See Bu-Dali, M. (2006), *Hemaiyat al-Mustahlik Fi Alqanoon Almuqaren 'dirasah muqaranah ma alqanoon alferanci*, Dar alkitab alhadith. p 668; Ibrahim A., 2007, Op. Cit., p 319

the whole case to be referred to the concerned authority.⁷ The concerned authority has the privilege to decide how best to resolve the complaint depending on the nature of the products and other criteria that may influence the decision.⁸

The government of the UAE, as part of its commitment to providing a proper climate for consumers and the free market based on integrity and transparency, has allocated different administrative bodies to provide adequate protection for consumers. It has conferred some of its responsibilities to these governmental institutions and authorities with sufficient power to ensure the adequate monitoring and supervision of the available goods and services and compliance with required international standards and specifications.⁹ As a result, several institutions and departments were given such authority to coordinate with each other in order to protect consumers' rights and create adequate mechanisms for the prevention of disputes.¹⁰

3.4 The Mechanism of Applying Consumer Protection Law by the Administrative Authorities

Consumer protection law enforcement utilizes different types of mechanisms in accordance with the responsibility assigned to the concern administrations. These mechanisms fall into two categories – prior inspection and subsequent inspection.¹¹ Prior inspection is the first stage in the enforcement of consumer protection regulations. It can be defined as the task of supervision conferred by the legislator to a certain authority to achieve different objectives

⁷- See Al-Nuaimi, H. (2011), *Tatawer Haqel Hemaiyat al-Mustahlik Fi Al-Emarat*, an article published in EmaratAlyoum Newspaper, 19/02/2011, available at; <http://www.emaratalyoum.com/opinion/2011-02-19-1.357929>, accessed date 19/02/11.

⁸- See Al-Muaini, A. (2009), *The Enforcment of copyright law in the United Arab Emirates*, PhD thesis, University of Aberdeen. p 140.

⁹- Ibrahim A., 2007, Op. Cit., pp 319-320; Rabah G., 2011, Op. Cit., p 153.

¹⁰- See Article 4 Para 2 of the UAE Consumer Protection Law, which stated that Coordinate with the concerned authorities to combat the illegitimate commercial practices that may harm the Consumer

¹¹- See Al-Saeedi, J. (2008), *al-Mafhoom al-Aam Il-Ghish Wa Dirasah Waqeyyah Linamazej An Taghyeer Asaar al-Sela'*, Published in 'Hemaiyat al-Mustahlik Wa Mukafahat al-Ghish al-Tejari Fi al-Dowal al-Arabiyah', almunadhamah alarabiyah Il-tanmiyah aledariyah, dar alkutub almasriyah, Egypt; Cario. p 66

and ensure the prevention of counterfeit goods and products entering into the country.¹² The second stage of consumer protection enforcement is the subsequent inspection. The legislature has granted authority to some governmental department employees (judicial officers)¹³ to fight counterfeit goods and products that have already entered into the country within markets and commercial agencies.¹⁴ The following subsection will examine each department, how effective their role has been, and what sort of challenges are impacting their effectiveness.

3.4.1 The Role of Customs

Practically speaking, it is more successful to seize a shipment of infringing goods and products while it is in transit rather than waiting until it reaches the markets. In the past, the main role of UAE customs was the collection of trade-related revenues and the control of trade in weapons, drugs and noxious substances.¹⁵ There was a huge need for improving the role of UAE customs as it is well known that border measures are an effective mechanism for controlling the transit of counterfeit goods and products that could otherwise affect the economy negatively.¹⁶ The UAE Foreign Trade Minister stated that “customs border are the first line of defence of any country”.¹⁷ Dubai Customs’ General Director Ahmad Butti has

¹²- Although the intervention of public authorities seen as a restriction on the principle of freedom of industry and trade, but it has been justified by reasons of commitment of Public health and safety. For more see; Al-Jabri, A. (1998), *Dawer aljamarek fi Hemaiyat al-Mstahlik*, a paper presented in Forum title ‘Consumer Protection in Shari’a and law’ held in Abu-Dhabi, 6-7 December 1998. p 44; Al-Saeedi J., 2008, Op Cit, p 68; Bu-Dali M., 2006, Op. Cit., pp 414-415.

¹³ - It refers to the person who has the capacity of judicial power in accordance to the provisions of law

¹⁴ - Al-Jabri A., 1998, Op. Cit., p 44; Al-Saeedi J., 2008, Op. Cit., p 68; Bu-Dali M., 2006, Op. Cit., pp 414-415.

¹⁵ - Ibid, Al-Jabri A., 1998, Op. Cit., p 45.

¹⁶ - See 2.3 Importance of Consumer Protection to Economic Development in this Thesis

¹⁷ - See Speech of UAE Foreign Trade Minister, (2007), *Qanoon Hemaiyat al-Mustahlik Yamnah al-Iqtisaad Shari’yat al-Tasadi L’artefaa al-Asaar*, published by Alitihad newspaper on 05/03/2007 available at; <http://www.alittihad.ae/details.php?id=101214&y=2007&article=full>, accessed date 12/05/2010.

agreed with the Foreign Trade Minister's opinion by stating that, "We want Dubai to be universally recognised as the world's leader in combating counterfeit goods and products".¹⁸

Therefore, combating counterfeit goods and products has become one of the top priorities in all UAE Customs departments, and border enforcement is now an essential measure for enforcing new consumer protection regulations.¹⁹ For instance, the Government of Dubai has strengthened the role of Customs in combating infringement items. Article 7 of Dubai Custom Law for 1998 addressed the matter of counterfeit goods by stating that they are considered prohibited and shall not be imported, exported or transported from UAE territory.²⁰ The law gave Customs authorities flexible power to deal with any counterfeit good whether by seizing, releasing, or in case of suspicion sending a sample to the concerned laboratory.²¹

Moreover, Article 7 of Combating Fraud and Counterfeiting in Commercial Transactions Law No. 4 for 1979 has allowed customs to exercise their authority in seizing the counterfeit goods and products. According to the latter provision, their role begins when customs officers inspect imported goods and products through the quarries inspectors, health departments that follow municipalities, and land entry points; moreover, the examination could be either partial or complete. In cases of suspicion, customs officers must take a sample from seized

¹⁸ - See Butti, A. (2008), *Speech on Welcoming Remarks*, delivered at the Fourth Global Congress on Combating Counterfeiting and Piracy, Held in Dubai 3-2/05/2008.

¹⁹ - See Mohammed, B., Marzeeq, A. and Malekah, Y. (2008), *Raqabat al-Jawdah Wa Dowroha Fi Hemaiyat al-Mustahlik 'esharah ela halat al-Jazae'r*', Published in 'Hemaiyat al-Mustahlik Fi Dhel al-Infetah al-leqtasadi', First Forum for Consumer Protection in Light of Economic Openness, held in Algeria at Institute of Legal and Administrative Sciences, 13-14 /04/2008, p 51; Al-Saeedi J., 2008, Op. Cit., p 66; Al-Muaini A., 2009, Op. Cit., pp 136-137.

²⁰ - See Article 7 of Dubai Custom Law for 1998

²¹ - Ibrahim A., 2007, Op. Cit., p 333.

goods and products and send it to the concerned laboratory for examination bearing in mind the following conditions:²²

- Seizing date
- Type and amount of seized goods and products
- The owner of seized items
- The name of custom officer

Three samples of the suspicious goods or products, along with three copies of the seizing report, must be sent to the examination laboratory, Custom Authority and the owner of the seized items. Moreover, other parties interested in an inspection should arrange with the customs administration before the examination or inspection takes place. For the sake and clarity, it should be pointed out that the customs officials should allow the concerned parties to take samples when examining suspect goods and products because in some cases, it is impossible for concerned parties such as municipalities and Economic Departments to carry out forensic research on the suspected goods and products on the Customs Authority's premises.²³

These procedures must take no longer than fifteen days; however, many scholars argue that the customs authorities' detention, suspension or release of suspect goods and products for a long period of time would affect nowadays transportation system which depend on fast services and avoid delay.²⁴ Therefore, the legislature has intervened here and mentioned that if the examination exceeds the limit time, then the owner can submit a request to the relevant court to release the items, and the court has a certain degree of latitude in determining a

²² - Al-Saeedi J., 2008, Op. Cit., p 67; Al-Jabri A., 1998, Op. Cit., p 46; Mohammed B., et al, 2008, Op. Cit., p 46.

²³ - Al-Muaini A., 2009, Op. Cit., p 147.

²⁴ - See Obaidat, M. (2008), *Hoqooq al-Mustahlik Wa Dhaherat al-Qish al-Tijari*, Published in 'Hemaiyat al-Mustahlik Wa Mukafahat al-Ghish al-Tejari Fi al-Dowal al-Arabiyyah', almunadhamah alarabiyyah II-tanmiyyah aledariyyah, dar al kutub almasriyyah, Egypt; Cario. pp 83-84; Al-Muaini A., 2009, Op. Cit., p 146.

suitable resolution. This Article deters false allegations by giving traders the right to make claims for any damages or losses that occurred.²⁵ Thus, the law gives permission to Customs authorities to hold suspected goods and products in their custody until they receive the report that may lead to release the items or transfer the case to the competent authorities.²⁶

Unfortunately, the current federal consumer protection law²⁷ does not contain any provision on the role of Customs Authority to create a level of consistency, among other customs authorities in the UAE to play a significant role in combating counterfeit goods and products and activating coordination within all seven emirates.²⁸ In cases of confiscation and destruction, Customs has no authority to deal with seized items until the court has reached a verdict.²⁹ Nonetheless, some scholars have argued that the role of customs authorities in some Emirates has been affected by other factors. Ahmad Al-Zubaydi, Chairman of Hemaya Universal,³⁰ has argued that the limited number of cadres specialized in the detection of adulterated and imitated goods in the concerned authorities has minimised the role of Customs in those Emirates. Ali Al-Jabri (Director of Customs Affairs) has stressed the absence of a network linking the parties involved in combating this phenomenon and the long procedures involved in investigating cases of commercial fraud which have diminished the role of customs.³¹

²⁵ - See Article 7 of Combating Fraud and Counterfeiting in Commercial Transactions No 4 for 1979

²⁶ - Al-Saeedi J., 2008, Op. Cit., p 67.

²⁷ - Article 20 of the UAE Consumer Law No. 24 for 2006 and Article 21 of UAE Consumer Executive Regulation No. 12 for 2007.

²⁸ - Ahmad Butti (General Director of Dubai Custom) announced in 07/06/2010 that Dubai Customs had caught seven million tablets and medical drug simulated and prohibited from trading in Dry Port in Dubai. Available at; <http://securepharmachain.blogspot.co.uk/2010/06/dubai-seizes-7-million-counterfeit.html>, accessed date 10/06/2010.

²⁹ - Article 7 of Combating Fraud and Counterfeiting in Commercial Transactions No. 4 for 1979

³⁰ - Hemaya Universal is the first specialized company in the Arab world providing professional expertise and strategic solutions to protect consumers, intellectual property and brand owners by reducing the manufacture, importation, distribution and sales of counterfeit and pirated products. Available at; <http://hemayauniversal.com/About.aspx>, scssed date 01/10/2010.

³¹ - According to a recent Report by European Commission, Taxation and Customs Union in 2008 found that most of the fake medicines seized at the European borders were routed through the United Arab Emirates; for

3.4.2 The Role of Police Departments

The police in the UAE play a supportive role in applying consumer protection law as Article 51 of the Federal Criminal Procedure Law No. 35 of 1992 have allowed police to immediately seize counterfeit goods and products that are available on streets or within premises that have public access.³² However, their job usually starts with a complaint by the individual or the department concerned.³³ After receiving a complaint, the police follow certain measures to investigate the claim. The first procedure is to establish a team to start investigating the case under the supervision of one or more police officers.³⁴ The team then start searching and investigating to certify whether the information provided by the placer of the complaint is in fact correct and consumer regulations have been violated.³⁵ Thereafter, the team studies the case in order to collect evidence and introduce the measures of an ambush or trap to catch the infringer with material evidence.³⁶

After collecting all of the factual evidence, the team must requests permission from the General Attorney for search warrants and other force actions.³⁷

(i) Search warrants

The police cannot search or arrest any person or place before gaining permission from the General Attorney. Thus, the police need to discover evidence that reasonably justifies the

more see: European Commission Taxation and Customs Union, (2008), *Report on EU Customs Enforcement of Intellectual Property Rights 'Results at the European border*, published by European Commission Taxation and Customs Union, p 13; Al-Zubaydi, A. (2008) *Ra'ees jama'iyat Hemayiat al-Mustahlik: No;ani dha'ef al-Mawared al-Maliyah wa Al-kawader al-Bashariyah*, An article published by Asharq Al-Awsat, Issue No. 10829 <http://www.aawsat.com/details.asp?section=43&article=479714&issueno=10829>, accessed date 11/10/2009; Al-Jabri A., 1998, Op. Cit., p 49.

³²- See Article 51 of Federal law on criminal procedure law No 35 for 1992.

³³- Dubai Police received a complaint by Dubai Municipality that there was information that a group of four was preparing to sell three and a half tons of expired meat non-viable for human consumption. See B. Al-Mutairi, (2011), *Main offender Arrested in the case of rotten meat*, published by Emaratalyoun, available at: <http://www.emaratalyoun.com/local-section/accidents/2011-02-11-1.354616>, accessed on 18/02/2011.

³⁴- See Article 35 of UAE Federal law criminal procedure law No. 35 for 1992.

³⁵- UAE Federal Consumer Protection Law No. 24 for 2006; Food Law No. 2 for 2008 and Law No. 4 for 1979 in Combating Fraud and Counterfeiting in Commercial Transactions.

³⁶- Al-Muaini A., 2009, Op. Cit., p 121.

³⁷- See Article 53, UAE Federal Law on Criminal Procedure Law No. 35 for 1992.

claim for which the police are seeking approval. At the first stage, it could be information under oath from a constable or any relevant that there is a reasonable evidence for believing that the offences violate consumer protection regulations,³⁸ such as making, importing, possessing in the course of business and distributing counterfeit goods and products.. The second stage is to submit these evidences to the General Attorney, who, after examining them, will approve the search warrant.

(ii) Police search

The police track down the suspect³⁹ and, at the same time, gather as much evidence as possible to support the case⁴⁰ by interviewing witnesses, securing the crime scene, arresting the suspect and taking a statement from the suspect.⁴¹ Police then perform all other functions associated with the preliminary investigation.⁴² The police can only detain a suspect or accuse him for 48 hours. The arrest depends on the type of criminal activity and the amount of items seized, so the police officer will arrest the suspect if he feels it is suitable. All seized counterfeit goods and products must be sent to the laboratory for examination and after receiving the report all seized items and materials along with the case file should be sent to the prosecution officer or the concerned authority.⁴³

³⁸- See Articles 26 and 27 of the Executive Regulation of Consumer Protection Law No. 12 for 2007; Articles 1, 2 and 4 of Suppression of Fraud and Deceit in Commercial Transaction No. 4 of 1979; Articles 8 and 16 of Food Law No. 2 for 2008.

³⁹- The police in each Emirate have jurisdiction over any infringed goods and products that are not on commercial establishments. Usually, purchases will be arranged with the trader delivering the counterfeit goods and products in an open area, such as car park or small village as long as it is away from eye witnesses.

⁴⁰- See Article 40, UAE Federal law on criminal procedure law No. 35 for 1992

⁴¹- Ibid, Article 47

⁴²- See Al-Marzouqi, M. (2003), *Criminal Proceeding Under the UAE law*, law update, altamimi and company, UAE; Dubai, issue 150, p 9.

⁴³- Chief Prosecutor Yonis Hussain has referred three and a half tons of expired meat to the laboratory for examination. For more see; Al-Mutairi B., 2011, *Main offender Arrested in the case of rotten meat*, Op. Cit.

The role of police in enforcing consumer protection in the UAE was very positive in some Emirates, such as Abu Dhabi, Dubai and Sharjah.⁴⁴ The Dubai Police have introduced a special department for dealing with counterfeit goods and products.⁴⁵ Other Emirates Police Department (e.g., Ajman, Ras-ALKhaimah, Um Al-Qaywain and Fujairah), however, have no special department for such cases within the police structure and thus usually refer such cases to other administrative authorities and departments, according to Abdul-Rahman Almuaini.⁴⁶ Al-Muaini has argued that the lack of adequate enforcement measures in some emirates eventually affects other emirates that take adequate measures to curb consumer protection law infringement. Al-Muaini added that to solve this weaknesses, police departments in other Emirates must be supported by the UAE's Federal government through increasing financial support, increasing the number of qualified personnel in the field of consumer protection, and creating professional departments to improve their performance in this field.⁴⁷ This step has led to an enhancement of the role of the police department in some emirates in applying consumer protection law and protecting consumers.⁴⁸

3.4.3 Ministry of Economy

The first authority that was vested with authority to protect consumers in the UAE was the Ministry of Economy when Consumer Protection Act No. 24 for 2006 was approved. Article 1 of the federal consumer protection law gave the jurisdiction to Ministry of Economy to assume the responsibility of applying this law as the main concerned authority. The Ministry

⁴⁴ - Major Salah Bu-Osaibah (Director of the Anti -Economic Crime Department) announced that Department of Dubai Police seized counterfeit goods worth more than AED 55 million in 2010. For more, see; *Counterfeit spare parts Seized*, available at; http://article.wn.com/view/2011/01/30/Counterfeit_spare_parts_seized, accessed date 05/02/2011.

⁴⁵ - Al-Tamimi E., 1999, Op. Cit., p 379.

⁴⁶ - Al-Muaini A., 2009, Op. Cit., p 127.

⁴⁷ - Ibid, at p 126.

⁴⁸ - Dubai Police has handled in 2010, 107 cases on counterfeit goods and products, See AED 55m of fakes seized in 2010, available at; <http://gulftoday.ae/portal/f9069259-245e-4aa0-8be1-eed137d5f105.aspx>, accessed date 05/03/2011.

of Economy is charged with protecting consumers as well as traders and businesses. As the Ministry prepares for the UAE's General Development plan, it is identifying its stages, annual divisions and all associated matters, such as projects, legislation and proposals. In the process, it must take into account not only the general strategic plan of the country and the studies it has conducted but also the pre-programs and information presented by the various ministries.⁴⁹

Moreover, the Ministry of Economy has to prepare legislation that organizes the various training stages needed to realize the economic and customs unity within the Emirates on the federal level in cooperation with the Ministry of Finance and Industry and the other concerned ministries. The main role is to cooperate with concerned ministries in conducting economic and commercial agreements and to follow up on the activities of the economic organizations, construct international and regional exhibitions and other measures that aim to support the trade exchange with other countries.⁵⁰

Along with all of these competencies, the Ministry has prepared under the supervision of the Department of Consumer Protection, which follows the Ministry, a statistic table showing the fluctuation of prices in the main markets. The main objective of conducting such a project was to provide better protection for consumers and prevent price manipulation.⁵¹

Mohammed Obaidat (Director of Arab Consumer Protection Association) stated that the consumer protection implementation is very weak in most Arab countries, especially in the Arabian Gulf countries, as most Consumer Protection Departments in the Gulf Cooperation

⁴⁹ - See Ministry of Economy (MOE), the official website of the Ministry of Economy, available at; <http://www.economy.ae>, accessed date 28/10/2010.

⁵⁰ - Ibid

⁵¹ - See Conroy, E. (2011), *Ministry of Economy to control food costs*, published in The National Newspaper, available at; <http://www.thenational.ae/lifestyle/food/ministry-of-economy-to-control-food-costs>, accessed date 10/05/2011.

countries underlie the Ministry of Economics and Business, which was established mainly to guard traders' rights and arrange their transactions and license issues.⁵²

Some scholars agree with Obaidat, through their claims that the role of the Ministry must be distributed and strengthened by real participation from other parties, such as Non-Governmental Organizations (NGOs), to provide the necessary protection for consumers without any harm to the interests of traders.⁵³ Bu-Dali has concurred with Obaidat by arguing that the consumer protection movement will remain weak in the Arab world despite the availability of a solid legal framework as a result of the absence of adequate supervision and integration between administrative bodies and the crucial influence of political (business) intervention on The MOE decisions.⁵⁴

3.4.3.1 Consumer Protection Department

The Ministry of Economy has assigned the Consumer Protection Department to follow up on consumers affairs on the federal level. The creation of such a department was considered as the first department to have legal authority to secure consumers' rights, and this was considered as a cornerstone in the field of consumer protection in the UAE.⁵⁵ Since its establishment, the Department of Consumer Protection has held several meetings to strengthen its control over the domestic markets and reduce exploitation and high prices. It also formed committees to periodically monitor markets and commodity prices.⁵⁶

⁵²- Obaidat M., 2008, Op. Cit., p 83.

⁵³- See Ibrahim, K. (2007), *Hemayiat alMustahlik Fi al-Mua'malat al-Elctroniyah*, Egypt, aldar aljameiyah. p 330
Bu-Dali M., 2006, Op. Cit., p 691; Ibrahim A., 2007, Op. Cit., pp 584-585

⁵⁴- Bu-Dali M., 2006, Op. Cit., pp 690-691.

⁵⁵- See Al-Hassan, K. (2009), *Consumer Confidence in E-commerce: The Need for Reform in the UAE*, a PhD thesis, University of Aberdeen. p 184; Al-Bustawesi, I. (2011), *al-Maso'liyah Un al-Gheish Fi al-Sela' 'dirasah muqarenah bain alfiqh alislamy wa alqanoon altejari'*, Egypt, dar al kutub alqanonyah. p 25.

⁵⁶- Ministry of Economy, 2010, Op. Cit.

The vital responsibility of the Consumer Protection Department includes increasing consumers' awareness, monitoring the movement of prices, combating monopoly, receiving consumers' complaints and pursuing appropriate action to settle those complaints. Additionally, the Ministry of Economy has given the Department a mandate to supervise the execution of the general policy for the protection of consumers. Moreover, the Department has responsibility to coordinate with the concerned authorities to heighten consumer awareness in the country about commodities and services, along with helping consumers to become acquainted with their rights and the methods of the claims thereof.⁵⁷

However, some experts in the consumer protection field have criticized the role of the Consumer Protection Department. Abdulla Al-Haj has stated that "although the UAE economy is linked to the free market which is subject to the laws of economics based on supply and demand, the CPD has to find an appropriate mechanism to face restrictive competition agreements and the abuse of dominant positions, the correction of practices contrary to fair trading to increase transparency of the market,"⁵⁸ and recent statistics introduced by the Department have indicated that there are dramatic increases in prices which give a clear sign that there is an absence of effective control over the movement of prices in the markets of the UAE.⁵⁹ Therefore, the concerned departments must activate their role by cooperating with other bodies, such as the Consumer Protection Association.⁶⁰

⁵⁷- See Article 4 Para 6 of consumer protection law, which has stated that one of the consumer protection responsibilities is to 'Receive Consumers complaints and to take actions accordingly or to refer them to the competent authorities. The complaint might be filed directly by the complainant as well as by the Consumer protection society as the complainant's representative'.

⁵⁸- See Al-Haj, A. (2007), *Ghala'a al-Asaar Wa Masoliyat al-Dawlah*, an article published in Alittihad Newspaper, 24/11/2007, available at; <http://www.alittihad.ae/wajhatdetails.php?id=32635>, accessed date 15/01/2011.

⁵⁹- Prices were increased in 2011 by 25-50% according to General Director of Abu-Dhabi Cooperative Society Faisal Al-Arshi. See; Al-Arshi, F. (2011), *Cooking oil, sugar prices up by 50%*, available at; <http://www.emirates247.com/news/emirates/cooking-oil-sugar-prices-up-by-50-2011-01-05-1.338238>, accessed date 20/01/2011.

⁶⁰-; A. Al-Haj, 2007, *Ghala'a al-Asaar Wa Masoliyat al-Dawlah*, Op. Cit.

Another problem that affects the role of the CPD was raised recently when the Department of Consumer Protection announced that the UAE markets are observed by 22 personnel. The Director of the Arab Consumer Network argued that the current number of observers is not enough to control the tens of thousands of sales outlets and shops of various activities in the country, and pointed out that some concerned authorities in many countries have allocated complete departments to control each activity separately, such as trade cars, tires, electronics and mobile phones, etc.⁶¹

Additionally, the new protection law has given the Department the authority to represent consumers in court and to take legal action against any illegal practice.⁶² However, according to the Director of the CPD, about 95% of consumer complaints were resolved through the CPD within the Ministry of Economy amicably, while the remaining conflicts were referred to the dispute settlement committee within the Ministry of Economy and some disputes were referred to the court.⁶³ Therefore, the CPD has marginalized the legal representative authority role granted to it by the Consumer Protection Act as it used to resolve most conflicts between parties amicably.

From the researcher's viewpoint, although the main goal is to protect consumer rights, it was better to transfer some cases to the court in order to create a kind of deterrence that might threaten other traders because most rogue traders are seeking the easiest ways to avoid court solutions. In support of this view, the Consumer Protection Association in Switzerland changed the law to allow civil association to represent consumers before the court, which was

⁶¹- Ministry of Economy, UAE markets are monitored by 22 inspectors. Available at: <http://www.emaratalyoum.com/business/local/2012-01-25-1.455535>, accessed on 26/01/2012.

⁶²- (Article 17 of the Consumer Protection Law states that The Directorate shall have the legal capacity to represent the Consumer before courts of law and any other authority as specified by the law)

⁶³- Director of the Consumer Protection Department Dr. H Al-Nuaimi has claimed that about 95% of consumers' disputes have been solved amicably between parties. This statement was mentioned in a forum held in Dubai on 27/09/2006. For more see; *Al-Mutalabah Be-tasree'a Esdaar al-La'ehah al-Tanfithiah Lqanoon Hemayiat al-Mustahlik Wa Tazeez Dower al-E'alaam*, a conference held in Dubai 27/09/2006 available at <http://www.albayan.ae/across-the-uae/1158493653514-2006-09-28-1.872942>, accessed on 14/08/2009.

achieved in 1981.⁶⁴ Similarly, the Spanish legislature agreed – after many requests from the organizations to demand this right – with Switzerland movement by giving registered Consumer Protection Associations the authority to represent consumers before the courts and in some cases allowed unregistered associations to represent consumers under certain conditions. This shows the importance of this role in strengthening the role of the Department in facing rogue traders and reducing and deterring such unfair practices to avoid legal prosecutions.⁶⁵

3.4.4 The Role of the Ministry of Health

The UAE government has given the Ministry of Health the main responsibility in the health sector of protecting consumers' right by providing a healthy life, ethical marketing practices on pharmaceuticals and raising consumers' level of awareness.⁶⁶ This role was based on the U.N. Guidelines for Consumer Protection 1985, guaranteed by Article 19 of the UAE Constitution,⁶⁷ and mentioned in Consumer Protection Executive Regulation No. 12 for 2007.⁶⁸

A growing concern for consumers, particularly in the context of a free market economy, is the information inequity in the market.⁶⁹ The overwhelming bulk of consumers in most Arab countries simply lack access to independent information and knowledge about products and

⁶⁴- Sehmidi, N. (1983) cited in Ibrahim K., 2007, Op. Cit., p 314.

⁶⁵- See Khalaf, A. (2008), *al-hemaiyah al-jena'iyah Il-mustahlik "fi majal adam al-ekhlal bil'as'ar Wa hemaiyat al-munafasah Wa mane'a al-ihtekar*, Dar al-jame'ah aljadedah. p 139.

⁶⁶- The UAE's health care system was ranked 27th out of 191 countries by the World Health Organisation in 2000. World Health Organization (2000), *Report on Health systems: improving performance*, Available at http://www.who.int/whr/2000/en/whr00_en.pdf, accessed date 1/4/2010.

⁶⁷- Article 19 of UAE Constitution states that 'The Community ensures health care for citizens and means of prevention and treatment of diseases and epidemics and encourages the establishment of hospitals and clinics public and private'.

⁶⁸- Article 8 Para 1 of the Executive regulation of consumer protection law No 12 for 2007 states that 'The right for protection from products, production processes and services that are harmful to health and safety'.

⁶⁹- See Fatak, A. (2007), *Ta'theer al-Munafasah Ala al-iltezam Bidhaman Salamat al-Muntooj*, Egypt; Alexandria, dar alfiker aljame'i, pp 8-20.

services.⁷⁰ This view was highly evident in specific sectors, such as the pharmaceutical, cosmetic, and traditional herbal remedies,⁷¹ where there is no data in the UAE on the prevalence of herbal remedy taking (e.g., its scale or products used); there are also concerns over the quality, safety and efficacy of such goods being used in the UAE.⁷² These types of medicines are widely available and freely traded for consumption, with no regulatory control, except in pharmacies, which are the only outlet under the control of the Ministry of Health.⁷³ In 2008, a study conducted by Fatima Ali Al-Braik, Paul Rutter and David Brown on the use of herbal remedies by UAE citizens has showed that the majority UAE nationals relied heavily on herbal medicines to treat both acute and chronic conditions.⁷⁴ Fatima Ali Al-Braik, Rutter and Brown found that the lack of control over product quality, respondents' faith in the product's usefulness, and the widespread usage of prescribed Western medicines whilst self-medicating with herbal products raised questions concerning patient safety.⁷⁵

Another sector is that of energy drinks, which have serious effects on consumer health, according to many specialised studies.⁷⁶ To tackle such issues, several countries have begun regulating the sales of energy drinks. Energy drinks in the European Union require a "high

⁷⁰- See Ali, A. (2002), *Hemaiyat al-Mustahlik Min al-Ghish al-Tejari wa al-Sena'ai ' Dirasah Muqarenah Bain Dowlat al-Emarat al-Arabiyyah al-Mutahedah Wa al-Dowal al-Ajnabiyyah'*, 2nd edition, Egypt, dar alnahdhah alarabiyyah, pp 26-27; Al-Daghi, R. and Saad, M. (2000), *al-Alamat al-Tejariyyah Wa Dowroha Fi Hemaiyat al-Muntaj Wa al-Mustahlik*, Egypt, matabat ale'temad, p 223; Abu-Amro, M. (2011), *Mujaz Ahkam Qanoon Hemaiyat Al-Mustahlik*, 1st edition, Lebanon; Beirut, Alhalabi Legal Publication. pp 5-7; Rabah G., 2011, Op. Cit., pp 189-190; Al-Bustawesi I., 2011, Op. Cit., p 23.

⁷¹- An herbal remedy is defined as a preparation containing plant components in a raw, semi-processed or processed state, used for the purpose of treating or preventing disease.

⁷²- In 2010, the authorities in United Arab Emirates seized several millions of counterfeit and illegal medicine doses from a warehouse in Dubai operated by a local company worth 70 million AED. For more, see *Dubai Customs seize counterfeit medicines*, <http://www.securingspharma.com/dubai-customs-seize-counterfeit-medicines/s40/a489/> securingspharma.com 02/06/2010. See also; (Report on EU Customs Enforcement of Intellectual Property Rights, 2008, Op. Cit., p 13.

⁷³- See Al-Braik, F., Rutter, P. and Brown, D. (2008), *A cross-sectional survey of herbal remedy taking by United Arab Emirate (UAE) citizens in Abu Dhabi*, *Pharmacoepidemiology and Drug Safety*, 17: pp 725–732, DOI: 10.1002/pds. p 725.

⁷⁴- Ibid, at p 729.

⁷⁵- Ibid, at p 725.

⁷⁶- See Clauson, K., Shields, K., McQueen, C. and Persa, N. (2008), *Safety issues associated with commercially available energy drink*, *Pharmacy Today*, Vol. 14, No. 5, pp 52-64, p 58; Alford, C., Cox, H. and Wescott, R. (2001), *The effects of Red Bull Energy Drink on human performance and mood*, *Amino Acids*, Vol. 21, No. 2, pp 139-150, pp 146-147.

caffeine content” label, while those in Canada must indicate the danger of consumption with alcohol on the energy drink. Norway and France have restricted the sale of energy drinks, while Denmark has prohibited it.⁷⁷ Unfortunately, such types of control are missing within the Ministry of Health. Ibrahim has argued that such initiatives are important to protect consumers’ health and to give consumers adequate information about the product being consumed.⁷⁸

Moreover, there are various facts that would weaken the role of the Ministry of Health, such as the unethical marketing of products, the exploitation of unaware and disadvantaged consumers, and weak regulations by the State. All of these facts directly affect people’s health, and the State is directly involved as people’s health and community safety are some of the main duties of the government, and such acts require quick intervention by the government to minimize and reduce the number of infringements. This can be achieved by increasing personnel abilities, adapting and amending existing laws to cope with economic openness and the development of new means of production.⁷⁹

3.4.5 Emirates Standardization and Metrology Authority

Another federal authority was established by UAE Federal Law No. 28 in 2001 to provide the necessary protection for consumers. Considered to be the only reference in the UAE in terms of quality standards, Emirates Standardization and Metrology Authority (ESMA's) strategy aims to support the national economy by establishing a new era of excellence and quality.

⁷⁷ - See Kim, M. (2010), *Caffeinated Youth: Regulation of Energy Drinks in Question*, Article at The Science In Society Review, The International Journal of Science, Society and Law, The Triple Helix, pp 4-5, p 5.

⁷⁸ - Ibrahim A., 2007, Op. Cit., p 577.

⁷⁹ - Ibrahim A., 2007, Op. Cit., p 586; Al-Bustawesi I., 2011, Op. Cit., pp 22-25; Fatak A., 2007, Op. Cit., pp 531-535; Rabah G., 2011, Op. Cit., pp 187- 189.

The existence of such an Authority makes consumers more confident that the products displayed in the local market are in conformity with international standards of hygiene.⁸⁰

ESMA's main goals are securing protection for health, economy and environment, supporting the national economy, being in line with the scientific progress of standards and quality management control, and making use of every possible method to educate people about standardization and metrology activities. These activities are achieved through various departments (e.g., Standards, Metrology, Accreditation, Conformity Assessment, Information Center, Human Resources and Finance) in addition to the Technical Office. The ESMA covers various fields of specialization, including preparing, approving, publishing, reviewing, modifying, issuing and adapting standards and technical regulations.⁸¹

However, the activation of the ESMA role has been greatly influenced by the political system in the country which distinguishes between federal and local authority. Hamad Al-Mudfa'a (Head of the Financial and Economic Committee at the National Council) claimed that the ESMA is limited in its role of supervising the procedures taken by concerned authorities (e.g., municipalities, Food Control Authority, Customs Authority, Consumer Protection Department) to control the quality of goods imported to the country, or traded in the market, and lacks regulatory authority over these institutions and departments and on the effectiveness of its role, which led to differing mechanisms of control and inspection in these institutions and departments in cases of detection of commercial fraud and determining the quality of traded goods.⁸² Najeeb Al-Shamsi has defend al-Mudfa'a point by stating that

⁸⁰ - See Emirates Authority for Standardization & Metrology (ESMA), (2010), the official website of the EMSA, available at; <http://www.esma.ae>, accessed date 23/10/2010.

⁸¹ - Ibid

⁸² - See AlMudfa'a, H. (2009), *Dha'af Dawer 'almuwasafat wa almaqayees' Yazeed mud'dalat alghish*, Alroya Aliqtesadiyah Newspaper, released date: 31/05/2009, available at <http://www.alroya.com/node/13211>, accessed date 1/9/2010; Al-Shamsi, N. (2011), *lqtesad Wahed ,, Watan Wahed*, an article published on EmaratalYoum Newspaper, 15/02/2011, available at; <http://www.emaratalyoum.com/opinion/2011-02-15-1.356324>, accessed date 15/02/2011

despite the passage of thirty-nine years of establishing the country, it seems that more work needs to be done on both the federal and local level to achieve unity between institutions supervising the economy.⁸³

Moreover, Al-Mudfa'a and Hamaish⁸⁴ stressed that the absence of ESMA offices at the national level has reduced the efficiency and effectiveness of its supervisory role, since there are only two offices – one in Abu Dhabi and one in Dubai. Furthermore, inspectors of the ESMA lack judicial authority, which eliminates ESMA's ability to stop the work of any institution exercising commercial fraud. Finally, there is no federal laboratory for testing and researching metrologies and standardizations, although one of ESMA's main competences is to establish a laboratory to deal with such cases.⁸⁵

3.4.6 Department of Economic Development

One of the main departments on the local level is the Department of Economic Development (DED), established in March 1992, with the objective to organise, regulate and boost trade and industry within the Emirate of Dubai. In October 2008, His Highness Sheikh Mohammed bin Rashid Al Maktoum, UAE Prime Minister and Vice-President, and Ruler of Dubai, issued Decree No. 25 for 2008 giving full responsibility to the Department of Economic Development to regulate and plan the overall economic performance of Dubai, supervise its functions and support the economic development to ensure that the objectives of the Dubai Strategic Plan are achieved.⁸⁶

⁸³ - Ibid

⁸⁴ - An Arabic Expert on Consumer protection.

⁸⁵ - See Hamaish, A. (2004), *Hemaiyat al-Mustahlik Min Mandhoor Islami*, U.A.E: Sharjah, Sharjah University press. p 241; AlMudfa'a H., 2009, *Dha'af Dawer 'almuwasafat wa almaqayees' Yazeed mud'dalat alghish*, Op. Cit.

⁸⁶ - See Department of Economic Development (DED), (2010), The official website of DED in Dubai, available at <http://www.ded.gov.ae>, accessed date 01/09/2010.

The Department of Economic Development is responsible for its traditional activities of business registration, licensing and commercial protection in Dubai; however, with four new agencies now under the umbrella of DED, the mandate has extended to include export development, retail development, entrepreneurship development and foreign investment. The development of these sectors is the responsibility of DED's agencies: Dubai Export Development Corporation, Mohammed Bin Rashid Establishment for Young Business Leaders, Dubai Shopping Festival Office and the Foreign Investment Office.⁸⁷

The main aim of DED is to create an environment for sustainable economic development to enhance the welfare and prosperity of Dubai and the UAE. The Department has utilized various mechanisms to achieve this aim:

- Developing and enhancing economic policy and regulation
- Providing efficient services to local and international investors and businesses
- Identifying and supporting growth of key sectors

In 2006, the Department has become responsible for the protection of consumers within the Emirate of Dubai, instead of the CPD, after the approval of Federal Law No. 24 on consumer protection. In 2010, the division of consumer protection under the DED was established to meet the needs of consumers.

Karim Qish, an expert in consumer protection, has argued that judging from the DED's role and its main objectives, it seem that the main task of DED was not to protect the consumer but to protect the local economy of the Emirate.⁸⁸ Along the same lines, Omer Bu-Shuhab, Executive Director of Supervisory and Consumer Protection in the DED, has insisted that the

⁸⁷ - Ibid

⁸⁸ - See Qish, K. (2008), *Dawer al-Sulatat al-Omomiyyah fi Hemaiyat al-Qodrah al-Shera'iyah Il-Mustahlik*, Paper presented in Forum titled 'almultaqa alwatani – hemaiyat almustahlik fi dhil alinfetaah aleqtasadi' held in Markez al-Oloum al-Qanoniyyah wa al-Edariyyah, Algeria 13-14 April 2008, pp 61-62.

Department has refused to apply a sufficiently tough supervisory system on commercial institutions because the Department follows a free market system.⁸⁹

3.4.7 Municipality

Another main department in the local authority is the Municipality, which deals with city planning and development. The Municipality department was established in 1954 and since then has held various responsibilities:

- Public Health Services
- Sanitation and Irrigation
- Planning and Surveying
- Contract Services and Procurement
- Public Parks and Horticulture
- Services of Public Enterprises
- Abattoir Services
- Financial Services
- Public Transport Services
- Building and Housing
- Marine Services
- Environment
- Rehabilitation Services for Contractors and Consultants
- Markets

Dubai Central Laboratory was used by the municipality through the Food Control Department for the examination of deferred food consignments, implementation of food destruction orders, issuing food health certificates, food label approval and fines and fees for food export and re-export.⁹⁰

According to most Arab scholars, specialists in the consumer protection field believe that the role played by such institutions remains weak and below the level required in the absence of

⁸⁹ - See Bu-Shuhab, O. (2010), *Aqtasadiyat Dubai: al-Talweeh bil-asa al-Reqabiyah ala al-Munsha'at Marfodh*, an article published in EmaratAlyoum Newspaper in 25/07/2010, available at; <http://www.emaratalyoum.com/local-section/other/2010-07-25-1.270289>, accessed date 14/1/2011.

⁹⁰ - See Dubai Municipality (DM), (2010), The official website of DM, available at <http://www.dm.gov.ae> , accessed date 02/09/2010.

correct application of consumer protection laws and the lack of cooperation between municipalities in the UAE.⁹¹ Abdulla Ibn Rouaidhah, Public Health Consultant in the General Secretariat of Municipalities, has argued that despite the achievements of the municipalities in the consumer protection area, municipalities still has a lot of work to be done to achieve its mission. One such effort is to enhance cooperation between municipalities and develop the administrative mechanisms for the municipalities to follow in order to share information with municipalities in all other emirates.⁹²

3.4.8 UAE Consumer Protection Association

The Association was founded in November 1987 and has been enrolled officially under the supervision of the of Ministry of Labour and Social Affairs by Decree No. 246 of 1989 in accordance with Federal Law No. 6 for 1974 on the Organization of Associations For Public Benefit, as amended by Federal Law for 1981. The association was created to educate consumers and raise awareness among citizens to enable them to cope with various phenomena, such as cheating, fraud and misleading advertising of goods.⁹³

The Ministry of Labour and Social Affairs has set various responsibilities to be achieved by the consumer association to meet consumers' needs:⁹⁴

1. To create public awareness among consumers about goods and services and their relationship to their health and safety;

⁹¹- Ibrahim A., 2007, Op. Cit., pp 321-322; Al-Jabri A., 1998, Op. Cit., p 48; Qish K., 2008, Op. Cit., pp 61-63.

⁹²- See Ibn Rouaidhah, A. (1998), *A'faq mustaqbaliah li-tatweer al-ta'awen baiyen al-baladiyat wa al-qeta'a al-ahli fi majal al-reqabah al-ghethaiyah wa hemayiat al-mustahlik*, a paper presented in Forum title ' Consumer Protection in Shari'a and law' held in Abu-Dhabi, 6-7 December 1998, p 151; Al-Shamsi N., 2011, *Iqtasad Wahed, Watan Wahed*, Op. Cit.

⁹³- In France, for example, L'Union Fédérale des Consommateurs was established in 1951, In the United states, the Consumer Product Safety Commission was established in 1972 and The Federal Trade Commission, Food and Drug Administration and Consumer Services Organization were all established to protect consumers' interests.

⁹⁴- See UAE Consumer Association (UAESCP), (2010), the official website of the UAESCP, available at; <http://www.uaescp.ae>, accessed date 02/11/2010.

2. Instruct consumers on how to ensure adequate consumer goods, especially food and medicines and the certainty those goods not precluded from trading in the country of origin for reasons related to consumer health and safety;
3. To create public awareness among consumers about the dangers of propaganda and misleading commercials and to inform them with methods of fraud and trickery used by traders; and
4. To conduct surveys and research studies on goods and services and publish the findings such that consumers may access them easily;

Despite the efforts made by the association to raise consumer awareness, this has been the role of the Consumer Protection Association ever since its foundation as the Association has a limited role (i.e., only raising consumers' awareness) as a direct result of the absence of a law granting it a role that is more extensive.

Many academics agree that there are various factors that led to this vulnerability and limited role of the association, including the nature of the relationship between state and civil society in the United Arab Emirates.⁹⁵ Judging from Federal Law No. 2 on the Associations with Public Benefit and NGOs for 2008, the relationship between those organizations and the state is determined by the government, which is the source of legislation regulating the activity of such associations. It also represents the most important source of funding for such associations, including the Consumer Protection Association. According to this relationship which was organized under the Act No. 2 of 2008 the UAE governments and concerned authority is entitled to publicise the Association and initiate liquidation without reference to

⁹⁵ - See Al-Qayidi, S. (2010), *Dawer Moa'sasat almujtam'a almadani fi Altanmiyah alSiasiyah fi Dawlat al-Emarat al-Arabiyyah al-mutahedah*, Dubai Police Academy, pp 48-53; Hafez, M. (2009), *Waqe'a al-Amel al-Ahli wa mu'awaqateh fi dowl majlis alta'awen, waraqat amal qudemat fi iftetaah muntada takatef ll-amal altatawi*, UAE; Abu-Dhabi, p 5; Ibrahim, H. (2005), *al-Islah al-Siasy Fi Dowl Majles al-Ta'awen al-Khaleji*, Markez alkhaleej ll-abhath, UAE; Dubai, p 96; Qandeel, A. (1992), *al-jameiat al-ahliyyah wa al-mujtam'a almadani fi al-aalem al-arabi*, Markez dirasat altanmiyah alsiasiyah wa al-dowliyyah, Egypt; Cairo, p 51; Ghalyoon, B. (2005), *Bena' almujtam'a almadani alarabi 'dawer al-awamel al-dkheliyyah wa al-kharejiyyah'*, Markez dirasat alwehdah alarabiyah, Amman, p 745.

the judiciary.⁹⁶ Therefore, the nature of the relationship between these institutions and the state is based on the nature of the state's supervision and control of the institutions and not vice versa.⁹⁷

Dr. Mohammed Al-Hamad, Director of the Executive Board of the Society for Consumer Protection in Saudi Arabia, has indicated that there are various factors that would impede the Association's progress, the main one being the lack of cooperation between governmental and non-governmental authorities.⁹⁸ Al-Hamad added that conflicts in the elections that are held to form the boards of directors ultimately lead to a weakening of cooperative work.⁹⁹

The researcher agrees with the view of these scholars, as most of the non-governmental associations share a common negative character which is lack of legal capacity to prosecute any traders who infringe consumer rights and regulation, a situation which prevails in most states in the Middle East.¹⁰⁰ Moreover, financial support from the government to society is weak at an estimated amount of 80,000 AED (13,575£) annually, which is not commensurate with the size of society's responsibility toward the community.¹⁰¹ Other scholars insist that

⁹⁶- See Lamoshiah, S. (2008), *Dawer al-Jame'iyat Fi Hemaiyat al-Mustahlik*, a speech presented at the first national conference held in Algeria about consumer protection in light of economic openness in Algeria. p 280.

⁹⁷- AlQayidi S., 2010, Op. Cit., pp 48-53; Hafez M., 2009, Op. Cit., p 5; Ibrahim H., 2005, Op. Cit., p 96; Qandeel A., 1992, Op. Cit., 51; Ghalyoon B., 2005, Op. Cit., p 745.

⁹⁸- See Al-Hamad, M. (2010), *The Second Arab Forum for the protection of Consumers from fraud and counterfeiting*, a Forum held in Riyadh; Saudi Arabia in 10 October, 2010, available at; <http://www.customs-apf.gov.sa/content.aspx?id=38>, accessed date 15/12/2010

⁹⁹- Al-Hamad M., 2010, Op. Cit; Ibrahim A., 2007, Op. Cit., pp 345-346.

¹⁰⁰- As most consumer protection associations in Arab countries are suffering from severe financial weakness, and its role is almost marginalized or absent in some cases, See; (Jordan) Abdah M. (2002) *Hemaiyat al-Mustahlik fi al-fiqh al-eqtasadi al-islami*, 1st ed, Majdalawi press. p 335 ;(Kuwait) Al-Mutairi, M. (2007), *Al-Hemayah al-Madaniyah Li-Mustahlik Fi al-Qanonain al-Musrei Wa al-Kuwaiti*, Thesis presented for PhD degree at Ain Shams University. pp 12-13. (Algeria) Bu-Dali, M. 2006, Op. Cit., p 53; (Egypt) Ibrahim K., 2007, Op. Cit., p 323; (Sudan) Ibrahim A. , 2007, Op. Cit., p 578;; (UAE) Hamaish A., 2004, Op. Cit., pp 290-291

¹⁰¹- See Al-Housani, K. (2010), *al-emamrat lihemayat al-mustahlik tanshid al-sultah al-qadheiyah*, issue no. 11486, released on 31/10/2010, available at <http://www.alkhaleej.ae>, accessed date 11/11/2010.

the most important factor that led to the weakness of society's role is its lack of judiciary authority from the Ministry of Economy, which refuses to give society such authority.¹⁰²

3.5 Adequacy of Measures Taken by Administrative Authorities to Enforce Consumer Protection

The general cause of inadequate consumer protection regulation enforcement was attributed, in most cases to a shortage of human resources, financial resources and practical experience in applying consumer protection regulations among relevant officials, including judges.¹⁰³ In addition to this, inadequate knowledge from both sides (traders and consumers) concerning their rights and remedies regarding consumer protection regulations infringements was problematic. These systemic problems resulted from insufficient domestic enforcement mechanisms, the absence of coordination and cooperation between administrative authorities, and the lack of transparency.¹⁰⁴

The previous section identified the various administrative agencies that enforce consumer protection regulations in the UAE. It has been noted that some administrative bodies have legal authority to take action against infringing persons without any recourse to the courts, and it is upon the concerned government departments' discretion to determine whether to pursue administration remedies against infringing party or not. The question that arises in such situations is "What is the difference between an order carried out by the court and an administrative order?" In order to make the picture clearer, let us examine an example: the

¹⁰² - See Al-Khajah, F. (2007), *al-mowatonon yatatala'on ela dawer akthar fa'eliyah Il-jameiyah*, an article published in UAE lawyers Forum, on 11 January 2007. Available at: <http://www.mohamoonuae.com/default.aspx?Action=DisplayNews&type=3&ID=612>, accessed date 12/01/2011.

¹⁰³ - Ibrahim A., 2007, Op. Cit., pp 581-582.

¹⁰⁴ - See Blakeney, M. (2004), *Enforcement of intellectual property rights: Challenges, Remedies, and Public awareness*, WIPO National Seminar on Intellectual Property for Faculty Members and Students of Ajman University, Ajman, May 5th and 6th, 2004, WIPO, IP.DUB/04/07. p 24; Al-Muaini A., 2009, Op. Cit., p 138

order for the destruction of counterfeit goods or products from authorities, courts and administration authorities. The difference is that a destruction order from the court would be the responsibility of the court and public prosecutors (in this instance, the case was a criminal case) to carry out, attend, and take note of the details of the destroyed products or goods. It is a final order decided by a judge according to consumer protection regulation,¹⁰⁵ whereas a destruction order made by administrative officials is carried out by the relevant competent authority ordering such destruction.¹⁰⁶

As mentioned before,¹⁰⁷ the administrative authorities involved apply consumer protection regulations after receiving a written complaint from a consumer with the relevant government department in the Emirate where the infringement of consumer protection law has taken place. Bear in mind that administrative remedies vary from one administrative authority to another and remedies depend on the opinion of individuals in the department or on what is called (*wasta*).¹⁰⁸ After reviewing the complaint application, an action may be taken which would include one or more of the following remedies:¹⁰⁹

- Attachment of the offending products;
- Seizure of the offending products and destruction of the same;
- Questioning of the trader who was the source of the offending goods or products, locally or abroad;
- Pursuance of further action against other traders who may have purchased the infringing products, seizing such products and joining these to the original action filed;

¹⁰⁵ - See Article 20 of UAE Federal Consumer Protection Law No. 24 for 2006; Articles 7-10 of Combating Fraud and Counterfeiting in Commercial Transactions No 4 for 1979; Article 15 of Food Law No. 2 for 2008

¹⁰⁶ - E. Al-Tamimi, 1999, Op. Cit., p 382.

¹⁰⁷ - See 3.3 How the Administrative Authorities involve in applying consumer protection law in this Thesis.

¹⁰⁸ - See 3.6 The Problem of Nepotism in Administrative Authorities in this Thesis

¹⁰⁹ - Al-Muaini A., 2009, Op. Cit., p 139; Ibrahim A., 2007, Op. Cit., pp 289-299; Fatak A., 2007, Op. Cit., pp 319-326.

- Fining the infringing trader an amount depending on the severity of the offence;
- Issuing a warning to cancel the trade licence of the infringer in the event of recurrence; and/or
- Transferring the issue to the prosecutor to pursue further criminal action against the offender.

The relevant administrative department has discretion to determine which of these remedies to apply depending on the nature of products and the action as well as other criteria.¹¹⁰

There is no doubt that the UAE's administrative measures are considered the best in the region and have developed tremendously in the past few years.¹¹¹ However, consumer protection regulations have been implemented by the individual Emirates in their own respective jurisdictions. Each Emirate has enforced consumer protection within its internal regulations and procedures. Therefore, protection would be available to a satisfactory degree in the Emirates of Abu Dhabi, Dubai and Sharjah because of its economic situation, whereas it is difficult to engage in such satisfactory protection in the remaining Emirates and there is usually a delay in pursuing such matters due to their financial weaknesses and shortage of staff.¹¹²

Al-Hosani, the Vice President of Consumer Protection Association, has criticised one of the main excuses used by UAE officials in the concerned authorities for any weakness regarding consumer protection – namely, that the country depends on the free market notion and thus it is up to consumers to choose what to buy. He added that although the free market is

¹¹⁰- Al-Muaini A., 2009, Op. Cit., p 140; Al-Tamimi E., 1999, Op. Cit., p 377.

¹¹¹- Abu-Amro M., 2011, Op. Cit., p 17; Ibrahim K., 2007, Op. Cit., p 44.

¹¹²- See Al-Hosani, K. (2010), *Consumer protection Association call for the government intervention*, in Arabic, available at: http://www.uaescp.ae/ar/news_details.asp?news_id=1681, accessed on 29/12/2011.

frequently associated with the rolling back of the frontiers of the state, this does not mean that the free market requires the state to lose its role in all areas.¹¹³

Altamimi,¹¹⁴ Ali Al-Jabri¹¹⁵ and Al-Bustawesi¹¹⁶ have argued that in a market where provenance is not routinely given or made available, more work needs to be done if the government is seeking to reduce the number of cases of infringing consumer protection law. They added that administrative remedies and action should not be limited to certain Emirates but instead such administrative actions should be made available throughout all Emirates of the UAE because currently it is not always exercised effectively or in a manner actively would actively reduce the violation of consumer protection regulations. Al-Tamimi and Al-Bustawesi have suggested that personnel within the administrative authorities should be trained to take more effective action against any act infringement of consumer protection regulations. Furthermore, there should be coherence within the administrative bodies and thus consistency in the actions taken.¹¹⁷

It would prove beneficial to establish enforcement administrative departments in the UAE that allow administrative officials to combat consumer protection law infringements. At present, nevertheless, it is rather difficult for complainants to visit and deal with various and different administrative authorities to ensue their protection due to the wide variety of different measures and procedures. In response to this problem, it is recommended the one administrative authority be established for the enforcement of consumer protection

¹¹³ - Ibid

¹¹⁴ - Al-Tamimi E., 1999, Op. Cit., p 377.

¹¹⁵ - Al-Jabri A., 1998, Op. Cit., p 49.

¹¹⁶ - Al-Bustawesi I., 2011, Op. Cit., p 25.

¹¹⁷ - Al-Tamimi E., 1999, Op. Cit., p 377; Al-Bustawesi I., 2011, Op. Cit., p 25.

regulations and to liaise with other administrative departments as the sole empowered enforcement body in the UAE.¹¹⁸

The lack of federal legislation and written codes in some areas of administrative remedies has to be tackled through the promulgation, by federal legislature, of more federal laws and regulations to replace the existing local administrative remedies that would weaken the federal work. The unification of administrative remedies in all Emirates is one of the most important steps towards minimizing the number of consumer protection infringements, promoting the satisfactory protection for all consumers in the UAE and achieving cooperation and coordination between all governmental and non-governmental administrative bodies concerned with the application of consumer protection law.¹¹⁹

3.6 The Problem of Nepotism in Administrative Authorities

There are other factors that play an important role in reducing the effectiveness of consumer protection administrative efforts and cause inadequacy in the protection of consumer rights. One of these factors is Nepotism *wasta*, which causes a major problem in the Arab world in general and in UAE society in particular. As *wasta* affect administrative decisions and disable the application of the law in most cases, it is important to know what *wasta* is and why it poses problems. *Wasta* can be defined as a “social network of interpersonal connections rooted in family and kinship ties and implicating the exercise of power, influence, and information sharing through social and politico-business networks”.¹²⁰ This social network

¹¹⁸ - Al-Bustawesi I., 2011, Op. Cit., p 299; Fatak A., 2007, Op. Cit., p 541.

¹¹⁹ - See Cunningham, R. and Sarayrah, Y. (1993), *Wasta: The hidden force in Middle Eastern society*. Westport, CT: Praeger; Rabah G., 2011, Op. Cit., pp 187- 192; Fatak A., 2007, Op. Cit., p 541; Al-Hamad M. , 2010, Op. Cit. ; Ibrahim A., 2007, Op. Cit., pp 579-582.

¹²⁰ - See Hutchings, K. and Weir, D. (2006a), *Guanxi and Wasta: A Comparison*, Thunderbird International Business Review, Vol. 48, No. 1, pp 141–156, p 143; Grant, J., Golawala, F. and Mckechinie, D. (2007), *The*

has continued to pervade business in the Arab world despite the advent of industrialization, internationalization, and modernization. The negative connotation of *wasta* is that it involves preference being given to family and friends to circumvent rules.¹²¹ Cunningham and Sarayrah have identified two types of *wasta*: intermediary and intercessory. Intermediary kind is utilized to facilitate the resolution of intergroup or interpersonal conflicts. In this system, *wasta* improves human relations and reinforces social norms. The other type is intercessory *wasta*, which involves someone intervening on behalf of a client to obtain an advantage or overcome a barrier from an authority figure.¹²²

Certainly, those who do not understand the negative implications of *wasta* in Arab societies need examples to appreciate its disadvantages. *Wasta* may lead to the use of informal channels (mostly based on kinship ties) to obtain any kind of service, such as avoiding a fine or speeding up an administrative process in a way that takes precedence over established laws and regulations. Therefore, traders will find it economically more rational to work on their social network than improve their services or provide goods and products of good quality.¹²³

Arab *wasta* has been compared to the Chinese concept of *guanxi*.¹²⁴ Both *wasta* and *guanxi* use social networks to influence the distribution of advantages and resources. However, while *guanxi* is based on Confucian ethics¹²⁵ that focus on strengthening collective ties,¹²⁶ *wasta*

United Arab Emirates: The Twenty-First Century Beckons, Thunderbird International Business Review, Vol. 49, No. 4, pp 507–533. p 513; Cunningham, R. and Sarayrah Y., 1993, Op. Cit., p 1.

¹²¹- See Dobie, K., Grant, J. and Knudstrup, M. (2002), *Attitudes and perceptions of the role of wasta in the professional life of Gulf residents*, Journal of Social Affairs, Vol. 19, pp 75–97.

¹²²- Cunningham, R. and Sarayrah Y., 1993, Op. Cit.

¹²³- Ibrahim A., 2007, Op. Cit., pp 580-581.

¹²⁴- Guanxi has been defined variously as networks, connections, contacts and even nepotism. A standard definition is that it refers to interpersonal connections. For more see; Buttery, E. and Wang, Y. (1999), *The development of a guanxi framework*, Marketing Intelligence and Planning, Vol 17, No 3, pp.147-154

¹²⁵- The philosophy of Confucius emphasized personal and governmental morality, correctness of social relationships, justice and sincerity; For more, see; Hutchings, K. and Weir, D. (2006b), *Understanding networking in China and the Arab world: Lessons for international managers*. Journal of European Industrial Training, Vol. 30, No. 4, pp 272-290; Mohammad, A. and Hamdy, H. (2008), *The Stigma of Wasta 'The Effect of Wasta on Perceived Competence and Morality'*, Faculty of Management Technology German University in Cairo, Al Tagamoa Al Khames, 11835 New Cairo City – Egypt.

violates Muslim ethics which emphasise avoidance of illegal practices.¹²⁷ Additionally, while some researchers have argued that *guanxi* may benefit organizational competitiveness and performance, no such claims are made for *wasta*. Indeed, *wasta* is blamed for the Arab world's poor economic performance and brain drain.¹²⁸ In 2006, a study conducted by Whiteoak, Crawford and Mapstone to examine the effect of *wasta* in the UAE has showed that young Emirati citizens believe that *wasta* is more useful to achieve any target than any other regulations and laws.¹²⁹ Similarly, Cunningham and Sarayrah point out that the economies of the Middle Eastern countries, where the practice of *wasta* is widespread, are influenced largely by external factors over which they have no control.¹³⁰ In the same context, Makhoul and Harrison (2004) have characterized *wasta* as inefficient and warned that it may lead to poor administrative performance and economic decline.¹³¹ On the other hand, little is done on the political level to reduce the widespread of *wasta* despite its negative impact on the general level of competence in the economy.¹³² Moreover, Hamad Al-Mudfa, Chairman of the Committee of Financial and Economic Affairs in the National Council, has argued that because of the gradual increase in the use of *wasta*, the government should introduce a law to combat corruption in all its forms, creating a regulatory mechanism

¹²⁶ - Hutchings K. and Weir D., 2006a, Op. Cit.; Hutchings K. and Weir D., 2006b, Op. Cit.

¹²⁷ - Hamaish A., 2004, Op. Cit., p 354; Al-Bustawesi I., 2011, Op. Cit., p 299.

¹²⁸ - See Cunningham, R. and Sarayrah, Y. (1994), *Taming wasta to achieve development*, Arab Studies Quarterly, Vol. 16, No. 3, pp 29–39; Al Maeena, K. (2003), *Vitamin WAW*, Arab View, available at: <http://www.arabview.com/articles.asp?article=81>, accessed date 23/2/2011; Kilani, S. and Sakijha, B. (2002), *Wasta: The declared Secret*, Amman, Jordan: Arab Archives Institute.

¹²⁹ - Whiteoak, John W. Crawford, Norman G. & Mapstone, Richard H. (2006), *Impact of gender and generational differences in work values and attitudes in an Arab culture*, Thunderbird International Business Review, Vol. 48, No. 1, pp 77-91.

¹³⁰ - Cunningham R. and Sarayrah Y., 1994, Op. Cit.

¹³¹ - See Makhoul J. and Harrison, L. (2004), *Intercessory wasta and village development in Lebanon*, Arab Studies Quarterly, Vol. 26, No. 3, pp 25-41.

¹³² - Mohammad A. and Hamdy H., 2008, Op. Cit., p 3.

to curb any attempt by any person to exploit his influence or position in profiting or taking advantage of others for personal gain.¹³³

Additionally, many experts have suggested that an attempt should be made by the UAE government to apply transparency and create new policies to overcome some consumers' claims of inequity related to the avoidance of some traders for punishments through *wasta*.¹³⁴

In the same trend, Cunningham and Sarayrah have suggested eliminating *wasta*, saying that governments have to focus on structural measures such as administrative reform and the strengthening of controls.¹³⁵

3.7 Why Do the Concerned Authorities Have to Raise Public Awareness?

One of the most important elements in reducing the number of infringements of consumer rights is the raising of consumer awareness. The fight against consumer protection regulation infringements must involve the public, since it is the public's purchasing power which causes these practices to increase, particularly infringing goods carried out on a commercial scale.¹³⁶

Al-Bustawesi has indicated that the negative role of consumers and their attitude in the case of infringements is the main factor in increasing the amount of noncompliance with consumer protection law. He has pointed that there three reasons have led to this negative role of the consumer, namely, the weak financial capacity of the majority of consumers; their lack of

¹³³- See Al-Mudf'a H. (2008), *Barlamaniyoon Yotaleboon Bi-esthedath Qanoon Limukafahat al-Fasad al-Edaray*, article in Akhbar al-Arab Newspaper, No. 2822, published 21/08/2008.

¹³⁴- Whiteoak, et al, 2006, p 89; Ibrahim A., 2007, Op. Cit., pp 585-586; Ibrahim K., 2007, Op. Cit., p 329; Al-Bustawesi I., 2011, Op. Cit., p 299.

¹³⁵- Cunningham, R. and Sarayrah Y., 1993, Op. Cit.

¹³⁶- See Al-Khudhairi, A. (2008), *Min Ajel Tawe'iyah Afdhal Bimakhater al-Sela' al-Muqaladah wa al-Maghshoshah*, Published in 'Hemaiyat al-Mustahlik Wa Mukafahat al-Ghish al-Tejari Fi al-Dowal al-Arabiyah', almunadhamah alarabiyah II-tanmiyah aledariyah, dar alkitab almasriyah, Egypt; Cario. p 161; Blakeney M., 2004, Op. Cit., p 26.

awareness and the weakness of consumer protection associations; and the lengthiness of litigations.¹³⁷

He added that government should focus initially on educating and increasing awareness among individuals and consumers to curb the selling of counterfeit goods and products, to reduce the number of infringements and to enhance the role of consumers in tackling such practices.¹³⁸ There is a growing call to introduce and raise public awareness to create an understanding of the link between counterfeit goods and products carried out on a commercial scale and the resultant economic and social harm. Therefore, consumer protection regulations in the UAE have stressed that the concerned administrative authorities should publish decisions and recommendations in order to increase consumers' awareness.¹³⁹ Many authorities have taken initiatives to enhance their role in educating their employees and consumers to achieve the following aims:¹⁴⁰

- Educational programmes to increase awareness among employees and consumers regarding the negative consequences of purchasing counterfeit goods and products;
- Increasing collaborative effort between authorities to elevate consumer awareness regarding the threats that counterfeit contraband presents to the local and national economy; and
- Organizing and arranging awareness lectures for school students at all levels;

The UAE government, represented by the Ministry of Economy, has adopted different initiatives that were introduced by regional and international organizations. At the regional level, the Ministry of Economy has adopted a 'consumer day' from the Gulf Cooperation

¹³⁷ - Al-Bustawesi I., 2011, Op. Cit., p 24.

¹³⁸ - Ibid, p 25.

¹³⁹ - Article 4 of the UAE Consumer Law No. 24 for 2006.

¹⁴⁰ - Al-Khudhairi A., 2008, Op. Cit., pp 161-162; Al-Muaini A., 2009, Op. Cit., p 154.

Council of which UAE is a member. The UAE celebrates this once a year on the first of March by holding a conference on consumer protection.¹⁴¹

Nevertheless, Hamaish and Rabah¹⁴² have argued that authorities in charge have to work and focus on increasing the number of awareness programmes for both locals and foreigners who do not speak Arabic, bearing in mind that the number of foreigners in the UAE has reached more than 75% of the total population.¹⁴³ Therefore, the concerned authorities have to reach as much of the UAE population as possible by arranging awareness programmes in different languages to allow the citizens to understand the legislation introduced by the government to protect the consumers and how to act in cases of infringement.¹⁴⁴ Professor Hamdy Hassan concurs with Hamaish's argument and adds that the main solution to increase consumer awareness in the Arab regime is by establishing private media (to avoid government restrictions) that consist of experts that are able to deliver adequate and neutral economic information that would raise awareness among all consumers with a sufficient level of impartiality.¹⁴⁵

¹⁴¹ - See 1.7.3 The Gulf Cooperation Council in this thesis.

¹⁴² - Rabah G., 2011, Op. Cit., pp 189-190.

¹⁴³ - See UAE 2005 census, (2006), *Preliminary Results of Population Housing and Establishments Census 2005 United Arab Emirates*, introduced by Ministry of Economy.

¹⁴⁴ - Hamaish A., 2004, Op. Cit., pp 340-341.

¹⁴⁵ - See Al-Bikhiti, H. (2008), *al-E'lam Wa Hemaayat al-Mustahlik Fi Dhil al-Mutaghairat al-Iqtisadiyah*, Published in 'Hemaayat al-Mustahlik Wa Mukafahat al-Ghish al-Tejari Fi al-Dawal al-Arabiyah', almunadhamah alarabiyah ll-tanmiyah aledariyah, dar al kutub almasriyah, Egypt; Cario, p 122.

3.8 General Analysis of Available Administrative Regime on Consumer Protection

3.8.1 Contradiction in Measures

From this chapter, it can be understood that the best way for effective implementation of consumer protection regulation in the UAE is a coordinated approach, involving all the relevant enforcement and applying one unified set of laws and procedures. The relation between the federal and local authorities should be enhanced to achieve to a sufficient and adequate level of enforcement of consumer protection regulations throughout all seven emirates without any differences in policies or governmental support.¹⁴⁶

According to many legal experts, the situation in the UAE on the administrative level needs to be reviewed by the government due to the interference between the authorities given to the federal and local administrative agencies.¹⁴⁷ For instance, the Ministry of Economy as a federal authority has been given legal authorization under Consumer Protection Law No. 24 for 2006 to interfere with any infringing act that would affect the consumer and the community; however, this authorization has been minimized by the introduction of the Food Law which give local institutions, presented by the Director of Food Control Agency the same authority, instead of the Ministry of Economy. The point here is not that local authorities should have different level of powers than those given to the Ministry of Economy but rather that these local authorities are enforcing and following different regulations and measures than those followed by the federal authority's that would create a kind of inconsistency among administrative bodies.

¹⁴⁶- See 3.5 the adequacy of measure taken by administrative authorities to enforce consumer protection regulations in this thesis.

¹⁴⁷- Ibn Rouaidhah A., 1998, Op. Cit., p 151; Al-Jabri A., 1998, Op. Cit., p 49; Al-Tamimi E., 1999, Op. Cit., p 377; Al-Shamsi N., 2011, *Iqtasad Wahed, Watan Wahed*, Op. Cit.; Al-Bustawesi I., 2011, Op. Cit., p 25.

For example, the Director of the Food Control Agency or the officer in charge has an authority to apply one of the following punishments on infringers of food law:

- Destroy seized goods or products without a verdict;¹⁴⁸
- Revoke business licence without a verdict;¹⁴⁹ and/or
- Close establishment without a verdict.¹⁵⁰

These various precautionary measures, including fines, have given the FCA a degree of latitude to determine which measures can be used against the offender.¹⁵¹ Whereas the Minister of Economy can order the establishment to suspend business for a week, the Minister must subsequently forward the issue to the court regarding the closure of the establishment and disposal of the goods in violation. It is clear from foregoing that giving more legal powers to the directors of local departments would weaken the role of the federal authorities, taking into account that most Emirates are following the federal system. Dr. Nasser Al-Towaim (Director of Consumer Protection Association in Saudi Arabia) argued that combined efforts and consistency in all mechanisms and laws in concerning bodies at both the federal and local levels would limit the spread of infringements of consumer protection law.¹⁵² Thus, if traders face no effective deterrent for illegal activity, they will be tempted to break the law.¹⁵³

¹⁴⁸ - Article 14 para 6 of UAE Food Law No. 2 for 2008

¹⁴⁹ - Ibid Article 14 para 7

¹⁵⁰ - Ibid

¹⁵¹ - Rabah G., 2011, Op. Cit., pp 188-189.

¹⁵² - See Al-Towaim, N. (2012), *Al-Ghuraf al-Tejariyah Tt-amer dhed Hemaiyat al-Mustahlik*, article published in 20/03/2012, available at; <http://www.alyaum.com/News/art/46020.html>, accessed date 01/04/2012.

¹⁵³ - See Hampton, P. (2005), *Reducing administrative burdens: effective inspection and enforcement*, London, Treasury. p 6.

3.8.2 Implementation Problem

Mazurek and Hilton (in their article on consumer protection and consumer movement in Poland) argued that there was no conflict of interest between the state and the consumer, since the former represented the interests of the latter: thus, if the enforcement of consumer protection were to fail, it must, logically, be the result of three elements (i) mistaken retailers, (ii) the misunderstanding of planning directives by management, and (iii) corrupt human behaviour.¹⁵⁴ In the case of the UAE, the legislature has covered the first element through civil and criminal sanctions that would stop the retailers from infringing consumer rights, whereas the second and third elements remains without any laws or regulations to help deal with these problems. The implementation problem is one of the main problems facing the UAE government in its efforts to apply consumer protection law. There are various factors that hindered the implementation of consumer protection regulations. Firstly, no inspections are carried out by the Ministry in charge to examine the regulations and measurement used by different federal and local authorities to ensure the effectiveness of these regulations.¹⁵⁵ Secondly, most of the concerned departments in consumer protection in the UAE regularly review and improve their guidelines, regulations and practices individually.¹⁵⁶ Thirdly, there is a lack of cooperation between federal and local agencies, although each department issue bulletins on product safety, and has the power to detect and inform the public of ineffective or below-standard goods being sold in the marketplace.¹⁵⁷ Obviously, this was clear in the case of Oasis water, which insisted on the previous shortcomings that would affect the enforcement of consumer protection law. Through analysing the department's measurements

¹⁵⁴ - See Mazurek, M. and Hilton, M. (2007), *Consumerism, Solidarity and Communism: Consumer Protection and the Consumer Movement in Poland*, Journal of Contemporary History, Vol. 42, No. 2, pp 315-343, p 327.

¹⁵⁵ - Al-Zubaydi A., 2008, *Ra'ees jamaiyat Hemaiyat al-Mustahlik: No;ani dha'ef al-Mawared al-Maliyah wa Al-kawader al-Bashariyah*, Op. Cit.; Al-Jabri A., 1998, Op. Cit., p 49.

¹⁵⁶ - Al-Shamsi N., 2011, *Iqtasad Wahed ,, Watan Wahed*, Op. Cit.

¹⁵⁷ - See Morris, D. and Al-Dabgagh, M. (2004), *the development of consumer protection in Saudi Arabia*, International Journal of Consumer Studies, Vol. 28, No. 1, pp. 2-13. pp 9-11.

in this case, it can be understood why consumer protection law enforcement remains insufficient. First, the local department examined only some of the packages in the Emirate of Dubai, even though the company supplied similar products to all of the seven Emirates that constitute UAE.¹⁵⁸

Dr. Ghasan Rabah has argued that the department and the manufacturer infringed consumer protection law executive regulation Article 10 on supplier obligations which prohibits the circulation of a product if it was in violation of the approved standards.¹⁵⁹ It is better to conduct a precautionary recall to reassure consumers and the public at large in order to minimize any confusion about product quality. Secondly, the department has fined the manufacturer according to its interior regulation system instead of Federal Law No. 24 for 2006 on consumer protection. Thirdly, the department did not refer the case to the judicial authority to redress the plaintiff with any type of compensation. Accordingly, as a consequence of disrupting the application of federal consumer protection law and applying local law instead, this reduces cooperation between these agencies, increases contradictions and infringes consumers' rights. Morris and Al-Dabbagh have suggested that there must be well-understood federal and local channels for aggrieved individuals to seek redress; otherwise, such practices may only be available to the 'well-connected' and could leave many consumers relatively unprotected.¹⁶⁰

The last element that would cause a problem in implementing consumer protection law is corrupt human behaviour, which is known in the Arabic region as (*wasta*).¹⁶¹ In their Article

¹⁵⁸ - This case was raised when a consumer complained to Dubai Municipality that he discovered worms in a bottle bought from Oasis water manufacturer. Dubai Municipality confirmed the contamination and ensured that the manufacturer was fined because of two reasons: firstly, the results of laboratory examination ensured that the bottle did not conform to health conditions; secondly, an inspection visit to the manufacturer confirmed the presence of a fault in one of the production lines. Unpublished.

¹⁵⁹ - Rabah G., 2011, Op. Cit., pp 154-155.

¹⁶⁰ - Morris, D. and Al-Dabbagh M., 2004, Op. Cit., p 10.

¹⁶¹ - See 3.6 The Problem of Nepotism in Administrative Authorities in this thesis.

‘Corruption and Development’ Gray and Kaufmann argued that corruption is one of the severe impediments in enforcing regulations in developing countries since it can override such regulations and cause serious economic and social harm. They claim that where political competition and civil liberties are often restricted, laws and principles of ethics in governmental bodies are poorly developed and the administrative institutions charged with enforcing them are ill-prepared, which would lead to weak and failed implementation of laws and regulations.¹⁶² In the same context, Cunningham and Sarayrah have argued that *wasta* has a broad affect on implementation regulations in the Arab world. They underscored the necessity of establishing a watchdog institution within the concerned Ministry, characterized by honest leadership to ensure enforcement of regulations.¹⁶³

Accordingly, Dr Abdul-Mone’em Ibrahim argued that in the absence of regulations that give certain authority to the role of each agency involved in consumer protection, consumers will not be adequately protected and their rights will remain subject to violation.¹⁶⁴

3.8.3 Why is Consumer Protection Association Weak in the UAE?

The main aim of establishing a consumer protection association is to play a neutral role between the government authority and consumers. This level of protection can be achieved by a consumer protection association if it has the legal capacity to represent consumers and to bring action against violators of consumer protection regulations.¹⁶⁵ The role of this civil

¹⁶²- See Gray, C. and Kaufmann, D. (1998), *Corruption and Development*, IMF Finance and Development, Vol. 35, No.1, pp 7-10.

¹⁶³- Cunningham, R. and Sarayrah Y., 1994, O. Cit.; Gray, C. and Kaufmann D., 1998, Op. Cit.

¹⁶⁴- A. Ibrahim, 2007, Op. Cit., pp 586-587.

¹⁶⁵- See Ali, N. (2008), *Dower Munadhamat al-Mujtama’ al-Madani Fi Ta’zeez al-Musharakah al-seiyasiah Fi Palestine*, Master degree Thesis at An-Najah National University in Nablus, Palestine, pp 14-18; Waller, S. Brady, J., Jillian, G. and Acosta, R. (2011), *Consumer Protection in the United States: An Overview*, European Journal of Consumer Law, available at; SSRN: <http://ssrn.com/abstract=1000226>. Accessed date 12/9/2011. pp 25-26.

organization (as discussed earlier) is minimized in the UAE as a result of several factors. Firstly, the legal restriction in the UAE that heavily affected the role of organizations, Federal Law No. 2 on Associations with Public Benefit and Non-governmental Organizations for 2008, indicated that the relationship between those organizations and the state is determined by the government, which is the source of legislation regulating the activity of such associations.¹⁶⁶ Article 16 of the latter law has banned organizations from interfering in UAE political, legal, ruling system or issues that would affect national security. Consequently, if an organization has any initiatives to preserve consumer rights or to combat the infringing party, its role would be impeded due to its limited freedom of expression and political participation.¹⁶⁷ If the organization is banned from exercising the main role for which it was established, how it can take a more active role?

Many legal experts, such as S. AlQayidi,¹⁶⁸ M. Hafez,¹⁶⁹ H. Ibrahim,¹⁷⁰ A. Qandeel,¹⁷¹ and B. Ghalyoon,¹⁷² have criticised the negative role of UAE legislature which has restricted the development of these organizations that led to the marginalisation of its role. They argued that if the government wants to activate the role of these organizations, it has to add some provisions to the consumer protection regulations or amend Federal Law No. 2 for 2008 to include provisions that outline their legal rights and enhance their role in a positive way; otherwise, the civil society organizations will remain not actively involved in combating infringements of consumer protection regulations. They emphasised two main rights that should be included and that will allow organizations to exercise their role adequately and effectively. Firstly, legal authorization would allow the organization to protect consumers'

¹⁶⁶ - Abu-Amro M., 2011, Op. Cit., p 215.

¹⁶⁷ - See Article 16 of UAE Federal Law No. 2 for 2008 on the Associations with public benefit and Non-Governmental Organizations.

¹⁶⁸ - AlQayidi S., 2010, Op. Cit., pp 48-53.

¹⁶⁹ - Hafez M., 2009, Op. Cit., p 5.

¹⁷⁰ - Ibrahim H., 2005, Op. Cit., p 96.

¹⁷¹ - Qandeel A., 1992, Op. Cit., p 51.

¹⁷² - Ghalyoon B., 2005, Op. Cit., p 745.

rights as well as their economic and social interests in state power and government institutions in court and public organisations. It would also allow the organization to lay claims on behalf of consumers on legal and companies or manufactures who infringed consumer rights and legitimate interests and to appeal to state power and government institutions in cases of institutions adopting decisions that contradict consumer protection law and other legislation safeguarding consumer rights and interests.¹⁷³

Secondly, other scholars have argued to members of the organization should be given judiciary powers to ease their efforts in obtaining information from relevant state government agencies, manufacturers, sellers and the suppliers of services in respect to the quality of products and goods sold or services rendered. This would also allow them to obtain other information necessary for the protection of consumers' rights and interests with the exception of state and commercial secrets.¹⁷⁴

Equipped with these rights, consumer protection organizations in the UAE will be capable to conduct a sufficient investigation on public opinion about the range of goods and their quality and investigate the quality of goods and services at their testing centers and laboratories accredited in the established manner.¹⁷⁵ Consequently, this will enhance and support both private and governmental sectors in various fields. Firstly, it will activate the role of governmental laboratories represented by ESMA as well as other competent local authorities and foreign organisations to conduct fair examinations and testing.¹⁷⁶ Secondly, it will encourage the submitting of proposals and recommendations to state government institutions, manufacturers, sellers and suppliers of services in relation to the improvement of the quality

¹⁷³ - AlQayidi S., 2010, Op.Cit., pp 48-53; Hafez M., 2009, Op. Cit., p 5; Ibrahim H., 2005, Op. Cit., p 96; Qandeel A., 1992, Op. Cit., p 51; Ghalyoon B., 2005, Op. Cit., p 745.

¹⁷⁴ - Rabah G., 2011, Op. Cit., p 188; Ibrahim A., 2007, Op. Cit., p 582.

¹⁷⁵ - Al-Khudhairi A. , 2008, Op. Cit., pp 260-261.

¹⁷⁶ - Al-Bikhiti H., 2008, Op. Cit., pp 126-127.

of goods and services.¹⁷⁷ Thirdly, it will activate one of the main means of combating infringing traders or establishments by boycotting their products, goods and services and informing consumers through the media about its risks and quality.¹⁷⁸ Boycotts are a form of consumer activism that provides an opportunity for relatively powerless individual consumers to redress the imbalance in the marketplace.¹⁷⁹

Al-Ghamdi, Sohail and Al-Khaldi believe that consumer organizations will play an important role if the organizations have the ability to work side by side with the governmental authority, which would allow the organizations to provide greater protection against defective or inferior products and services. They also argue that adequate consumer protection requires more testing agencies and organizations similar to those established in North America and Western Europe.¹⁸⁰

For example, consumer organizations in the USA have been guaranteed the abovementioned rights by the government and have been an effective force in leading to safer and better quality products.¹⁸¹ Moreover, similar legal authorities have been given to consumer organizations and NGOs in the European community. For example, in the UK, the Consumer Association (CA) stands as a largely unquestioned advocate for the consumer; moreover, the CA is virtually assured of extensive news coverage for its numerous reports and enquiries.¹⁸²

Elissar Sarrouh has stressed the importance of the combination of work between the

¹⁷⁷ - Ibrahim A., 2007, Op. Cit., pp 581-582.

¹⁷⁸ - Abu-Amro M., 2011, Op. Cit., pp 215-216.

¹⁷⁹ - See Hawkins, R. (2010), *Boycotts, buycotts and consumer activism in a global context: An overview*, Management & Organizational History, Vol. 5, No. 2, pp 123-143, p 123; Ibrahim A., 2007, Op. Cit., p 578.

¹⁸⁰ - See Al-Ghamedi, S., Sohail, M. and Al-Khaldi, A. (2007) *Measuring consumer satisfaction with consumer protection agencies: some insights from Saudi Arabia*, Journal of Consumer Marketing Vol. 24, No. 2, pp 71-79. p 79.

¹⁸¹ - See Mayer, R. (1989), *Consumer Movement: Guardians of the Marketplace 'Social Movements Past and Present'*, Twayne Publishers, Boston. ; Carsky, M., Dickinson, R. and Canedy III, C. (1998), *The Evolution of Quality in Consumer Goods*, Journal of Macromarketing, Vol. 18, pp 132-144.

¹⁸² - See Burgess, A. (2001), *Flattering Consumption: Creating a Europe of the consumer*, Journal of Consumer Culture, Vol. 1, No. 1, pp 93-117. p 99

government and civil society by mentioning that “...effective public sector management is increasingly seen as more than just modernizing state institutions, it is also about fostering dynamic partnerships with civil society and the private sector in order to improve the quality of service delivery, enhance social responsibilities and ensure the broad participation of citizens in decision making”.¹⁸³

3.9 Conclusion

This chapter has covered the role of administrative agencies in the UAE to enforce consumer protection regulations. Taking into consideration the legal framework of the UAE, which follows the federal system, UAE has divided consumer protection authorities into two categories – federal and local.

To activate the role of these administrations, the UAE has introduced legal norms which serve as an essential foundation for effective enforcement. Thus, the UAE through consumer protection regulations has established the necessary administrative institutions to comply with the requirements of new laws on consumer protection and has conferred legal authority to different institutions to enhance protection for consumers in different stages. Consumer protection regulations in the UAE have offered administrative measures and procedures that tend more towards time-efficiency than seeking remedy through judicial authority.

Administrative institutions have played an effective role in enforcing consumer protection regulations and reducing the level of counterfeit goods and products. Some local authorities have achieved tremendous gains in the consumer protection field, like Dubai Police and Abu

¹⁸³ - See Sarrouh, E. (2003), *The UNDP Role in Public Administration Reforms in the Arab Region*, paper prepared for The Expert Consultative Meeting on Public Administration and Public Accounting Developments, With Stress on Electronic Tools, UNESCWA in collaboration with UNDP and DPDAM, July, Beirut, Lebanon, p 6.

Dhabi Police as well as Abu Dhabi, Dubai and Sharjah Customs, whereas some authorities are still playing an insufficient role in a way that affects consumers in other Emirates.

There are various factors that weakened the ability of administrative agencies in enforcing consumer protection regulations, including the limited number of cadres specialized in the detection of adulterated and imitated goods in the concerned authorities. Moreover, the lack of coordination between the concerned authorities in the country in order to cope with the unlawful commercial practices has weakened the role of administrative authorities and the existence of different measures and remedies followed by different administrations has led to a weakening of their role. Therefore, the fight against such acts of infringement would have a tremendous chance of success if it were based on coordination and cooperation between both federal and local administrative authorities. The influence of *wasta* among administrative bodies is considered to be a serious problem that would have a negative impact on the implementation of consumer protection regulations introduced by the government.

This chapter concludes that, despite some emerging signs of change in attitudes and levels of consumer protection, the same issues will remain at the forefront of consumer protection in the UAE as long as education and awareness programmes are not being provided to the people to increase awareness amongst the new generation about the importance of the role played by consumers in minimising the number of infringements and protecting the economy and society.

Appropriate and comprehensive regulations are essential to the fair and practical operation of markets, and to the creation and maintenance of the confidence of consumers and businesses. However, not all regulations are effective in achieving these goals, and there is genuine concern about the impact of poorly designed or unnecessary regulations on business, consumers and the economy. Exploring good regulatory practice can address some of these problems through the effective enforcement of existing regulations rather than the

introduction of additional regulations. Therefore, to reach such a level of regulation, the UAE government must seek a prospective model capable of tackling and reducing the challenges that currently face proper implementation of consumer protection regulations. According to the UAE Legal background,¹⁸⁴ the government can consider two approaches – the Shari’a law or the European model – as most UAE legislations were derived either from Shari’a law or foreign laws.

The next chapter will examine current Shari’a law and assess whether the current Islamic legislation can serve as a possible model for a comprehensive consumer protection.

¹⁸⁴ - See 2.2.3 Legal System in this thesis.

Chapter Four

Consumer protection under Islamic Shari'a Law: Can Shari'a law be a solution?

4.1 Introduction

Because Islam is one of the most important sources of legislation in Arab countries in general, and in the United Arab Emirates in particular,¹ there was a need to allocate a separate chapter to indicate the existence of Qur'anic verses and Prophet Mohammed's [PBUH] teachings that deal with and organize consumer protection issues. Islam has given consumer rights and protection considerable attention under the Holy Qur'an and the Teaching of Prophet Mohammed [PBUH], for instances of a breach in legal transactions, whether buying or selling goods or services. This chapter will give a full explanation of how Islamic law (Shari'a law) has given consideration to consumer protection.

At first, the chapter will clarify the sources of Shari'a law and illustrate the primary and secondary sources of Islamic jurisprudence as well as the distinction between them. Then, the chapter will indicate the four main legal schools that depend on the interpretation of Qur'anic verses and Prophet Mohammed's [PBUH] teachings to give their personal judgements on various issues. The chapter will then describe which parts of Shari'a law deal with consumer protection. The chapter will also focus on the authorities that were established under Shari'a law to implement and apply laws and regulations taken from the Qur'an and Sunna to preserve consumer rights. Lastly, this chapter will indicate the application of Shari'a

¹ Article 7 of the UAE Constitution states that "Islam is the official religion of the Union. The Islamic Shari'a shall be a main source of legislation in the Union".

law in some countries that apply this type of legislation to commercial transactions and will examine how successful and effective Shari'a law was in tackling issues that may arise in the field of consumer protection.²

4.2 Introduction to Shari'a Law

Islam is one of the five divine religions, which are known as *Ibrahimya religions* “Abrahamic religious”³ in the Middle East – Judaism, Christianity, Islam, Mandaism and Samaritanism.⁴ The general meaning of the word ‘Islam’ is “submission”, but in the religious context, it means “to obey and follow the divine teaching, to leave and deny all types of the disbelief, polytheism and their followers.”⁵ It is also considered as the second largest religious community in term of adherents, as the number of the Muslims has increased to approximately 1.25 billion.⁶ Muslims believe that Islam is the accomplished version of an original monotheistic faith revealed to the Prophets before the Prophet Mohammad [PBUH], which included Adam, Abraham, Moses, Jesus, and others.⁷

Shari'a is the moral code and religious law of Islam and the term ‘Shari'a’ literally has two meaning: the first is “a way or path to the water source”,⁸ the second meaning is a comprehensive set of rules based on Islamic teachings that should regulate the general and private aspects of adherents life. From these definitions, it is clear that Shari'a law has a

²- The Kingdom of Saudi Arabia is one of the leading countries that use Shari'a law as an exclusive source of legislation.

³- These are religions which share the Prophet “the patriarch” Abraham in their religious lineage. They also are monotheistic and have Semitic origins.

⁴- See Al-Maglooth, S. (2007), *Atlas Aladian*, AlAbeekan, p 15; Smith, J. (1998), *Religion, Religions, Religious*, Critical Terms for Religious Studies, University of Chicago Press, pp 269-284.

⁵- See Redha, M. (1947), *Tafseer Almanar*, 2nd edition, dar almaaref, 1st part, p 290.

⁶- See Kettani, H. (2010), *2010 World Muslim Population*, Proceedings of the 8th Hawaii International Conference on Arts and Humanities, Honolulu, Hawaii.

⁷- See Esposito, J. (1998), *Islam: The Straight Path*, 3rd edition, Oxford University Press, pp 6-12.

⁸- See Al-Sayis, M. (1998), *The history of the Islamic jurisprudence*, 1st edition, Dar Alfik, p 17; Kamali, M. (2008), *Shari'ah law: An introduction*, one world publication, p 2; Al-Buti, M. (1996), *The Jurisprudence of the Prophet biography*, 1st edition, Dar Alfikr, p 37.

significant place in the hearts and minds of its adherents as it is considered as the legal framework that organizes and arranges the public and private aspects of life. Shari'a deals with many aspects of day-to-day life, including politics, banking, economics, business, contracts, family, sexuality, hygiene, and social issues.⁹ Consequently, Shari'a law has become the most religious law that is used widely, and one of the three most common legal systems used in the world along with common law and civil law.¹⁰

Shari'a is not a single code of law; rather, it is composed of four sources to which legal experts refer. The first two sources are the Qur'an and the Sunna, "collected traditions of Prophet Mohammad [PBUH]". The other two complementary sources are consensus among Muslims Jurists (*Ijma*) and legal analogy (*Qiyas*). That said, some jurisprudence schools do accept other additional sources as secondary sources though these first four primary sources are allowed by all legal schools.¹¹

Every scholar who approaches Islamic law immediately encounters the considerable complexity of its commercial law, which is extremely different from the Western approach to that same branch of law. This is mainly due to the different levels of the source of law: the Prophet was a merchant engaged in commercial practices, some of which he permitted some of which he forbade. Some of these prescriptions are included in the Qur'an and consequently have the status of Divine Command that is valid for all times; however, others are set forth in the Sunnah, or authenticated reports about the acts and word of the Prophet. Therefore a great

⁹- See Ansari, Z. (1992), *The contribution of the Qur'an and the Prophet to the development of the Islamic fiqh*, Journal of Islamic Studies, Vol. 3, No. 2, pp 141-171, pp 144-146; Al-Bazzaz, A. and Haim, S. (1954), *Islam and Arab nationalism*, Die Welt des Islams, New Series, Vol. 3, Issue 3/4 (1954), BRILL Press, p 204.

¹⁰- See Bader, G. (1978), *Islamic Law: Its Relation to Other Legal Systems*, The American Journal of Comparative Law, Vol. 26, No. 2, pp. 187-198. p 187

¹¹- See Janin, H. and Kahlmeyer, A. (2007), *Islamic Law: the Sharia from Muhammad's Time to the Present*, McFarland and Co. Publishers, p 3; Peretz, D. (1994), *The Middle East Today*, 6th Ed, Praeger Publisher, p 39; Khan, A. (2003), *The Reopening of the Islamic Code The Second Era of Ijtihad*, University of St. Thomas Law Journal, Vol. 1, 341, pp 3-4; Al-sayis M., 1998, Op. Cit., pp 17-18

number of principles of Islamic commercial law are sacred prescriptions for which a very narrow range of interpretation is allowed.¹²

4.2.1 The distinction between Primary and Secondary sources of the Shari'a law

Despite the similarity in the roles and aims of primary (the Holy Qur'an and Sunna) and secondary (Qiyas and Ijma) sources by providing Shari'a law with the main structure and fundamental legislation, rules and judgments, but still there are many differences between those two sources. According to Muslim jurists these differences can be classified into three axes, namely the creator, the purpose, the punishment and the boundaries¹³.

The first sort of differentiation between the two sources are lies in the creator, as the primary sources are believed by all Muslims that it come directly from God and not affected by any distortion that would achieve security, stability and tranquility among the members of the society. Whereas, the secondary sources have been formulated through interpretation and explanation the primary sources by Muslims jurists¹⁴.

The second kind of distinction between the primary and secondary sources is that laws and regulations which derived from primary sources have chosen strengthening of the society as a main purpose. As the primary sources has dealt with many aspects of day-to-day life, including politics, banking, economics, business, contracts, family, sexuality, hygiene, and social issue. On the other hand, the main purpose of the secondary sources is to deal with

¹²- See Fayzee, A. (1974), *Outline of Mohammadan law*, New Delhi, Oxford University press, p 16; Mancuso, S. (2007), *Consumer Protection in E-commerce Transactions: a First Comparison between European Law and Islamic Law*, Journal of International Commercial Law and Technology Vol. 2, No. 1, pp 1-8. p 4

¹³- Al-Sayis, M., 1998, Op. Cit., p 19.

¹⁴- Ibid, at p 20.

cases and newly emerging situations and to find a solution by interpretation and explanation the primary sources¹⁵.

The third sort of discrimination between the primary sources and secondary is located on the boundaries and to which extent could create laws from the both sources. As the primary sources have unique features, one the flexibility and adaptability to different societies and regions, the other an ability to change and develop over time, while the secondary sources are usually used and limited on a particular circumstance and case.¹⁶

4.3 The main sources of Shari'a Law

There are two primary sources of shari'a law: the precepts set forth in the Quran, and the example set by the Islamic prophet Muhammad in the Sunna. Where it has official status, Shari'a is interpreted by Islamic judges with varying responsibilities for the religious leaders (imams). For questions not directly addressed in the primary sources, the application of Shari'a is extended through the consensus of religious scholars (ulama) who are thought to embody the consensus of the Muslim community (ijma). Islamic jurisprudence will also sometimes incorporate analogies from the Qur'an and Sunna through (qiyas) legal analogy. The main two sources for Shari'a law are the Holy Qur'an and 'the normative praxis of the Prophet', namely the Sunna. The other complementary sources are human reasoning and what is known as Ijtihad.¹⁷ There are numerous sources which are founded by jurists in human reasoning and interpretation of Qur'an and Sunna. Ijtihad and human reasoning occur

¹⁵ - Ibid, at p 21.

¹⁶ - See Hallaq, W. (2009), *An introduction to Islamic law*, 1st edition, Cambridge press, p 27.

¹⁷ - See Johansen, B. (2008), *A perfect law in an imperfect society Ibn Taymiyya concept of Governance in the name of Sacred law*, In: P. Bearman, W. Heinrichs and B. Weiss (ed), *The Law Applied; contextualizing the Islamic Shari'a*, I.B. Tauris, p 263.

in a variety of forms.¹⁸ This section will determine the differences between the primary and secondary sources, and will elucidate only four sources (the Holy Qur'an, Sunna, qiyas and ijma) as there is disagreement among schools and jurists over the validity and scope of the rational proofs that originated from ijhtihad.

4.3.1 The Holy Qur'an

The Qur'an is the first and most supreme source of the Shari'a law. It is believed to be the direct word of God as revealed to the Prophet Mohammad [PBUH] through the angel Gabriel in Mecca and Medina.¹⁹ It was revealed to the Prophet Mohammad [PBUH] in the periods between 610AC and 623 AC. Over those twenty-three years, the Qur'an was revealed gradually, mostly in response to problems and questions that the Prophet faced while dealing with Muslims and non-Muslims. This method of revelation made the Holy Qur'an a practical guide for solving problems that arise in the real world.²⁰

The greater portion of the Holy Qur'an is concerned with the moral and religious themes, devotional matters, human beings, family law, inheritance, the universe, the hereafter, the history of bygone events, and parables. There are also some verses concerning economic matters, such as the duties and rights of laborers, traders, and consumers, contracts, usury (*riba*) and other different transactions.²¹ Moreover, the Holy Qur'an also included other divine religion, and according to *Ibn Taymiyya* (1263-1382),²² the Qur'an contains the spirits

¹⁸- See Al-Khabazi, J. (1982), (Ed) Mohammad Buga, *al-Mugani fi Asool al-Fiqh*, 1st edition, Saudi Arabia, Matba'at Umm AlQura, pp 185-189:273:285.

¹⁹- See Abdel-Haleem, M. (2006), '*Qur'an and Hadith.*' In: Winter, Tim, (ed.), *The Cambridge Companion to Classical Islamic Theology*, Cambridge University Press, p 19.

²⁰- See Al-Qar'awi, S.and Al-Hassan, M. (1994), *Al-Bayan fi Oloom Al-Qur'an*, 2nd ed, Maktabat Al-Dhalal. pp 169-187.

²¹- See Khallaf, A. (1978), *Ilm Usul Al-Fiqh*, 12th ed, Dar Alqalam. p 32; Sabri, A. (2007), *Wasaya Al Rasool Lilitojar*, 2nd ed, Dar AL- Farouk, pp 6-25; Al-Sharnabasi, R. (2009), *Hemaiyat Al-Mustahlik fi Al-fiqh Al-islami*, 1st edition, AlAmanah. pp 12-25.

²²- Taqi ad-Din Ahmad ibn Taymiyyah known as (Shaykh al-Islaam) one of the famous Muslim scholars.

and the letter of all knowledge.²³ As it is the basic and undisputed part of Shari'a law, the Holy Qur'an provides general guidelines on almost every topic of Islamic law. Therefore, all Muslims believe that the Qur'an gives clear evidence of the unity and integrity of God's law (Shari'a law), and how it is good for all times, places and communities.²⁴

4.3.2 The Sunna

The second main source of Islamic Shari'a law is the Sunna, and it is well-known that the normative praxis of the Prophet Mohammad [PBUH] was subordinated to the Holy Quran.²⁵ However, the two together compose the fundamental code of Islamic law, and the Qur'an commands Muslims to follow these teachings as it is mentioned in several places within the Quran: "*He who obeys the Messenger, obeys Allah,*"²⁶ "*Obey Allah and His Messenger.*"²⁷ The 'Sunna' literally means the "trodden path," which takes on both positive and negative meanings at different points. Among Muslims jurists, the Sunna is considered to be the collected traditions and teaching of the Prophet Mohammad [PBUH]. It was completed within the same period of twenty-three years in which the Qur'an was revealed to the Prophet. The Sunna is constituted of cases (*hadith*), explanation, comments, opinions, and manners of the Prophet [PBUH] accurately recorded and transmitted by Muslim scholars. According to *Ibn Taymiyya*, the Prophet's Sunna is a rich source of normative thought and practice because it does more than just refer to his acts and words, the Prophet's silence in the

²³ - See Little, D. (1973), *The Historical and Historiographical significance of the detention of Ibn Taymiyya*, International Journal of Middle East Studies, Vol. 4, No. 3, Cambridge University Press, pp 320-321.

²⁴ - See Salqeeni, A. (1991), *Al-nusaar fi Usl al-fiqh al-islami*, 1st ed, Dar Al-fiker.p 412; Ibn Taymiyah, T. (1903), *Minaj Al-sunna Al-nabawiyah*, Part 1, Egypt, Al-amiriyah, p 147.

²⁵ - See Ibn Abdul-albir, H. (1994), *Jamea Albayan w Tafdheelh*, (Ed) Abe-Alashbaal Alzuhaire, 1st edition, Saudi Arabia, Dar Ibn Al-Gawzi, p 191.

²⁶ - The Holy Qur'an 4:80.

²⁷ - The Holy Qur'an 3:32.

face of certain events, and his attitude towards some practices can be understood as a statement on such events or practices.²⁸

As it is subordinated to the Qur'an, the Sunna is used to clarify, elucidate, apply, and interpret the Qur'anic text in the specific contexts of concrete cases that arose during the period of the prophecy. To comment on this, *Abu Zahrah*²⁹ has evaluated the Sunna and its vital role by stating that 'every single chapter of fiqh finds its origin in the Qur'an, which is then explained and elaborated by the Sunnah'.³⁰ In the Holy Qur'an, there are injunctions and commands requiring Muslims to engage in daily prayers, but the details of this issue (e.g., number of prayers, time of prayers, how to pray) can be found in the Sunna.

The two books *Sahih Bukhari*³¹ and *Muslim*³² have earned a unique place in the history of the Sunna, as their collections not only present the most authentic *hadith*, but also the reporting is organized through accepted stringent criteria such as quality and soundness of the chain of narrators.³³

4.3.3 Legal Analogy (Qiyas)

This source of Shari'a law is considered as a complementary or secondary source. *Qiyas* means measuring or ascertaining the length, weight or quality of something. It also means a comparison between two things to establish equality or similarity. In the terms of Shari'a, *qiyas* is the extension of a Shari'a ruling from an original case (*Asl* = main) to a new case

²⁸ - See Al-jawziyah, I. (1973), *Ei'laam al- Muwaqqi'en*, (Ed). Taha A. Saad, Lebanon, Dar Al-Jabal, p 33.

²⁹ - Sheikh Muhammad Abu Zahrah (1898-1974) was a conservative Egyptian public intellectual, traditional scholar of Islamic law.

³⁰ - See Abu Zahrah, M. (1947), *Abu Hanifah, Hayatuh wa Asruh, Ara'uh wa fiqhuh*, Egypt, Dar Al-fiker Al-Arabi, p 80.

³¹ - Muhammad Ibn Ismail al-Bukhari (810-870) the most famous author in the Hadith Knowledge.

³² - Abu- Al-hussain Muslim Ibn Al-hajjaj (821-875) the second famous author in the Hadith knowledge after Bukhari.

³³ - See Al-Andalusi, Y., '*Al-Tamheed l'ima fi al-mout'a min al-ma'ani wa Al-Asaneed*', Part 10, Morocco, Edition By Ministry of Islamic Affairs-Morocco, p 278.

(*far'* = part) because the new case has the same effective cause (*ellah* = reason) as the original case.³⁴ It is the process of analogical reasoning in which the teachings of the Qur'an are compared and contrasted with *hadith* in order to draw an analogy between a known injunction to a new one. Pursuant to this method, the rulings of the Qur'an and the Sunna may be used as a means to solve or provide a response to a new problem that may arise. The main purpose is to establish similarities between the event in question and one that occurred in the lifetime of the Prophet, in the belief that their similarity will allow the application of the same ruling.

To demonstrate this methodology, the interpretation of the Qur'anic text declares that wine in the Qur'an is forbidden absolutely {*O ye who believe! Strong drink and games of chance and idols and divining arrows are only an infamy of Satan's handiwork. Leave it aside in order that ye may succeed*}.³⁵ The wine in the previous verse is forbidden for the main (*asl*) reason (*ellah*) of its intoxicating effects, and the new case of using narcotic drugs is (*far'* = part) the judgment is prohibited.

4.3.4 Consensus among Muslim Jurists (Ijma)

Ijma is a secondary source of Shari'a law and one of the rational proofs. It is an Arabic term referring to the consensus among Muslim scholars and their determination to do thing which they believe that the act do not contradict with the Islamic teachings.³⁶ It is an absolute consensus, which means that there is no room for disagreement or opposition. There are two main pieces of evidence in the Holy Qur'an and the Sunna that provide supports for its

³⁴ - See Khallaf, A. (1956), *l'lm Asul Al-fiqh*, 7 ed, Mak'tabh al-Da'wah al-islamiyyah, p 52; Salqeeni A., 1991, Op. Cit., p 126.

³⁵ - The Holy Qur'an 5:90.

³⁶ - See Al-Maqdesi, I. (1958), *Rodht al-Nadher wa Jant al-Mandher*, Egypt: Alsalafiya. p 67; Salqeeni A., 1991, Op. Cit., pp 90-91.

validity. The first evidence from the Qur'an states: "Get ye then an agreement about your plan and among your partners"³⁷ and the other evidence from the Sunna "My Ummah (Muslim community) will never agree upon error".³⁸

After the death of the Prophet Mohammad [PBUH] in 632 AC, Shari'a continued to undergo fundamental changes, beginning with the reigns of Caliphs Abu Baker (632–34 AC) and Omar (634–44 AC), as many decision making matters were brought to the attention of Muhammad's closest companions for consultation. They used to resolve these problems through consensus, under the one condition that their decision did not contrast with that of the Qur'an and Sunna.³⁹

There are two forms of consensuses that have been agreed by most Islamic jurisprudences, explicit and implicit consensus. The first form of consensus is explicit, which means that all agreed on the judgment after a debate among all jurists. The second form is implicit, which means that some jurists made the judgment while other accepted their judgement without sharing their opinion.⁴⁰

4.4 The Four Main Legal Schools (*Madhhab*)

The four main Shari'a law schools concur on the principles of faith, but they differ on subsidiary issues (*Furu'*). These four schools are the Hanafi School, Maliki School, Shafi'i School and Hanbali School.⁴¹ The phrase *madhhab* is derived from an Arabic word that

³⁷ - The Holy Qur'an 10:71.

³⁸ - See Alsajestani, S. (1998), *Sunan Abu-Dawood, Kitab al-fiten wa al-malahem, Bab zeker al-fiten wa dla'elha*, Published by Dar Al-fiker. Hadith No. 4253.

³⁹ - Khallaf A., 1956, Op. Cit., pp 45-46.

⁴⁰ - Ibid, at p 51.

⁴¹ - Kamali M., 2008, Op. Cit., p 68.

meaning "to go" or "to take as a way".⁴² Every *madhhab* have one leader and different numbers of followers. The leader of the madhhab (school) is known as the *mujtahid*, which is derived from the word *ijtihad*, which means the person who works hard to obtain good result. In the *Usul Al-Fiqh*,⁴³ it is an effort by the *mujtahid* to obtain a judgment on a particular issue from the two main sources of Shari'a law – namely, the Qur'an and the Sunna.⁴⁴

Each school implies a body of doctrine taught by a leader or imam and followed by the members of that school. The leader of the school (*imam*) must be capable of exercising independent decisions. These judgments are based on or derived from the primary texts of the Holy Qur'an and Sunna on a particular question. Every imam must apply original methods and principles that are unique to his own school. The role of the followers is to assist their imam in the explanation and spreading of his teaching. Therefore, those *madhhab* (schools) were well-known for their extensive dependence on personal opinion and analogies (*ra'y* and *qiyas*) that were extended to create⁴⁵ a new style of jurisprudence known as "the estimated jurisprudence", a judgment on issues that may arise in the future which made a great contribution to the development of the law on commercial transactions.⁴⁶

4.5 Consumer Protection under Shari'a Law

Consumer protection as a part of commercial law has taken on significance under the Shari'a law as it is considered one of the most important aspects to be covered with credibility and transparency in negotiations between parties. Under Islamic law, consumer protection has

⁴² - Al-Sayis M., 1998, Op. Cit., p 60.

⁴³ - *Usul Al-Fiqh* is the methodology that deals with the sources or roots of Islamic law.

⁴⁴ - See Al-Shokani, M. (2000), *Ershad al-Fehool ela tahqiq al-haq min Elm al-asool*, Dar al-Fadheelah. pp 249-264.

⁴⁵ - See Thabit, A. "Al Khatib Al-Bagdadi", (2004), *the History of Bagdad 'Tarikh Bagdad'*, part 13, Dar Alkitb Al'alamiya, p .348

⁴⁶ - See Al-Nabhan, M. (1974), *Al-Madkhal li-Tashri' Al-islami*, 2nd edition, Dar Alqalam, p 239.

been controlled by strict conditions and obligations under Qur'anic injunction and the prophet teachings. Islam as a religion that has an impact on such relationships between traders and consumers has provided a comprehensive structure for carrying out business and providing fair protection for consumers' rights.⁴⁷

The importance of consumer protection has been recognized under the primary sources of Shari'a law as this type of relation has been almost fully covered and provided by the Islamic injunctions. As mentioned previously, Shari'a law is a section of the Islamic religion that deals with legal systems and regulations imposed on all people under the constitution of an Islamic government. It covers all types of legal regulations from criminal to public to civil to contracts, including commercial law.⁴⁸

Although the main sources of Islamic law have not covered all aspects of a typical legal system, many scholars and judges throughout the history of Islam have added much legislation to the Shari'a law out of their knowledge and understanding of Qur'anic and prophetic teachings, which consist of various forms, including qiyas, ijma and other sorts of ijtihad.⁴⁹

4.6 Why does Shari'a law concentrate on consumers and what sort of protection it provides?

Nowadays, cases related to consumers and consumption have taken a prominent place in the schedules and local and international conferences of governments throughout the world; however, it has been largely neglected in the Islamic world even though it was mentioned in Shari'a law specifically in Qur'anic text and the Prophet Mohammed's [PBUH] teachings

⁴⁷ - See Rankin, B. and Gateshill, P. (1992), *Ethics and Religions*, Longman, pp 5-7.

⁴⁸ - See Al-Ahwani, H. (1998), *hemaiyat al-Mustahlik fi Etaar al-ndhariyah al-A'mah Il-aqed*, Nadwat hemaiyat almustahlik fi al-Shari'ah wa al-Qanon, U.A.E university, p 2.

⁴⁹ - See Ghahwagi, F. (2008), *Dhaman oyub al-mabee'a*, Egypt, Dar al-kutub al-Qanonyah, pp 6-8.

1,400 years ago⁵⁰ as most consumer protection regulations were adopted from other developed countries in the beginning of this century and not extracted from Islamic teachings.⁵¹

Nevertheless, the area of consumer protection has received great attention under Islamic teachings due to its direct effects on consumers who might otherwise fall victim to many types of tricks, such as fraud, monopolization of goods, and the hiding of defects in some goods, which may persuade the consumer to purchase goods and services upon misleading information provided by the traders.⁵² For all of the reasons mentioned above, Shari'a law has given consumer protection high concentration and consideration and it has stimulated traders and encouraged them to follow a permitted type of trade as a means of income (*halal*).⁵³ Al-Awneh has pointed out that Islamic teaching, by encouraging individuals to engage in *halal* types of businesses, has protected the consumer indirectly who is the main part of business circulation. He added that Qura'nic texts motivate individuals to act with high self-efficacy for their society.⁵⁴ Individuals' self-efficacy promotes the flourishing of business, and consequently maintains the protection of consumers' rights and reduces government

⁵⁰ - See Oudah, A. (1986), *al-Tashree'a al-Jena'ai al-Islami muqarnan bi-lwadhaey*, mouasasat Alresalah. P 24; Al-Gharni, A. (2006), *al-Hesbah Fi al-Madhai wa al-Hadher 'baiyen thabat alahdaf wa tattwer alisloob'*, 2nd edition, maktabat alroshed. p 4; Ibrahim, A. (2007), *Hemaiyat Al-Mustahlik 'Dirasah Muqarenah'*, First edition, Manshorat al-Halabi. p 32; Al-Sharnabasi R., 2009, Op. Cit., p 7

⁵¹ - See Obaidat, M. (2008), *Hoqooq al-Mustahlik Wa Dhaherat al-Qish al-Tijari*, Published in 'Hemaiyat al-Mustahlik Wa Mukafahat al-Ghish al-Tejari Fi al-Dowal al-Arabiyah', almunadhamah alarabiyah II-tanmiyah aledariyah, dar alkutub almasriyah, Egypt; Cario. p 83; Rabah, G. (2011), *Hemaiyat Al-mustahlik Al-jadeed 'al-Mabada', al-Wasa'el, wa al-Mulahagah*, 2nd edition, Lebanon; Beirut, Maktabat zain alhuqoqiyah. pp 11-16; Morris, D. and Al-Dabbagh, M. (2004), *The development of consumer protection in Saudi Arabia*, International Journal of Consumer Studies, Vol. 28, No. 1, pp 2-13. p 7.

⁵² - See Zakaria, F. (2005), *Dhabt al-Jawdaj Wa Hemaiyat al-Mustahlik*, Jordan: Amman, Dar Osamah, p 12.

⁵³ - 'Halal' is an Arabic term designating any object or action which is permissible to use or engage in, according to Islamic law and custom. In Islam, faith, or *iman*, is the basic motivating factor for believers, and it is this that determines conscience. Hence, business decisions are guided by *iman*, which in practice means following shariah law, and engaging in what is halal, or permitted sorts of businesses, and avoiding that which is haram, or forbidden: see: Wilson, R. (2006), *Islam and Business*, International Business Review, Vol. 48, No. 1, pp 109-123, p 113.

⁵⁴ - See Al-Awneh, S. (1998), *Human motivation: An Islamic perspective*, American Journal of Islamic Social Sciences, Vol. 15, No.4, pp 19-39, p 24.

intervention.⁵⁵ Although there has been relatively little work on marketing from an Islamic perspective, it has been suggested that a value maximization approach should be adopted, stressing the value of the products offered from a social perspective and not merely in terms of monetary value for the purchaser.⁵⁶

Economic activity in the Islamic view is outlined as follows: the entire circle of economic activity covers not only the social individual but also individuals with a religious bent.⁵⁷ In their study on the application of Shari'a law to consumer protection in Saudi Arabia, Al-Dabbagh and Morris have mentioned that Islam stresses duties rather than rights; this assurance is a major distinction with many Western approaches to consumer regulation which focus on consumer charters or catalogues of rights. They added that the logic behind the Islamic approach is that if everyone fulfils their duties, then the blind pursuit of self-interest is held in check and the rights of all are protected. Thus, Islamic law makes no real distinction between the parties to a contract, at least in terms of responsibility for telling the truth.⁵⁸

The next section will indicate some aspects of consumer protection that have been covered and were cited in the Holy Qur'an and the teachings of Prophet Mohammed [PBUH], which has indicated and ensured the importance of consumer protection in Shari'a law.⁵⁹ Those Islamic teachings have covered different scopes of consumer protection to establish a level of

⁵⁵ - Noordin Sopiee and Rozali Mohamed Ali put it aptly when they said that "Laws and regulations do play an important part in curbing excesses, but can never entirely replace ethical-driven responsibility, transparency and accountability exercised through discipline and self-regulation" quoted in; Abeng, T. (1997), *Business Ethics in Islamic Context: Perspectives of a Muslim Business*, Business Ethics Quarterly, Vol. 7, No. 3, pp 47-54, pp 47-48, See also; Khan, K. and Aftab, S. (2000), *Consumer Protection In Islam: The case of Pakistan; monopoly control authority*, Vol. 39 issue 4, Blackwell Publishers Ltd, University of Adelaide and Flinders University of South Australia, pp 484- 485; Rabah G., 2011, Op. Cit., p 189.

⁵⁶ - See Saeed, M., Ahmed, Z. and Mukhtar, S. (2001), *International Marketing Ethics from an Islamic Perspective: A value-maximization Approach*, Journal of Business Ethics, Vol. 32, No. 2, pp 127-142, p 138

⁵⁷ - Morris, D. and Al Dabbagh, M., 2004, Op. Cit., p 3.

⁵⁸ - Ibid, at pp 3-4.

⁵⁹ - See Al-Razeen, R. (2008), *hemaiyat al-mustahlik min Al-ghishh al-tijaari fi al-shari'ah al-islamiyah*, Nadwat hemaiyat almustahlik Wa mukafaht alghishh altijaari, by Arab Organization for Administrative Development. pp 90-91.

assurance among consumers. It will also indicate the ability of such teachings to monitor markets effectively.

4.6.1 Islamic Teaching on Fair Contracts

Shari'a law has dealt with consumer protection from different perspectives, as it highlighted which elements are most pertinent to consumer protection by concentrating on the mutual consent of the parties, transparency in dealings, and fulfilment of their promises, agreements and contracts. Examples of such verses prove the emphasis of the Qur'anic texts and Teachings of the Prophet Mohammed [PBUH] on the importance of fair transactions. For instance:

*{O ye who believe! Eat not up your property among yourselves in vanities: But let there be amongst you Traffic and trade by mutual good will.}*⁶⁰

*{And do not eat up your property among yourselves for vanities, nor use it as bait for the judges, with intent that ye may eat up wrongfully and knowingly a little of (other) people's property.}*⁶¹

Both verses urge and encourage people in the Islamic community to work on permissible types of trade. Both verses also argue that the traders must avoid forbidden transactions and not sell fake or inferior goods.

Muslim scholars⁶² have stressed this point as they believe that the main aim of conducting business under Islamic teaching is for traders to provide goods to consumers who want to

⁶⁰ - See The Holy Qur'an 4:29

⁶¹ - See The Holy Qur'an 2:188

meet their basic needs and to encourage fair trade among the people. Therefore, Muslim traders have to follow these directives which guide their trade under the rules of Islam.

Additionally, Shari'a law has concentrated on the mutual consent of the parties, which means that it protects consumers even in the very initial steps, such as the formation of the contract. It has focused on the will of the parties since 1,400 years ago. This has been mentioned in the Qur'anic injunction which stated: *{O you who believe! do not devour your property among yourselves falsely, except that it be traded by your mutual consent.}*⁶³ This verse confirms that any agreement or contract established between parties must contain two main conditions: first, the mutual consent of the parties; and second, if there is any kind of fraud, pressure or misstatement exercised by one of the parties, then the contract will be abolished directly.⁶⁴

Moreover, Shari'a law has emphasized that all contracts must be understandable and clear for all parties, so that if there has been any type of fraud or ambiguity in an agreement or contract, the consumer has the right to cancel the contract as a consequence. It also has encouraged the parties to record all deals in front of witnesses rather than depending on word-of-mouth contract. This decreases uncertainty between parties and eases judgment.⁶⁵ These procedures are mentioned in the 'debt verse' and are enforced under Shari'a law to

⁶²- See Al-Nadawi, A. (1983), *Estadhero al-Niyah Fi Amalokm*, majalat al-eqtesad al-islami, aladad 38, pp 9-10; Qahaf, M. (1984), *al-Nidham al-Islami al-Iqtesadi 'nadhrah a'amah'*, majmo'at maqalat fi kitab ro'a fi al-nedham al-iqtesadi al-islami, Editor; Saleh Karkar, 1st edition, Tunis, p 40; Al-Zarqa'a, M. (1980), *Seiyaghah Islamiyah Min Dalet al-Maslahah al-Ijtemaiyah*, baheth manshor fi kitab al-eqtesad al-islami, Editor: Mohammed Saqer, 1st edition, esdar al-markez al-alami le'abhath al-iqtesadi al-islami, pp 174-175; Al-Asqalani, A. (2000), *Fateh al-Bari Fi Shareh al-Bukhari*, Part 9, 1st edition, Dar al-Salam, p 539.

⁶³- See The Holy Qur'an 4:29

⁶⁴- See Husain, A. (2009), *Contract in Islamic Commercial and Their Application in Modern Islamic Financial System*, <http://gific.blogspot.com/2008/09/contract-in-islamic-commercial-and.html>, accessed date: 28/04/2009.

⁶⁵- Morris, D. and AlDabbagh M., 2004, Op. Cit., p 4.

protect consumers' rights in deferred transactions to ensure the amount paid by consumers. The aim of the debt verse is to provide an ideal economic climate based on trust.⁶⁶

Furthermore, Shari'a law after focusing on the importance of the clarity and transparency of contracts and agreements urges and orders all Muslims to fulfill their promises toward other parties. There is much evidence in the Qur'an texts and Sunna teachings of the importance of the fulfilling those promises. An example from the Qur'anic injunctions has stated that {O ye who believe! fulfill (all) obligations}⁶⁷ and it also stated that {*and draw not near to the property of the orphan except in a goodly way till he attains his maturity and fulfill the promise; surely (every) promise shall be questioned*}.⁶⁸ Another example from Sunna reported that Prophet Mohammed said: *(There are four signs for hypocrite: These are: (1) Whenever he is entrusted, he betrays; (2) whenever he speaks, he tells a lie; (3) whenever he makes a covenant, he proves treacherous; and (4) whenever he quarrels, he behaves in a very imprudent, evil and insulting manner)*.⁶⁹ The four Islamic legal Schools⁷⁰ emphasize the importance of Islamic teaching in ensuring fairness for the both parties, and they stress the

⁶⁶ - See Omran, A. (1986), *Hemaiyat al-Mustahilk athn'a takween alaqed*, Egypt: Alexandria, al-ma'arif press, p 11; Babli, M. (1989), *al-Kasib wa alinfaq wa Adalat al-tawzee'a fi al-mujtama' al-islami*, 1st ed, Saudi Arabia: Riyadh, Dar Al-Khani, pp 81-82; For more illustration, see The Holy Qur'an 2:282 debt verse stated that: {O you who believe! when you deal with each other in contracting a debt for a fixed time, then write it down; and let a scribe write it down between you with fairness; and the scribe should not refuse to write as Allah has taught him, so he should write; and let him who owes the debt dictate, and he should be careful of (his duty to) Allah, his Lord, and not diminish anything from it; but if he who owes the debt is unsound in understanding, or weak, or (if) he is not able to dictate himself, let his guardian dictate with fairness; and call in to witness from among your men two witnesses; but if there are not two men, then one man and two women from among those whom you choose to be witnesses, so that if one of the two errs, the second of the two may remind the other; and the witnesses should not refuse when they are summoned; and be not averse to writing it (whether it is) small or large, with the time of its falling due; this is more equitable in the sight of Allah and assures greater accuracy in testimony, and the nearest (way) that you may not entertain doubts (afterwards), except when it is ready merchandise which you give and take among yourselves from hand to hand, then there is no blame on you in not writing it down; and have witnesses when you barter with one another, and let no harm be done to the scribe or to the witness; and if you do (it) then surely it will be a transgression in you, and be careful of (your duty) to Allah, Allah teaches you, and Allah knows all things}

⁶⁷ - The Holy Qur'an 5:1

⁶⁸ - The Holy Qur'an 17:34

⁶⁹ - See Al-Zubaidi, Z. (1994), *Mukhtassar Sahih Bukhari*, Translated by Muhammad Khan, Vol 1, book 2, hadith 32, Maktba dar-us-salam

⁷⁰ - Hanbali, Shafi'i, Maliki and Hanafi School

point that “who wants to trade has to learn the trade provisions and conditions of contracts and the right and unfair contract according to Shari’a law.”⁷¹

4.6.2 Islamic Teaching in case of weights and measuring

The Qur’anic texts and Sunna teachings have addressed different aspects of consumer protection, including the importance of precision in the exactness in weights and related measures. Muslims, accordingly, have to follow these obligations and must not change or manipulate any weights and measures. As when, for instance, a seller assures the buyer that he bought the agreed quantity without any difference in weight, though in fact he has bought less,⁷² the holy Qur’an states: *{Woe to those that deal in fraud, Those who, when they have to receive by measure from men, exact full measure, But when they have to give by measure or weight to men, give less than due}*.⁷³

Some Muslim scholars have argued that the contract must be terminated unconditionally regardless of whether the fraud was small or huge.⁷⁴ Whereas, most Muslim scholars agree that only large manipulation of weights and measures requires the termination of the contract, and if the manipulation is simple then the consumer lacks the right to terminate the contract.⁷⁵

The researcher agrees with first opinion – namely, that the contract must be terminated without distinction whether the fraud was small or huge – to preserve consumers’ right to

⁷¹- See Al-Nawawi, M. (2007), *al-Majmoo’a Shareh al-mathhab*, editor: M. almutee’ai, Part 9, 1st edition, dar a’alem alkitab, p 162; Al-Ghazali, M., *Ehiya’a Aloom Al-Deen*, dar al-ma’refah, Part 2, Lebanon; Beirut. p 66.

⁷²- Al-Razeen R., 2008, Op. Cit., p 94.

⁷³ - The Holy Qur’an 83:1-3

⁷⁴ - See Baik, A. (1998), *al-Mu’amalat al-Shari’iyah al-Maliyah*, 1st edition, dar al-fiker alarabi, p 90; Shahatah, S., *al-Nadhariyah al-A’amah Fi al-Shar’iyah al-Islamiyah*, matba’t al-e’atemad, Egypt, p 155.

⁷⁵ - See Al-Qurah-daqi, A. (2002), *Mabda’ al-Redha Fi al-Aqood*, 1st edition, dar al-basha’er al-islamiyah, p 732; Shalabi, M. (1985), *al-Madkhal Fi al-Ta’areef Bil-fiqh al-Islami wa qawa’ed al-Milkiyah wa al-Aqood feeh*, 1st edition, dar al-nadhah al-arabiyah, p 589; Al-Sabouni, A. (1996), *al-Madkhal Lderasat al-Tashree’a al-Islami*, 1st edition, PART 2, Jama’at Halab, Syria, p 565; Al-Muhamsani, S. (1983), *al-Nadhariyah al-Amah Ll-mujebat Fi al-Shari’iyah al-Islamiyah*, 3rd edition, Part 1, dar al-alam llmaliyeen, p 435.

choose and to be informed, which was indicated in the United Nations guidelines for consumer protection,⁷⁶ and to stop encouraging such traders, to engage in unjust enrichment. The Shari'a law has followed a hierarchical system in punishing offenders by advising and warning traders against cheating from the beginning. If a trader repeats same act again, the authorised person who controls and supervises the market must defame the trader in order to protect the consumers.⁷⁷

Furthermore, Shari'a law has emphasized on other types of manipulation and the prohibition of adversarial brokering. Moreover, The Shari'a has prohibited some transactions that involve uncertainty, impure or spoiled products, sale or purchase of stolen property, and monopoly over essential commodities.⁷⁸

4.6.3 Islamic Teaching on Monopoly

Another side of consumer protection provided under Shari'a law forbids monopolies of goods and essential commodities. Therefore, all sorts of monopolies have been given the utmost consideration under Shari'a law for two reasons. Firstly, they cause great harm to the national economy, and secondly to encourage the spirit of competition among traders based on justice, equality and fairness in transactions.⁷⁹ The main goal of the traders who rely on monopoly is to gain the highest profit via illegal transactions, which can come in various forms, such as

⁷⁶- See; *United Nation Guideline for Consumer Protection 'as expanded in 1999*, (2003), Department of Economic and Social Affairs, available at: http://www.un.org/esa/sustdev/publications/consumption_en.pdf, accessed date 15/11/2011.

⁷⁷- See Al-Muqari, A. (2007), *Nafah al-Tayeb fi Qusen al-Andalos*, Editor: Ahmed Mahdali, 1st edition, Part 1, alhai'ah almusriyah ala'mah II-kitab, p 203; Al-Sheizari, A. (1981), *Nehaiyat al-Rutbah Fi Talab al-Hisbah*, dar althaqafah II-teba'ah wa alnasher, p 109; Al-Qarashi, M. (2001), *Ma'alem al-Qurbah Fi Ahkam al-Hisbah*, Editor: M. Sha'ban and S. Al-Mute'ei, dar alkitob alelmiyah, p 195; Al-Mawardi, A. (2006), *al-A'hkam al-Sultaniyah*, 1st edition, Dar alkitob alelmiyah, p 227; Al-Samara'I, H. (2004), *'al-Mu'asasat al-Edariyah Fi al-Dawalah al-Abasiyah*, Dar alfiker alarabi, Lebanon; Beirut, p 331.

⁷⁸- See Abdah, M. (2002), *Hemaiyat al-Mustahlik fi al-fiqh al-eqtasadi al-islami*, 1st ed, Majdalawi press. pp 182-265; Al-Razeen R., 2008, Op. Cit., pp 90-98; Al-Sharnabasi R., 2009, Op.Cit., pp 35-78

⁷⁹- See Afar, M. (1985), *al-Iqtasad al-Islami*, 1st edition, Part 1, dar albayan alarabi, p 167; Abdul-Rasool, A. (1998), *al-Mabad'a al-Iqtasadiyah fi al-Islam*, 1st edition, dar alfiker alarabi, Egypt; Cairo, p 103.

artificial price hikes and controlling of commodities under black markets.⁸⁰ As a result, the Qur'anic texts and Sunna teachings have addressed monopolists with various types of punishments. As it has been reported, *Omar binu'l-Khattab*⁸¹ heard Prophet Mohammed [PBUH] say that (*Whoever stores up the food of Muslims in order to obtain excessive prices, may God smite him with leprosy and bankruptcy*).⁸²

Muslim jurists remain divided on this issue into two parties. The first party – with which the researcher agrees – (i.e., Hanbali, Shafi'i and Hanafi) believes that monopoly is religiously permissible, as the trader has a clear right to sell goods or services that he owns at a price appropriate to its value, as long as it does not include damage or injustice to the general population. In other words, any sort of monopoly practised by traders which led to harm or deprive consumers of any necessary goods or services in order to gain high profits as a result is forbidden (*haram*). They also believe that monopoly is a type of oppression, as they think that traders in this case violate a key right of consumer by stocking goods.⁸³ Whereas, on the other side, the second party believes that monopolies on necessary goods should be prohibited although is allowed on services as they believe that every person has authority over his own assets.⁸⁴

Such protection which has been provided for consumers by Islamic teachings aims to meet the needs of society and protect them from the greed of traders.

⁸⁰- See Al-Bustani, B. (2009), *Muheet al-Muheet*, 1st edition, dar al-kutob al-ilmiah, p 438 ; Abdah M., 2002, Op. Cit., pp 198-201

⁸¹- He was the third leader for Muslims after Prophet Mohammed [PBUH] and Abu-Baker.

⁸²- See Al-Shawkani, M. (2002), *Naile alawtaar min Ahadeith saiyed al-akhiyaar*, 1st edition, Part 5, Dar al-Kitaab al-Arabi, p 249.

⁸³- See Al-Kasani, A. (2000), *Badaa'a' al-Snaa'a' fi trtib al-Shraa'a'*, Editor: Mohammed Halabi, 1st edition, Part 5, dar al-ma'rafah, p 129; Al-Turmozi, M. (2000), *al-Jam'a al-Saheeh*, Editor: Ahmad shaker, Part 3, dar al-kutob al-ilmiah, p 567; Al-Razi, F. (2000), *al-Tfsir al-Kbir A'ou Mfatih al-Ghib*, 1st edition, Part 23, dar al-kutob al-ilmiah, p 25; Hanbal, A. (2008), *Masnad al-Emam Ahmad Bin Hanbal*, 1st edition, Part 2, dar al-kutob al-ilmiah, p 33.

⁸⁴- See Al-Dowri, Q. (2000), *al-Ihtkar Wa'tharh fi al-Fiqh al-Islami*, 1st edition, dar al-furqan, p 73; Al-Nawawi, Y. (2006), *Roudhat al-Talbin Wa'mdah al-Mftin*, Editor: Khalil Sheha, 1st edition, Part 5, dar alma'rafah, p 411.

4.6.4 Islamic Teaching on Fraudulent Sales

Islam has forbidden any dealings that may involve any sort of fraudulence whether at the time of purchasing or after. In Shari' law, there are many types of fraudulence, and it stresses the most common kind of fraud – namely, adding or mixing goods. For more illustration, the seller in this case may mix or add the product he wants to sell with another material for two reasons: first, to secretly alter the weight of the goods sold; and second, to improve spoiled goods by selling them with high-quality products.⁸⁵ Therefore, the teachings of Prophet Mohammed [PBUH] prohibit such transactions and clear evidence has been provided based on the experience of walking in the markets (*“The Prophet Mohammed [PBUH] happened to pass by a heap of eatables (corn). He thrust his hand in that (heap) and his fingers were moistened. He said to the owner of the heap of eatable (corn), ‘What is this?’ ‘Messenger of Allah, these have been drenched by rainfall’. He (the Prophet) remarked ‘Why did you not place this (the drenched part of the heap) over other eatables so that the people could see it? He who deceives is not of me (is not my follower)’”*).⁸⁶

Islamic laws have prohibited any uncertain deal that depends on unclear and speculation conditions, as has been mentioned before. Therefore, Shari'a law emphasizes two main conditions that must be involved in any transaction: first, the mutual consent of the parties, and second, if there any kind of fraud, pressure or misadvertisement has been exercised on the consumer, and then the transaction must be cancelled directly.⁸⁷ Therefore, transactions that contain uncertain goods or those which are in some cases not yet existent have been strongly prohibited in Shari'a law as they may lead to someone being able to amass wealth at the expense of others if by chance those goods are destroyed before consumers receive them.

⁸⁵ - Al-Razeen R., 2008, Op. Cit., pp 92-93.

⁸⁶ - See Al-Hajaj, M. (1993), *Sahih Muslim*, (Ed) Mohammed F. Abdul-baqi, Lebanon, Dar al-Kutib al-elmiyah. Hadith No. 0164.

⁸⁷ - Husain A., 2009, *Contract in Islamic Commercial and Their Application in Modern Islamic Financial System*, Op. Cit.

For example, the *hadith* has provided that Prophet Mohammed [PBUH] (“*forbade the sale of fruits till they are almost ripe. Anas was asked what is meant by ‘are almost ripe’. He replied, ‘Till they become red’. Pro [PBUH] further said, ‘If Allah spoiled the fruits, what right would one have to take the money of one’s brother (i.e., other people)’*”).⁸⁸ Another example of such protection against fraud and fake products has been provided by historians who state that during caliphate *Omar binu'l-Khattab*, a commercial fraud case arose in the market. He ordered the punishment of the trader who was selling milk diluted with water, and he spilt the milk to protect the consumers who would not know the relative quantities of milk and water.⁸⁹

Most Muslim scholars agree that this type of transaction between the trader and consumers is prohibited. They believe that this type of contract leads to conflict between sellers and consumers and lead to the extortion of money from people, which contradicts the main goals of Islam in practising business.⁹⁰

On the other hand, Shari’a law encourages free trade and urges traders and manufacturers to provide products and goods of high quality and at fair prices without any false information.⁹¹ Through their good behaviour toward the consumers, they will receive rewards from God in this world and the hereafter. This reward has been ensured by Prophet Mohammed [PBUH] when he says that: (*God said: God loves best those who hasten to worship*).⁹²

⁸⁸ - Al-Zubaidi Z., 1994, Op. Cit., Hadith No. 403

⁸⁹ - Abdah M., 2002, Op. Cit., pp 219-220.

⁹⁰ - See Al-Sheirazi, I. (1996), *al-Muhathb Fi fiqh al-Imam al-Shafa’i*, Editor: Mohammed Al-Zuhaili, 1st edition, Part 1, alsar alshamiyah Il-teba’ah, p 62; Al-Qurtubi, Y. (2006), *al-Kafi Fi Fiqh A’hl al-Mdinah al-Malki*, 1st edition, dar alktub alelmiyah, p 10; Al-Kasani A., 2000, Op. Cit., p 5, p 138.

⁹¹ - Zakaria F., 2005, Op. Cit., p 12.

⁹² - See Al-Albani, M. (1985), *Selselat Al ahadeith Al sahiha*, 4th edition, Part 3, Al-Maktib Alislami. Hadith No. 1113.

4.6.5 Islamic Teaching on Usury (*Riba*)

One of the issues that have been dealt with under Shari'a law was usury. Islamic teachings have forbidden traders from increasing their capital by lending money on interest – i.e., usury which known in Shari'a law as (*riba*). This sort of business contradicts the Islamic teachings which believe that any trader may encounter profit or loss by practicing business in normal situations as in any type of business there is a possibility of losing or gaining money; however, in usury, there is no fairness as the debtor is always in a positive position.⁹³ The Qur'anic teachings have forbidden such type of business when God say that any person dealing with usury is the enemy of God.⁹⁴ For instance, *“Those who devour usury will not stand except as stand one whom the Evil one by his touch Hath driven to madness. That is because they say: ‘Trade is like usury’, but Allah hath permitted trade and forbidden usury. Those who after receiving direction from their Lord, desist, shall be pardoned for the past; their case is for Allah (to judge); but those who repeat (The offence) are companions of the Fire: They will abide therein (for ever) Allah will deprive usury of all blessing, but will give increase for deeds of charity: For He loveth not creatures ungrateful and wicked”*.⁹⁵

Muslim Jurists have divided usury into two types: first, deferred usury, which was mentioned in the Qur'anic text,⁹⁶ when a person borrows money from another and both parties agree on

⁹³ - See Al-Azhari, S. (2009), *al-Thamar al-Dani Fi Taqreb al-Ma'ani Lrsalah A'bi-zid al-Qirwani*, Editor: M. Abdul-Salam, 1st edition, dar ibn alhaitham, p 665; Al-Zaila'i, O. (2000), *Tbiien al-Hqaa'q Sharh Knz al-Daqaq'q*, Editor: Mohammed Enaiyah, 1st edition, Part 4, dar al kutub alelmiyah, p 131; Taylor, T. and Evans, J. (1987), *Islamic Banking and the Prohibition of Usury in Western Economic Thought*, National Westminster Bank Quarterly Review, pp 15-27, p 21; Hamaish, A. (2004), *Hemaiyat al-Mustahlik Min Mandhoor Islami*, U.A.E: Sharjah, Sharjah University press. pp 114-115.

⁹⁴ - Al-Sharnabasi R., 2009, Op. Cit., pp 125-128.

⁹⁵ - The Holy Qur'an 2:275-276.

⁹⁶ - {O you who have believed, do not consume usury, doubled and multiplied, but fear Allah that you may be successful} the Holy Qur'an, 3:130.

some interest on money borrowed without any service; and second, commodity exchanges in unequal quantities, which are prohibited in the Sunna.⁹⁷

Most Muslim scholars have agreed on the prohibition of these two types of usury as they believe that usury is tool of oppression and a means to unjustly take others' money by exploiting their consumers' needs and circumstances⁹⁸.

Some modern Muslim jurists, such as Abduh, Shaltut, Tantawi and Al-Qaradhawi have tried to legitimize bank interest. These modernists proposed a number of legal arguments that have been heavily criticized for using false legal reasoning, mixing *hikma* and *illah*, selective historical readings of the commercial contracts at the time of Prophet Muhammad [PBUH], and misapplying principles.⁹⁹ However, their argument was based on the claim that most current businesses activities did not exist previously, such as mortgages. They added that an interest rate is like a price in the modern economy. It is used to regulate the demand of new finance situation, and if the interest rate were zero, then the world would be faced with

⁹⁷- See Ibn Mufleh, I. (1997), *al-Mubda' Sharh al-muqna'*, Editor: M. Isma'eel, Part 4, dar alkitab alelmiyah, p 127; Ibn Qudamah, A. (1985), *al-Mughani L-Ibn Qudamah*, 1st edition, Part 4, dar alfiker, Lebanon; Beirut, p 25.

⁹⁸- See Daraz, M. (1987), *al-Riba Fi Nadhr al-Qanoun al-Islami*, 1st edition, alaser alhadeeth lnasher, p 12; Al-Ameen, H. (1983), *al-Wade'a al-Masrefiyah Wa Estithmareha Fi al-Islam*, 1st edition, dar alshoroq, p 283; Abu-Zahrah, M. (1985), *Tahreem al-Riba Tandheem Iqtesadi*, aldar alsuadiyah lnasher, p 35; Al-Nabhan, M. (1978) *Mafhoom al-Riba Fi Dhel al-Tataworat al-Iqtesadiyah wa al-Ejtema'iyah al-Mua'serah*, 1st edition, dar alrebat, p 105; Al-Abadi, A. (2000), *al-Mulkiah Fi al-Shria'ah al-Islamiyah*, 1st edition, mua'sasat alresalah llteba'ah wa lnasher, pp 40-41; Abdah M., 2002, Op. Cit., pp 185-188.

⁹⁹- In their opinion, Stocks and Bonds are necessary for both individuals and communities and applying small rates by banks is a necessity of modern finance and necessary for efficient allocation of resources. For more, see; Al-Qaradhawi, Y. (2009), *Fataowa Moa'asrah*, Part 1, 11th edition, dar alqalam ll-tourath, pp 609-611; Usmani, M. (2000), *The historic judgment on interest delivered in the Supreme Court of Pakistan*, 1st edition, Published by Idaratul-Ma'arif, Available at, Darul Ishaat in Karachi; Siddiqi, M. (2004), *Riba, Bank Interest and the Rational of its Prohibition*, Islamic Research and Training Institute, ISBN 9960-32-145-2, Saudi Arabia; Jeddah; Shaltut, M. (2004), *al-Fatawa: Dirasah limushkilat al-Muslim al-Mua'ser Fi Hayiateh al-Youmiyah al-A'amah*, 1st edition, dar alshoroq, p 323; Rodinson, M. (1968), *al-Islam Wa al-Ra'smaliah*, Editor and Translator: Nazeeh Al-Hakeem, 1st edition, dar altaleea'ah llteba'ah wa lnasher. P 50; Tantawi, M. (1998), *hemaiyat al-Mustahlik fi Etaar al-ndhariyah al-A'mah ll-aqed*, Nadwat hemaiyat almustahlik fi al-Shari'ah wa al-Qanon, UAE University.

limited supply and infinite demand, and how would credit be allocated in such a situation as that?¹⁰⁰

However, in order to ensure that economic activity and growth can continue, Islamic legislation has developed different contractual forms for advancing funds for profitable investment that do not violate the prohibition of interest, which known as *murabaha*.¹⁰¹ However, this type of contract was also criticised by Al-Rayami, who has claimed that although the main aim from establishing *murabaha* is to ease the financial burden on consumers by reducing, fixing and making affordable rates, the current practice of *murabaha* has made no distinction between *murabaha* and usury as the current practice of *murabaha* is applied and exercised similarly to the usurious contracts.¹⁰²

Shari'a law also encourages traders to seek a permitted or legal type of business. Additionally, it imposes the requirement for perfection on its adherents while they are doing their job or practicing their own business, whether they were providing goods or services. It also commands them to sell or provide goods and services of high quality. For more explanation, Islam obligates the worker to perform the tasks which he has contracted to the best of his ability, but since individuals are endowed with different abilities and talents, it expects that their levels of productivity will differ.¹⁰³ Clear evidence is provided in the Islamic teaching when the Prophet says that “*if any of you undertakes to do any work, God*

¹⁰⁰ - Ibid

¹⁰¹ - Murabaha is a particular kind of sale, compliant with Shari'a teachings where the seller expressly mentions the cost he has incurred on the commodities for sale and sells it to another person by adding some profit or mark-up thereon which is known to the buyer. As the requirement includes an "honest declaration of cost" and must be different from Usury rates. See Al-Hamed, A. (2003), *Bai' al-Murabaha al-Amer be-Lshera*, 1st edition, Dar Balansiyah, Saudi Arabia, p 27; Lewison, M. (1999), *Conflicts of Interest? The Ethics of Usury*, Journal of Business Ethics, Vol. 22, No. 4, pp 327-339, DOI: 10.1023/A: 1006164904326, p 334; Syedain, H. (1989), *Counting on the Qur'an (Islamic System of Finance)*, Management Today, March, pp 104-109.

¹⁰² - See Al-Rayami, S. (2012), *Mutajarah... Bekalemah*, available at: <http://www.emaratalyoum.com/opinion/2012-01-03-1.450030>, accessed date 5/1/2012.

¹⁰³ - See Al-Azhari, M. (2001), *Tarshheed al-isthilak al-fardi Fi al-iqtasad alislami*, Egypt: Cairo, 1st ed, Dar al-salam, p 40; Al-Tabarani, S. (1999), *al-Mua'jam al-Awsat*, Part 1, Egypt: Cairo, Dar al-haramin, p 275.

loves to see him do it well and with efficiency”,¹⁰⁴ emphasizing the importance of work in Muslim life.

These previous Qur’anic texts and Sunna teachings comprised the theoretical part of the Shari’a law. The next section will illustrate the practical aspect of these injunctions and teachings. As it has been mentioned in the previous section that teachings of Prophet Mohammed [PBUH] were considered as a clarifying part of the injunctions of the Holy Qur’an, the teachings come in different forms, such as behaviors, sayings, and silent on some events and practices. The Prophet Mohammed [PBUH] has allocated a group of people who has been chosen regarding their knowledge, fairness, justice and morality to ensure proper application of consumer protection regulations that were provided in Shari’a law.

4.7 Economic supervisory system (*Hisba*) under Shari’a Law

To achieve sufficient implementation of the abovementioned teachings, an authority has been established to work under the name of "Economic Supervisory Authority" (*Hisba*) in order to enforce the adequate application and monitor markets and retailers.¹⁰⁵ It was a clear obligation under the Qur’anic text in verses 104 of Surra 3 of the Holy Qur’an that state: (*“Let there arise out of you a band of people inviting to all that is good, enjoining what is right, and forbidding what is wrong: They are the ones to attain felicity”*).¹⁰⁶ These verses indicate the direct command from God of the obligations on the Islamic societies to designate

¹⁰⁴ - See Al-Musoli, A. (2005), *Masnd A'bi-Yoa'la*, Editor: Khalil Sheha, 1st edition, Part 7, dar alma'refah II-teba'ah, p 349:4386; Al-Tabarani S., 1999, Op. Cit., P1, pp 275: 897; Hamaish A., 2004, Op. Cit., p 45.

¹⁰⁵ - Al-Sharnabasi R., 2009, Op. Cit., p 77.

¹⁰⁶ - The Holy Qur'an 3: 104

a group of people as an "authority" that is in charge of enforcing good manners and prohibiting sins.¹⁰⁷

Most Muslims scholars have agreed on a similar definition of *hisba*, which they define as “a group of people that have authority under the Shari’a law to command individuals to act in good manner and prohibit sins”.¹⁰⁸

From the viewpoint of the researcher, a suitable definition of *hisba* could be “an administrative control exercised by the state through special employees over individual’s activities in commercial fields for the dissemination of justice among the society according to the regulations of Shari’a law”. This definition gives authority to the State to select the members of this organization. It also combines religious authority as represented by Shari’a regulations and administrative authority, which is embodied by the State. This sort of combination enables the State to distribute consumer protection functions among its religious and executive powers.

4.7.1 Hisba Conditions and Duties

The duty of that authority was to nurture and grow in a structured manner over time. At some level, it covers commitments as to what nowadays could be called the Ministry of Health, Consumer Protection Department, Municipalities and Authority of Standards and Metrology.¹⁰⁹

¹⁰⁷ - Al-Sheizari A., 1981, Op. Cit., p 10; Hamaish A., 2004, Op. Cit., pp 229-230; Al-Gharni A., 2006, Op. Cit., p 1, pp 4-13.

¹⁰⁸ - See Al-Jawziyah, I. (2008), *al-tourq al-Hakimah Fi al-siyasah alshra’iyah*, 1st edition, dar Ibn hazem, p 345; Al-Hanbali, A. (1966), *Al-Ahkam As-Sultaniyyah*, 1st ed, Egypt, Cairo, matba’at Mustafa Alhalabi, p 384; Ibn Khaldoon, A. (2002), *Mugademat Ibn Khaldoon*, (Ed) Ahmad Al-zu’abi, 2nd edition, Dar al-arqam lIteba’ah, p 152.

¹⁰⁹ - See Ibn-Alekhwah, I. (2001), *Ma’alem alqurbah fi Ahkam al-Hisbah*, 1st ed, Dar Alkutib al-elmiyah, p 25.

An employee working for (Hisba) Economic Supervisory Authority must possess by several specific features:

- 1- Islam: In order to be fully aware of passages within the Qur'an and Sunna that deal with commerce.
- 2- Capacity: In order to be able to tolerate the legal responsibility.
- 3- Knowledge: In order to be fully aware of commercial transaction conditions and to preserve the community from fraud manipulators.
- 4- Justice and the ability to exercise his duty.¹¹⁰

There were several responsibilities placed on employees working for the Economic Supervisory Authority (hisba). One of these responsibilities is to monitor and control prices to prevent cheating and monopolies. They also have to concentrate on detail like measuring weights, quality, and cleanliness of tools used in butcheries.¹¹¹ Another responsibility is to seek support from other professionals like doctors, architects and experts to fulfill their duties in cases where their opinion is compulsory.

Another level of their responsibilities was to supervise the auditing of business and financial trades, in order to prevent usury (*riba*), gambling and any prohibited transactions. Furthermore, employees under the Economic Supervisory Authority will have to monitor the consistency between commercial ads and real promotion used by the trader, the goods and manufactories, the goods in the markets, their quality and the manner in which they were stored, thereby controlling it the quality of the products.

¹¹⁰ - See Al-Jasas, A. (2007), *A'hkam al-Qura'n Ll-jasas*, Editor: Abdul-Salam Shaeen, Part 2, dar al-kutub al-ilmiah, p 317; Al-Qurnatiy, M. (1979), *Al-quaneen Al-fiqhiyah*, Dar Al-elim Il-maliyeen, p 282; Al-Nawawi Y., 2006, Op. Cit., p 10, p 220.

¹¹¹- See Omer, Y. (1998), *Ketaab Ahkam al-Souq*, Editor: Mahmoud A. Maki, 1st edition, maktabat althaqafah aldeniyah, pp 107-108; Abdah M., 2002, Op. Cit., pp 319-323; Al-Abadi A., 2000, Op. Cit., p 2, pp 241-244; Al-Jawziyah I., 2008, Op. Cit., p 205.

This Economic Supervisory Authority has organized traders and professions into three categories of consideration:¹¹²

- 1- Professions requiring integrity, such as doctors and teachers, whose services affect people lives.
- 2- Professions requiring honesty assurance, such as goldsmiths.
- 3- Professions requiring quality and accuracy, such as manufacturers and carpenters.

Islam has realized the importance of honest trade and consumers' rights, protected them with many rules and regulations, and established a powerful system to create a society based on fairness, equality, and righteousness. It is the duty of the state to put legislation in place to control commercial advertisements so that consumers are not misguided by false promotions.¹¹³

4.7.1.1 Practical Application of the Hisba System in Saudi Arabia

Because Saudi Arabia is one of the leading countries that apply Shari'a law as a main source for legislation in all fields,¹¹⁴ it has adopted this model to enhance confidence in markets and ensure the sufficient application of these teachings by traders. Although the *hisba* system was adopted in Saudi Arabia to handle any illegal practices that contradict Shari'a law, the current implementation of this system is different from its previous role as exercised in the Islamic

¹¹² - See Abdul-Mone'am, H. (1988), *Deiwan al-Madhalem*, 2nd edition, dar aljeel ll-teba'ah wa alnasher. pp 215-216; Al-Shaibani, M. (1979), *Nedham al-Hukm Wa al-Edarah Fi al-Dawlah al-Islamiyah*, a'lem alkutub, Egypt, Cairo, pp 138-139; Al-Sharnabasi R., 2009, Op. Cit., p 83.

¹¹³ - See Ibn Taymiyah, T. (2005), *Fatawa Shikh al-islam Ibn-taymiyam*, (Ed) A. Al-baz and A. Al-jazaar, Dar al-Wafaa. p 84; Al-Gharni A., 2006, Op. Cit., pp 10-12; Hamaish A., 2004, Op. Cit., pp 230-231.

¹¹⁴ - The Basic laws of Saudi Arabia, Article 23 has stated that The state protects Islam; it implements its Shari'a; it orders people to do right and shun evil; it fulfills the duty regarding God's call.

model and has not been updated to suit current commercial transaction.¹¹⁵ Therefore, the current implementation of consumer protection in Saudi Arabia is no different from the situation in the UAE and may be worth further attention. Morris and Al Dabbagh,¹¹⁶ who conducted a study on the development of consumer protection in Saudi Arabia, they indicated the following:

- 1- This system contains within it some measures which are recognizable as consumer protection legislation but no coherent, codified body of law has been developed to safeguard consumers' rights and provide redress where they have suffered detriment.
- 2- Consumer protection as such does not feature prominently in Saudi Arabia's development plans or its government structure. Nor is promotion of consumer protection recognized as an important means of developing a modern, wealthy economy where raising quality is more important than increasing quantity of output.

Additionally, on the role of consumer protection associations, they mentioned that there are four factors that have inhibited the development of consumer 'voice' in Saudi Arabia:

- The lack of any government (or other) agency which has a goal to promote the interests of consumers;
- The absence of, or lack of publicity of, standards in many areas which makes it difficult for consumers to make cases for poor product performance;
- The absence of systematic enforcement of consumer regulations; and
- A reluctance on the part of many Saudi consumers to seek redress if they are dissatisfied.¹¹⁷

¹¹⁵ - See Al-Omer, F. (2003), *Muqadimah Fi Tareekh al-Iqtasad al-Islamy Wa Tatawouroh*, Islaimc Research and Training Institute, Vol. 62. p 386; Al-Bustawesi, I. (2011), *al-Maso'liyah Un al-Gheish Fi al-Sela' 'dirasah muqarenah bain alfiqh alislamy wa alqanoon altejari'*, Egypt, dar al kutub alqanonyah. p 299

¹¹⁶ - Morris, D. and Al Dabbagh M., 2004, Op. Cit., pp 2–13.

¹¹⁷ - Ibid, at p 11.

In this regard, Al-Kanhal has explained the absence of consumer voice within the Saudi community because of the government intervention in their role. He argued that one of important conditions and the fundamental basics that make an institution of civil society more effective is that it arises as a result of the will and the initiative of citizens, independently of authority and official bodies, and does not need approval. He added that current consumer associations do not have any independence in practicing their duties to protect consumers' needs effectively as such associations remain under the control of the government and face the threat of closure if their role exceeds the limit established by the government which never exceeds the level of community awareness.¹¹⁸

According to the previous findings, the current application of Islamic teachings toward consumer protection within Saudi Arabia, which is considered as the main country for the application of Shari'a law, is still weak and needs to be updated. To advance the current situation in Saudi Arabia, Ahemd Mosa, a Counsellor in the Ministry of Commerce in Saudi Arabia, has claimed that the first step toward securing consumer rights in Saudi Arabia is to issue and/or develop updated regulations and rules relating to consumer protection.¹¹⁹ On the same trend, Al-Omer has pointed out that without a clear and codified legislation based on the Islamic teachings, there will be difficulty in applying those teachings adequately, which will have a negative impact on consumers.¹²⁰

These facts lead to an overarching question: can the current situation of Shari'a law be a possible solution for the UAE government to tackle the challenges facing the application of consumer protection regulation?

¹¹⁸- See Al-Kanhal, A. (2010), *Saudi Consumer Protection Association governmental or civil?!*. (in Arabic) available at <http://www.aalkanhal.com/?p=506>, accessed date 10/1/2012.

¹¹⁹- See Mosa, A. (1982), *alhemaiyah alqanonyah llmustahlik fi almamlakah alarabiya alsoudiyah*, 1st edition, published by Institute of Public Administration. p 312.

¹²⁰- Al-Omer F., 2003, *Op. Cit.*, p 386.

4.8 Can the Current Situation of Shari'a law be a Possible Solution?

Despite the ability of Shari'a law to be flexible in the face of change, it is commonly believed that a codified system of law must be introduced to cover commerce and trade. However, it is important to see this as being compatible with, or at least unobjectionable to, Shari'a law rather than a deviation from it.¹²¹ This view has its origins in Ottoman¹²² law, which is itself based on French commercial law. The 1931 Ottoman Commercial Court legislation is a comprehensive system comprising more than 600 articles covering sea and land trade and all commercial transactions.¹²³ Therefore, the pressures which brought about these changes include the growth of international joint venture companies, the need to limit liability in order to encourage entrepreneurship, and the growing complexity of business operations. The issue here is not that the economy of Muslim countries suddenly became more open, it is that Muslims can no longer assume that everyone they dealt with was 'one of us'. Consequently, this system itself has buckled under the strain of the rapid development of the economy in most Islamic countries over the last 40 years or so.¹²⁴ Al-Omer foresaw the dangers of "traditional culture and values (Islamic teaching) being undermined by alien values and a spirit of materialism" (foreigner legislation) and noted that such issues could only be dealt with via a "well planned combination of cultural, economic, social, legislative and managerial solutions".¹²⁵ Morris and Al-Dabbagh have indicated that the enormous investment in major infrastructure projects and the rapid growth in the number and size of public and private companies have prompted many individuals and groups to draw upon

¹²¹- Al-Bustawesi I., 2011, Op. Cit., p 300; Khan, K. and Aftab S., 2000, Op. Cit., p 502; Morris, D. and Al-Dabbagh M., 2004, Op. Cit., pp 5-6.

¹²²- The Ottoman Empire was one of the largest and longest-lasting Muslim empires in history.

¹²³- Morris, D. and Al-Dabbagh M., 2004, Op. Cit., p 6.

¹²⁴- Al-Omer F., 2003, Op. Cit., p 386.

¹²⁵- Ibid, at p 386.

foreign jurisdictions when organizing their commercial activities; and confusion was the inevitable end result.¹²⁶

In addition to the factors mentioned above, Mannan has pointed out that numerous other factors affect the development of commercial law and consumer protection in Arab countries in general, and in Saudi Arabia in particular, where there is an awareness of the problems of reconciling traditional values and rapid economic change which led to imperfections of the market economy.¹²⁷ Similarly Chapra, in writing about the economic challenges facing Islam, mentioned that unfortunately because of a number of historical factors (e.g., the decadence of Muslims and their consequent subjugation by imperialist forces, both capitalist and socialist), there is a wide discrepancy between Shari'a law and actual practice in Muslim countries. Muslim society does not reflect the spiritual lustre of Islam and, in fact, among a vast majority of the society, there is not even an awareness of the necessary characteristics of Muslim or Islamic society.¹²⁸ The prime aim of the government is to uphold Islam and maintain associated cultural values".¹²⁹ Therefore, these cultural pressures need to be added to the policy of the government cooperating with international agencies and harmonizing trade activities through membership of, for example, the World Trade Organization. An example of how the desire to adopt international standards promoted Saudi domestic consumer protection legislation is provided by the Standards and Metrology Law of 1963. As its name suggests, this law stipulated that the metric system would become the standard in Saudi Arabia; however, it also included measures on the labelling of packaged goods, particularly for imported pre-packaged food, which represents the first time that mandatory labelling information has been included in Saudi Arabian legislation. Other 'consumer

¹²⁶ - Morris, D. and Al-Dabbagh M., 2004, Op. Cit., p 6.

¹²⁷ - See Mannan, M. (1986) *Islamic Economics: Theory and Practice*, revised edition, Hodder & Stoughton, London, p 285.

¹²⁸ - See Chapra, M. (1992) *Islam and the Economic Challenge*, The Islamic Foundation and The International Institute of Islamic Thought, Leicester, UK, p 9.

¹²⁹ - Most Arab Countries; constitutions have expressed that Islam is the main source of legislation.

protection' measures on untruthful advertising, labelling and misdescription of goods were contained in the Commercial Fraud Laws of 1961 and 1984, which updated the legal position with respect to fraudulent trading in general.¹³⁰ However, recent statistics indicate that around 80 per cent of electrical products in the Saudi market do not meet Saudi standard specifications.¹³¹ According to the Secretary General of Saudi Commercial Chamber Fahad Al-Sultan, the losses of the Kingdom of Saudi Arabia and national economy from commercial fraud and counterfeiting have reached 11 billion USD.¹³²

The percentages mentioned above show that all of these efforts are far meeting the needs of the current development in the legislation and production and mitigating the weaknesses in enforcement. Khan and Aftab have argued that most of these regulations need to be revised in order to harmonize with the current global trend and the rapid development in contracts and other business activities to cover these new fields. They have suggested that most Muslims countries should have Islamic institutions that can be used effectively in joint efforts to create a codified Shari'a law for consumer protection. They added that these Islamic institutions have to coordinate with the Ministry of Commerce and Ministry of Religious Affairs so that they can exchange their input regarding the framing of suitable legislation for consumers.¹³³

From the researcher's viewpoint, the current implementation of Shari'a law in countries that identify Shari'a law as a legal tool to tackle consumer rights infringement are very weak and need to be revised in order to establish codified legislation based on true Islamic teachings and harmonised with the development of international standards. Therefore, the current

¹³⁰ - Morris, D. and Al Dabbagh M., 2004, Op. Cit., p 6.

¹³¹ - See Al-Shohaidi, M. (2010), *41 Billion SAR is Saudi Arabia losses from Commercial Fraud*, published in 1/08/2010, available at: <http://www.ameinfo.com/ar-176616.html>, accessed date 07/01 /2012.

¹³² - See Al-Sultan, F. (2011), *Tukalef Al-iqtasad Al-Watani 16 Milyar Sanawyan*, published in 16/09/2010, available at: <http://www.esharh.net/?act=artc&id=4466>, accessed date 06/10/2011.

¹³³ - Khan, K. and Aftab S., 2000, Op. Cit., p 501.

model of Shari'a law is not a possible model for improving the UAE legislation on consumer protection.

4.9 Conclusion

Eventually, we can find that Islam as a religion consisted of four main sources – the Holy Qur'an and the Sunna, which are known as the primary or revealed sources; and legal analogy and consensus among Muslims jurists. The jurists gave to Islamic legislation a unique feature known as 'legal pluralism', which involves dozens of opinions being given by jurists through their own understanding for Qur'anic texts and the teachings of the Prophet Mohammed [PBUH].

Moreover, one of the main findings of this chapter is that *fiqh* – Islamic jurisprudence – has played an essential and dynamic role in developing Shari'a law, as it is endowed with the necessary methodology and resources to shape the contemporary realities of social changes. Islamic jurisprudence began to flourish several years or decades after the death of the Prophet Mohammad [PBUH], as the companions of the Prophet were depending entirely on the curriculum created and formulated by God and revealed to the Prophet Mohammed [PBUH]. However, as a result of neglecting Shari'a law after the death of all companions of Prophet Mohammed [PBUH], many changes have taken place in the customs and society of the Islamic world. However, there was no parallel development in the legal system that could establish the legislation in the country, which ultimately caused the backwardness of laws and not keep pace with the significant development in economic sector. Therefore, those huge changes had a negative effect on the development of Islamic jurisprudence to keep pace with those changes.

Recently, after the Arab spring, there has been a serious call for adopting Islamic Shari'a law as a model in Muslim societies. Some advantages that followed the revolution in terms of jurisprudential methodology included enriching the law, mechanisms and procedures that were formulated to improve the social situation in the Arab countries. The difference of opinion between the schools of jurisprudence was not a point of disagreement between the schools of law but, on the contrary, has helped the development of methodologies and judgments which spread at that time and gave the Islamic jurisprudence a unique feature known as "legal pluralism", whereby dozens of opinions are brought together to deal with different cases in different times.

As indicated in this chapter, an example of consumer protection has already been provided under Shari'a law, which provided Islamic societies a pathway to create such laws to preserve the rights of their consumers and traders. Unfortunately, the neglect for Shari'a law by the governments of Muslims countries, especially legal provisions that organise the commercial transaction within primary sources for several decades, has led governments to not take full advantage of those divine provisions that have acceptance by the majority of the UAE population.

To sum up the current situation of Shari'a law and its current implementation provides no solutions for the current problems that are facing the application of consumer protection regulations, Shari'a law could be a great path for the UAE government in the formulation of new laws or amending the current regulations for consumer protection if it was reviewed and updated to keep pace with the current development as it is the religion of most citizens living in the UAE.

The next chapter will examine the second model on which the government of the UAE can rely to achieve adequate enforcement for consumer protection regulations in the UAE. The

following chapter will examine the UK consumer protection regime as a possible model to amend the current UAE consumer protection regime.

Chapter Five

The United Kingdom Model on Consumer Protection

5.1 Introduction

The preceding chapter described the first model that UAE can rely on in developing consumer protection regime. The Islamic model discussed many weaknesses and difficulties of the application Shari'a law from being not codified and the shortcomings of its current implementation in some countries that follow and apply Shari'a law as a primary source for legislation. As noted in the Introduction, the ultimate objective of this study is to achieve the most proper regime and legal framework on consumer protection to protect consumers' rights and enable them to obtain adequate redress. This requires the search for a regulatory practice capable of settling some of these problems through the effective enforcement of existing regulations rather than the introduction of new ones.

This chapter examines the second available model of consumer protection – namely, the approach taken by the United Kingdom, which has a rich history in the consumer protection field that is covered in many books and studies.¹ This enrichment in legislation has affected the business atmosphere, as reflected by both consumers and traders, and has led to a qualitative leap by creating a confidential framework in consumer protection. Moreover, since the United Kingdom became a member of the European Economic Community (EEC) in 1973, many new laws have been adopted, especially in the field of consumer protection,

¹- See Oughton, D. and Lowry, J. (2000), *Consumer Law*, 2nd edition, Blackstone Press limited.; Howells, G. and Weatherill, S. (2005), *Consumer Protection Law*, 2nd edition, Published by Ashgate.; Macleod, J. (2007), *Consumer Sales Law*, second edition, Routledge-Cavendish; Hellwege, P. (2004), *Consumer Protection in Britain in Need of Reform*, The Cambridge Law Journal, Vol. 63, No. 3, pp 712-742; Garner, J. (1968), *The British Ombudsman*, The University of Toronto Law Journal, Vol. 18, No. 2, pp 158-164.; Ramsay, I. (2007), *Consumer law and policy 'text and Materials on regulating consumer markets'*, 2nd edition, Hart Publishing.

that are derived from obligations imposed by the Union.² Such commitment entails a major effort on the part of the authorities to achieve the dual goal of removing obstacles to trade among Member States and guaranteeing to all European consumers a uniform and mandatory degree of protection.³ Thus, this merging of UK regulations and European Directives has left the UK consumer protection regime to achieve a level at par with the best in terms of consumer rights with regard to sale of goods and services, access to justice through small claims court procedures, maintenance of product safety, provision of consumer advice, sponsoring of consumer advocacy at the policymaking level and investigating of markets that are not fit for consumers.⁴

This chapter attempts to explore the United Kingdom's experience in enforcing consumer protection through administration, legislation alternative dispute resolution, consumer associations and media, and its role in raising consumer awareness. This chapter will focus on these four channels and how the United Kingdom tackled the difficulties that consumers may face as a result of rogue traders infringing their rights. Then, the chapter will examine the role of consumer associations and media as supporting entities that educate consumers and protect their rights. Finally, the chapter will point to a number of issues that should be raised in order to enable the current UAE consumer protection regime to work more effectively.

²- For example, the CPR 2000 are based on the directive 97/7/EC of 20 May 1997 on the protection of consumers in respect of distance selling, Office Journal of Law 144, 04/06/1997 P. 0019 – 0027 and the CPR 1987 on the directive 85/577/EEC of 20 December 1985 to protect the consumer in respect of contracts negotiated away from business premises O.J.L. 372, 31/12/1985 P. 0031 – 0033. For more See; Tench, D. (1999), *Consumer Protection Legislation*, in R. John (ed), *The consumer Revolution 'redressing the balance'*, Hodder & Stoughton. p 95; Carroll, A. (2002), *Constitutional and Administrative law*, 2nd edition, Longman.p 65; Hellwege P., 2004, Op. Cit., p 713.

³- See Bourgoignie, T. (1992), *Characteristics of consumer law*, *Journal of Consumer Policy*, Vol. 14. No. 3, pp 293–315. p 296.

⁴ See Organisation for Economic Co-Operation and Development (OECD), 2002, *Regulatory Reform in the United Kingdom: Government Capacity to Assure High Quality Regulation*, Paris, p 7.

5.1.1 United Kingdom Regime on Consumer Protection

The UK government has responded to rapid changes in manufacturing, advertising and supplying of those goods and services through the introduction of a wide range of regulations and administrative bodies to tackle related challenges.⁵

In the legal context, the UK government introduced a wide range of legislation covering various aspects of the basic needs of consumer interests and afforded them the capability of subjective protection. The government has enacted much legislation that sustains, promotes and adjusts the structure of the free market – legislation such as the Consumer Protection Act of 1987, Unfair Terms in Consumer Contracts Regulations of 1999, Sale and Supply of Goods to Consumer Regulations of 2002, the Enterprise Act of 2002 and many others.⁶

In the administrative context, the United Kingdom has established many departments under one central government on local and national levels with an adequate homogeneousness and uniformity between both levels. The role of the central government in relation to consumer protection can be described as the initiation and furtherance of legislative policy and supervising the enforcement of consumer protection measures designed to protect the economy and safety interests of consumers within the general constraints of the market.⁷ The two government departments most closely associated with the development of consumer policy are the Department of Trade and Industry and its satellite, the Office of Fair Trading. Other departments such as the Food Standards Agency and Advertising Standards Agency, as

⁵ - See Black, J. (1996), *Constitutionalising Self-Regulation*, The Modern Law Review, Vol. 59, No. 1, pp 24-55, pp 24-26.

⁶ - See Hire-Purchase Acts 1954 and 1964; Trade Descriptions Act 1968; Fair Trading Act 1973; Supply of Goods (implied terms) Act 1973; Consumer Credit Act 1974; Unfair Contract Terms Act 1977; Consumer Safety Act 1977; Supply of Goods and Services 1982; Sale and Supply of Goods Act 1994 and Sale of Goods (Amendment) Act 1995.

⁷ - Oughton D. and Lowry J., 2000, Op. Cit., p 21.

independent bodies have specific policy roles in specialised areas of consumers' economic interests, health and safety.⁸

Consequently, consumers are protected from unsafe products, fraud, deceptive advertising, and unfair business practices through a mixture of national and local governmental laws and the existence of many private bodies with legal right to take action. These public and private bodies both protect consumers and, at a formal level, equip them with the knowledge they need to protect themselves, while also putting pressure on businesses to be more efficient and innovative.⁹

The following section will explore these governmental bodies and whether there is any degree of consistency between these administrative bodies and the effectiveness of their remedies.

5.2 Administrative Bodies: Consistency and the Structure of Enforcement in the United Kingdom

Harvey and Parry, in their book *the Law of Consumer Protection and Fair Trading*, have outlined the primary responsibilities of the government as follows: 'The Role of Central government in consumer protection is to promote legislative policy, oversee the implementation of legislation and oversee the work of various government agencies'.¹⁰ In the United Kingdom, trade practice law has historically been characterised by decentralised enforcement. Local trading standards offices had exclusive jurisdiction over the enforcement of the Trade Descriptions Act 1968, whereas the Office of Fair Trading had limited

⁸ - See Lugt, M. (1994), *Opportunities for, and Limits to, Harmonizing Criminal Law on Food Processing and Distribution, and Administrative Sanctions in the European Community*, European Journal of Crime, Criminal and Criminal Justice, Vol. 2 No. 3, pp 307-316, p 311.

⁹ - See Waller, S., Brady, J., Jillian, G. and Acosta, R. (2011), *Consumer Protection in the United States: An Overview*, European Journal of Consumer Law, available at; SSRN: <http://ssrn.com/abstract=1000226>. Accessed date 12/9/2011. p 2.

¹⁰ - See Harvey, B. and Parry, D. (2000), *Consumer Protection and Fair Trading*, 6th edition, Butterworths. p 49.

enforcement powers.¹¹ In that period, consumer protection was considered by a number of analysts as a synonym for ‘bureaucracy’ and the inefficiencies of government regulations.¹³ Deutch and Belobaba have attributed the defects in governmental intervention primarily to problems of understaffing and poor funding,¹² whereas Cappelletti and Jolowicz have recognised that governmental bodies are following traditional approaches of dealing with problems by using a reactive rather than proactive approach in seeking out new problems.¹³ To tackle those difficulties, and to alleviate the huge concern about inconsistency and the need for coordination in enforcement, the model was changed as increasing enforcement responsibilities were transferred to the new independent official body.¹⁴

Two major steps were introduced by UK government to enhance consumer protection through administrative bodies. The first was the establishment of the Office of Fair Trading (OFT), which has become the United Kingdom’s competition and consumer protection authority and which works in partnership with Trading Standard Services (TSS) across the United Kingdom to promote and protect the interests of consumers and businesses. The model was adopted to simulate the US Federal Trade Commission model.¹⁵

¹¹- IRamsay I., 2007, Op. Cit., p 454.

¹²- See Deutch, S. (2004), *Consumer Class Actions: Are They a Solution for Enforcing Consumer Rights? The Israeli Model*, Journal of Consumer Policy, Vol. 27, No. 2, pp 179-212, pp 179-180; Belobaba, E. (1979), *Some features of a model Consumer Trade Practices Act*, In: Proceedings of the 7th Annual Workshop of Commercial and Consumer Law, pp 1–9. Toronto: Canada Law Book Co, p 9.

¹³- See Cappelletti, M. and Jolowicz, J. (1975), *Public interest parties and the active role of the judge in civil litigation*, A. Giuffrè. The UK has tackled this challenge when it found within the White Paper ‘the safety of goods’ (1984) that ‘many consumer goods found to contravene safety requirements are imports’, Cmnd 9302 para 27; therefore, some degree of co-operation between the Trading Standards Service and the Commissioners of Customs and Excise was necessary to tackle such offences. This has been solved under Consumer Protection Act 1987 s 37(1)(2), which provides Customs with the sufficient authority to seize suspicious goods for examining before releasing or holding for infringement. For more, see; Cardwell, K. (1987), *The Consumer Protection Act 1987: Enforcement of Provisions Governing the Safety of Consumer Goods*, The Modern Law Review, Vol. 50, No. 5, pp. 622-638, pp 628-632; Jaffe, L. (1973), *The Illusion of the Ideal Administration*, Harvard Law Review, Vol. 86, No. 7, pp. 1183-1191, pp 1183-1184.

¹⁴- See Cartwright, P. (2007), *Crime, Punishment, and Consumer Protection*, Journal of Consumer Policy, Vol. 30, No. 1, pp 1-20. p 18.

¹⁵- Ramsay I., 2007, Op. Cit., p 454.

Therefore, a variety of powers and functions were conferred upon this new independent and nonpolitical office by the Fair Trading Act 1973.¹⁶ The official rationale for the creation of the OFT was to remove the regulation of competition and consumer policy from the political arena, encouraging continuity and expertise in the development of policy on a long-term basis. Administrative regulation was also justified in terms of its being a response to the limitation of judicial and legislative processes. A major objective of the newly created office was to maintain and promote an effective market mechanism by responding to market failures attributable to uncompetitive practices and information failure.¹⁷

Second, the government has also developed some degree of uniformity in enforcement through the creation in 1978 of the Local Authorities Coordinating Body on Trading Standards (LACOTS), which subsequently became known as 'LACROS'. This body acts as a spokesperson to the central government on reform proposals, provides for the collection and exchange of technical information, negotiates voluntary standards of quality with trade associations; promote uniformity in interpretation and aids in the coordination of enforcement work.¹⁸ Now, a new approach is being taken to secure more consistency, through the establishment of the Local Better Regulation Office, which will play an important role in liaising between different local authorities. The new approach will make compliance easier for business, tackle the inconsistency problem, and prevent real damage to the public.¹⁹

Accordingly, the UK model has tackled the problem of inconsistency by designating the main OFT as a body to protect consumer rights and establishing LACROS, which acts as supporting department to enhance and promote uniformity in interpretation and aids in the

¹⁶ - Sir Geoffrey Howe underlined these points in introducing the Second Reading of the Fair Trading Bill (Official Reports HC, 1972: 453-57) and concluded that given the specialist and detailed nature of the work and the need for continuity in its performance, it could be best done by an independent official body.

¹⁷ - I. Ramsay, 2007, Op. Cit., p 454.

¹⁸ - I Ramsay, 2007, Op. Cit., p 349; G. Howells and S. Weatherill, 2005, Op. Cit., pp 576-577.

¹⁹ - See Local Better Regulation Office, (2009), *Better Local Regulation: Supporting Businesses Towards Recovery*, UK, pp 11-13.

coordination of enforcement work. This is one of the main advantages of the UK consumer protection model from which can the UAE learn in terms of administrative context. This administrative model can help the UAE to solve one of the main problems mentioned earlier regarding the UAE's inconsistency and lack of coordination between the concerned authorities.²⁰

Additionally, the enactment of the Enterprise Act of 2002 has been essential in enhancing the role of the OFT. Firstly, it changed the structure of the OFT from that of a Director General Model to a board structure in 2003. The new model requires the board to be composed of a Chair and at least four other members who are appointed for terms no longer than five years.²¹ This step was taken by the government to reduce the risks of capture, to secure stability and to limit idiosyncrasy.²² Secondly, it has given the OFT various functions to act effectively, monitoring unfair business practices that affect the interests of consumers, and the power to recommend reforms to the Secretary of State. The OFT was also given an important new role of taking rule-making initiatives to propose regulations for those practices which seemed to adversely affect consumers' economic interests. Another function was to seek assurances from individual traders that they would refrain from persisting in a course of conduct that was deemed detrimental and unfair to consumer interests.²³

The new centralised enforcement model has more advantages in regard to enforcement through national agencies. There are arguments for central enforcement; indeed, one test case, or a communication directed to a head office, may secure countrywide compliance, avoiding a multiplicity of local actions. In addition, the national agencies will enjoy reduced compliance costs. A further supporting argument is that national agencies may have more

²⁰ - See 3.8.1 Contradiction in Measures in this Thesis

²¹ - See Schedule 1 of the Enterprise Act 2002.

²² - OECD, *Regulatory Reform in the United Kingdom: Government Capacity to Assure High Quality Regulation* 2002, Op. Cit., p 38.

²³ - Ramsay I., 2007, Op. Cit., pp 460-461.

bargaining power vis-à-vis national firms, although this must be balanced against the potential danger of agency capture. National agencies may also take advantage of economies of scale in producing and collecting certain information, for example, as in testing the safety of products, developing standards and collecting information for licensing purposes.²⁴

The next section will consider the effectiveness of administrative penalties in settling consumers' disputes.

5.2.1 Administrative Penalties as a Quick Solution in the UK Model

There are various types of remedies under the Competition Act of 1998 and Enterprise Act of 2002²⁵ for the OFT as an administrative authority, including informal agreement to comply, warning letters, fines, undertakings, destroying, and licence revocation. These discretionary sanctions will be imposed when infringements by a trader or manufacturer have taken place.²⁶

To some degree, both administrative sanctions and regulatory offences may operate in a similar manner. Once the offending conduct is proved, the defendant is subjected to a financial penalty; however, the removal of criminal stigma from sanctions may raise the question of whether this would make administrative sanctions less effective as a deterrent.

There are some reasons to believe that it might not. Firstly, the financial penalty may exceed any penalty that would be imposed by way of fine by criminal courts.²⁷ Thus, in case of deterrence at the level of the fine imposed, the administrative sanction may play a positive

²⁴ - Ibid, at p 349.

²⁵ - Part 8 of the Enterprise Act 2002.

²⁶ - See Woodroffe, G. and Lowe, R. (2007), *Consumer Law and Practice*, Seventh Edition, Aweet and Maxwell, p 343.

²⁷ - The Financial Services Authority provides a good example of this when it has fined the Shell Transport and Trading Company (STT), Royal Dutch Petroleum Company (RDP) and the Royal Dutch Shell Group of Companies (Shell) £17 million for committing market abuse and breaching the listing rules in 2004. Financial Services Authority, *FSA fines Shell 17,000,000 for market abuse*, available at website FSA/PN/074/2004, Published in 24/08/2004; http://www.fsa.gov.uk/Pages/Library/Communication/PR_/2004/074.shtml, accessed date 30.10.2011

role. Secondly, administrative sanctions do not require the same procedural limitations as regulatory offences, and this would improve the chance of enforcement actions being successful.²⁸ For example, the Consumer Credit Act of 2006 confers power to the OFT to impose significant sanctions upon firms or individuals if it is satisfied that, in all likelihoods, there has been a contravention. Sanctions include not only financial penalties in the form of fines but also restitution orders or even bans from the industry.²⁹ Khanna has argued that administrative sanctions are likely to have a strong an effect in deterring corporate misconduct as criminal sanctions.³⁰ On the same trend, Ashworth has also supported alternative approaches to the criminal law, which he would call ‘civil violations’ or ‘administrative offences’, and which he sees as providing quick and effective justice.³¹ Consequently, a wide range of administrative remedies would be preferred by consumers to preserve their rights and obtain redress, as this approach may work effectively as recourse to legal action. Thus, the availability of those effective administrative sanctions may save consumers time and money.³²

Despite the OFT’s effective role in pharmaceuticals and health,³³ misleading advertisements,³⁴ and property,³⁵ though, some economics experts have argued that

²⁸ - Ramsay I., 2007, Op. Cit., pp 505-506

²⁹ - See Consumer Credit Act 2006 Sections 25(a), 33(a), 36(b)(d) and 39(a)(b).

³⁰ - See Khanna, V. (2004), *Politics and corporate crime legislation*, Regulation, spring, 30-35, pp 30-31.

³¹ - See Ashworth, A. (2000), *Is the criminal law a lost cause?*, Law Quarterly Review, 116, pp 225–256, p 231.

³² - Ramsay I., 2007, Op. Cit., pp 350-351.

³³ - In *Office of Fair Trading v Ashbourne Management Services Ltd*, John Clayton-Wright, Dawne Clayton-Wright [2011] EWHC 1237 (Ch), the the High Court held that minimum contract length terms and a number of other key terms in gym membership contracts, and was recommended and enforced by Ashbourne Management Services Limited ('Ashbourne'), are unfair and hence unenforceable.

³⁴ - In *Office of Fair Trading v Officers Club Ltd* [2005] EWHC 1080, the OFT argued that the discount was not real and the company (the defendant) made that false advertisement, and it in the fact knows that nobody will buy those items at full price. The OFT presented that advertisements for the discount scheme were misleading advertisements within regulation 2(2) of Control of Misleading Advertisements. The defendant argued that it had complied with the Code of Practice for Traders on Price Indications published pursuant to the Consumer Protection Act 1987 s. 25(1). The Court held that the advertisement could be misleading despite compliance with the Code of Practice for Traders on Price Indications. It also found that strategies were misleading advertisements for the purposes of the Regulations, and their publication was a Community infringement within Pt 8 of Enterprise Act 2002.

administrative sanctions may be criticised as they are too low and have the potential to be disproportionate. Furthermore, the removal of criminal stigma may raise some anxiety about the application of such sanctions as deterrence. They also have been criticizing the OFT for being ineffective and for many of its investigations leading to no action, especially in the cases of oil companies' retail sales and supermarkets.³⁶

The next section will examine some types of consumer protection in the United Kingdom within the legal context that do not exist in the UAE – specifically, legal acts on consumer protection, misleading advertisements and unfair consumer contract terms, as well as the sort of protections or rights the consumer receives from United Kingdom legislation.

5.3 United Kingdom Consumer Protection Act 1987

The Consumer Protection Act of 1987 (1987 c. 43) is an Act of the UK Parliament that brought important reforms. The CPA of 1987 repeals but substantially reproduces the Consumer Safety (Amendment) Act of 1986, which had enacted some of the proposals contained in the 1984 white paper 'The Safety of Goods'.³⁷ A primary economic reason for regulating product safety is inadequate consumer information as consumers may be unaware of hidden or long-term risks. Another justification for the need to regulate is the difficulties that individuals face in processing complex health and safety data; for example, the complexity of the scientific issues associated with food and drug technology makes it

³⁵- In September 2009, the OFT imposed a £39.27 million fine on six recruitment agencies that had participated in the 'Construction Recruitment Forum', a cartel that agreed to boycott new entrants and fix fees. See *OFT statement on Competition Appeal Tribunal's judgment in construction recruitment forum case*, available at; <http://www.of.gov.uk/news-and-updates/press/2011/51-11>, accessed date 19/05/2011.

³⁶- See *Fair Trading Remains Toothless in Face of Tesco*, published on 23/10/2008, available at <http://nickharveymp.com/en/article/2008/400300/fair-trading-remains-toothless-in-face-of-tesco>, accessed date 20/07/2009; Ibrahim, A. (2007), *Hemaiyat Al-Mustahlik 'Dirasah Muqarenah'*, First edition, Manshorat al-Halabi. p 294; Rabah, G. (2011), *Hemaiyat Al-mustahlik Al-jadeed 'al-Mabada', al-Wasa'el, wa al-Mulahagah*, 2nd edition, Lebanon; Beirut, Maktabat zain alhuqoqiyah.Op. p 79; Cartwright P., 2007, Op. Cit., p 16

³⁷- See Cmnd. 9302. The Paper was presented to Parliament by the Secretary of State for Trade and Industry in July 1984.

difficult for consumers to have a continuing and sustained input into the process of formulating and enforcing safety standards.³⁸

The CPA of 1987 consists of four parts: Part 1 concerned product liability, introducing a regime of strict liability for damage arising from defective products; and Part 2 created government powers to regulate the safety of consumer products through Statutory Instruments. The distinction between the civil provisions of Part 1 and the criminal provisions in Part 2 should be noted, particularly with regard to the range of goods subject to the new law. Virtually all goods, except for buildings and unprocessed agricultural products, are included in the civil provisions relating to product liability, whereas only 'consumer goods' are subject to the criminal controls. Consumer goods are those which are 'ordinarily intended for private use or consumption,'³⁹ however, food, medicines, fertiliser and motor vehicles, which are regulated under their own specific legislation, are excluded from the scope of the criminal Part 2 of the Act.⁴⁰

As a further illustration of this contrast, for civil liability to determine that there is a defect in a product, it must ensure that "the safety of the product is not such as persons generally are entitled to expect." In order to determine more precisely what this means, all circumstances must be taken into account from the way it is marketed, the use of any mark, and any instructions or warnings, etc. All products, therefore, must be designed and constructed with their intended and potential use and user clearly in mind from the start.⁴¹

Thus, products are deemed criminal if the consumer goods fail to comply with general safety requirements. These requirements were identified as any safety regulations imposing requirements with respect to that matter (safety regulations – i.e., specific controls regarding categories of goods, such as electrical equipment, toys and cosmetic products); or any

³⁸ - Ramsay I., 2007, Op. Cit., pp 691-692.

³⁹ - See S. 11 (7) of Consumer Protection Act 1987.

⁴⁰ - Ibid, S. 10 (7)(a,b,c,d,e,f)

⁴¹ - Ibid, S. 3 (2)

standards of safety approved for the purposes by or under any such regulations and imposing requirements with respect to that matter (a prohibition notice – made by the Minister and served on any person, banning the supply of a named product); or any provision of any enactment or subordinate legislation imposing such requirements with respect to that matter as designated by any such regulations (suspension notice – served by the enforcement authority on any person, prohibiting the supply of a specified product for up to six months pending further action).⁴²

Part 3 described the criminal offence of giving a misleading price indication in terms of goods, services, accommodation or any facilities, whereas Part 4 of the CPA of 1987 concentrated on the governing bodies controlling the enforcement of the Act. Before the enactment of this Act, the enforcement bodies were suffering from limited power to enter, seize or enforce that the retailer reveal his supplier of unsafe goods and instead were dependent upon the voluntary co-operation of traders.⁴³ Accordingly, the CPA of 1987 has strengthened and conferred much wider powers of enforcement. As a result, an enforcement officer can enter any premises⁴⁴ other than those used only as a private dwelling⁴⁵ and inspect and purchase any relevant goods.⁴⁶ Additionally, the law enables the officer in charge to seize and detain the goods⁴⁷ and require the production of, and make copies of, books and documents relating to the business.⁴⁸

Moreover, the CPA of 1987 conferred an additional power under section 45(2), which makes it clear that the powers conferred by the Act can be exercised against relevant goods whether or not any prohibited act may have been committed in relation to them. Thus, for example, a

⁴² - See Jenkins, D. and Davies, B. (1989), *Product safety in Great Britain and the Consumer Protection Act 1987*, Applied Ergonomics, Vol. 20, No. 3, pp 213-217, p 214.

⁴³ - Cardwell K., 1987, Op. Cit., p 624.

⁴⁴ - S. 29 (2) of the Consumer Protection Act 1987

⁴⁵ - Ibid, S. 30(2)

⁴⁶ - Ibid, S. 28(1)(a)

⁴⁷ - Ibid, S. 29 (6)

⁴⁸ - Ibid, S. 29 (4)(5)

submission that goods cannot be seized because they are in possession for the purpose of modification rather than sale will not succeed.⁴⁹

Furthermore, to meet the need for some degree of co-operation between the TSS and the Commissioners of Customs and Excise, the CPA of 1987 conferred similar powers to officers in Customs to seize and detain imported goods for not more than two working days.

In short, in regard to goods or products which are already suspected to breach the safety provisions, the CPA of 1987 constitutes a major step forward in consumer protection. The concerned authorities now have adequate powers to trace and seize, or suspend the supply of unsafe goods. The mechanism has already been established to ensure full collaboration between Customs and Excise and the TSS, where there is a serious threat that such goods are en route to UK ports.

5.4 The Problem of Misleading and Unfair Advertising

The problem of advertising was mentioned as one of the obstacles that has not been dealt with adequately under the UAE regulations and that must be dealt with under a separate regulation. Although the first available model (Shari'a law) has prohibited misleading advertisements, the current implementation has showed that these Teachings have not yet been codified effectively enough to tackle the problem. This section will examine the UK model on misleading advertising and how effectively UK measures have tackled this problem.

As it was mentioned in the first chapter, advertisement is considered a key element in the business world. Ads that appear by the billions in magazines, newspapers, and television are

⁴⁹ - Cardwell K., 1987, Op. Cit., p 626.

essential as a means for most companies to get their product out to the public.⁵⁰ A company's marketing depends primarily on these types of advertisements to suggest to consumers that their products are better or more sufficient than those of the competitors. The pervasiveness and high visibility of media advertising, and its use of sophisticated psychological techniques, have made its economic, social and cultural⁵¹ impact a topic of continued interest in the field of consumer protection.⁵² In particular, it can be said that advertisements do not provide objective information. The advertiser only tells the consumer what he wants to hear, while other facts that might be relevant to a prudent shopping decision tend to be omitted.⁵³ Thus, advertising aids producer to consolidate their power over the market, while undermining consumer sovereignty.⁵⁴ The discrepancy between the bargaining powers of these two parties has stimulated the UK government to tackle this inequality in order to serve consumer rights and control of deceptive advertising.⁵⁵

In the United Kingdom, the framework for the regulation of advertising was established by the Molony Committee, which mentioned in its conclusion that advertisements making false or misleading claims of a factual character ought to be regulated by trade description

⁵⁰ - See Hanson, J. and Kysar, D. (1999), *Taking Behavioralism Seriously: Some Evidence of Market Manipulation*, Harvard Law Review, Vol. 112, No. 7, pp 1420-1572, p 1438; Boddewyn, J. (1992), *Global Perspectives on Advertising Self-Regulation*, Quorum Books, Westport, Connecticut, p 22.

⁵¹- Avner Offer summarizes the effects of advertising by stating that: "Advertising ... engage the senses, stimulates novelty, broadens the range of experience and choice... it presents information about products and services. It pays for a good part of the media, and underwrites sporting and culture activity... support the spurious differentiation of identical goods, and thus makes them more expensive" see; Offer, A. (2006), *The Challenge of Affluence: Self-control and Well-being in the United State and Britain since 1950*, Oxford University Press, pp 103-105.

⁵²- It is argued that modern advertising methods tends to misinform rather than to inform the consumer. For more See; Pitofsky, R. (1977), *Beyond Nader: Consumer Protection and the Regulation of Advertising*, Harvard Law Review, Vol. 90, No. 4, pp. 661-701. pp 665-666.

⁵³ - See Boddewyn, J. (1985), *Advertising Self-Regulation: Private Government and Agent of Public Policy*, Journal of Public Policy & Marketing, Vol. 4, pp 129-141, p 130; Russo, E., Metcalf, B. and Stephens, D. (1981), *Identifying Misleading Advertising*, Journal of Consumer Research, Vol. 8, No. 2, pp 119-131, pp 120-121.

⁵⁴- Ramsay I., 2007, Op. Cit., p 396.

⁵⁵ - Part of the rationale for such laws lays in the endemic lack of information available to the consumer in the modern market place, especially those that are technologically advanced. See; Howells, G. and Weatherill S., 2005, Op. Cit., p 395.

legislation.⁵⁶ In the United Kingdom, those false advertisements were usually controlled by the self-regulatory Advertising Standard Authority (ASA) – an independent body – alongside the OFT.⁵⁷ The next section will examine self-regulation and legal instruments as well as the combination of the two.

5.4.1 Self-regulation of Advertising

Advertising in the United Kingdom is self-regulated via the ASA, which monitors compliance with the British Code of Advertising, Sales Promotion and Direct Marketing code.⁵⁸ The ASA is funded by levy⁵⁹ but remains independent from the advertising industry. The philosophy behind self-regulation is that a socially responsible industry is best placed to understand its own complexities. Writing in 1986, Baggot and Harrison suggested that the persistence of self-regulation in advertising reflected three factors: its “compatibility with British administrative culture”: the considerable economic and political influence of the advertising industry, and its ability to “mobilise support throughout media”.⁶⁰ Self-regulation can be described as a supplementary law that fills gaps in the existing law, and makes it easier to resolve disputes without incurring any formal litigation through proactive rather than reactive action, although the ASA has no power to order the granting of compensation to misled consumers.⁶¹

⁵⁶ - See the Molony Committee, (1962), *Final Report of the Committee on Consumer Protection*, Cmnd. 1781, London, HMSO. Cmnd. Paras 634 and 766.

⁵⁷ - IS 1988 No. 915.

⁵⁸ - Ramsay I., 2007, *Op. Cit.*, p 437.

⁵⁹ - The levy is set at 0.1 % of advertising space costs and 0.2% of Mailsort contracts.

⁶⁰ - See Baggot R. and Harrison, I. (1986), *The Politics of Self-Regulation the case of Advertising Control*, *Review of Politics*, Vol. 14, No. 2, pp 143-159, pp 143-157; Boddewyn, J. (1989), *Advertising Self-Regulation: True Purpose and Limits*, *Journal of Advertising*, Vol. 18, No. 2 (1989), pp. 19–27. pp 20-21.

⁶¹ - See Harker, D. and Wiggs, G. (2000), *Three Generations of Advertising Self-Regulation: Learning from our Forefathers*, *Marketing Bulletin*, available at: <http://marketing-bulletin.massey.ac.nz/>, accessed 3/9/2011, pp 2-3; Howells, G. and Weatherill S., 2005, *Op. Cit.*, p 423.

In general terms, the ASA code has emphasised that all advertisements must be legal, decent, honest and truthful, that advertisers should have a sense of responsibility to consumers, and that advertisers must comply with both the letter and spirit of the code.⁶² In the event of a complaint from a consumer, competitor or interest group (e.g., Consumer Association⁶³ or Hearing Aid Council),⁶⁴ it (complaint) should be written and the ASA adjudicates whether a given advert is code-compliant or not.⁶⁵

Self-regulation has two remedies that may apply to advertisers: substantiation and publication of corrective advertising. Substantiation is a significant advantage of the self-regulatory model, especially in relation to complex medical products and conditions in that the onus of proof is on the advertiser to justify any queried claims⁶⁶ rather than the regulator having to disprove the claim.⁶⁷ The alternative remedy is corrective advertising; if the ASA upholds a complaint, for example, then it can order advertisements to not be republished or to be amended from their current format at the advertiser's expense. If an advertiser seriously, or regularly, breaks parts of the advertising code, then the ASA can insist that all future advertising be submitted for prior approval before publication. Thus, the main aims of corrective advertising are to correct lingering consumer misimpressions and to correct market shares that have been illegally achieved through false advertisement.⁶⁸ This remedy was supported by the Enterprise Act of 2002 under section 217(8), which confers power to order

⁶²- Ramsay I., 2007, Op. Cit., pp 437-439.

⁶³- See 5.10 The Effective Role of Consumer Protection Associations in the UK in this Thesis.

⁶⁴- The Hearing Aid Council (HAC) is an excellent example of how reforming public bodies can simultaneously boost public protection and generate significant cashable savings.

⁶⁵- See Ross, L., Cathcart, C. and Lyon, P. (2010), *Consumer choice for hearing aids and listening devices: newspaper advertisements for UK private sector provision*, International Journal of Consumer Studies, Vol. 35, No. 1, pp 95-103. p 100.

⁶⁶- Many of the functional advertisements provide claims that are incapable of objective substantiation. They promise miraculous weight loss without diet or exercises and claim to provide a solution simply by 'detoxifying the body'. Phrases like 'absolutely safe', 'no allergic effects', 'no side effects', '100% effective' are used. Some even guarantee a target effect within a certain period of time. See; Wai-ling, T. (2004), *Combating deceptive advertisements and labelling on food products – an exploratory study on the perceptions of teachers*, International Journal of Consumer Studies, Vol. 28, No. 2, pp 117-126. p 119.

⁶⁷- British Code of Advertising, Sale promotion and Marketing Direct, sections 50.1, 50.7, 50.15 and 50.24

⁶⁸- Ross, L., et al, 2010, Op. Cit., p 100.

corrective advertising in enforcement; however, UK authorities have demonstrated little enthusiasm for the use of corrective advertising as a remedy on the basis that it has met difficulties in practical application within the United States.⁶⁹

5.4.2 Legal Instruments on Misleading Advertisements

While advertising complaints are primarily dealt with through self-regulatory means as described in the previous section, claims made in advertisements may also be considered under general consumer protection legislation, breaches of which may lead to criminal or injunctive sanctions. This is because the United Kingdom has implemented the Misleading Advertising Directive by the statutory instrument in the Control of Misleading Advertisement Regulations of 1988, which were amended by the Control of Misleading Advertisement (amendment) Regulations of 2003,⁷⁰ in order to implement the Comparative Advertising Directive. The main type of control required by the EC Directive for misleading advertising is to suppress such ads by Member States. The key element for control of an advertisement is its deceptive nature, which was stated in the definition of ‘misleading’ under regulation 2 (2):

‘an advertisement is misleading if in any way, including its presentation, it deceives or is likely to deceive the persons to whom it is addressed or whom it reaches and if, by reason of its deceptive nature, it is likely to affect their economic behaviour or, for those reasons, injures or is likely to injure a competitor of the person whose interests the advertisement seeks to promote’

Another main piece of legislation is the Consumer Protection from Unfair Trading Regulations (CPUTR) of 2008⁷¹. The 2008 Regulations place a general prohibition on unfair

⁶⁹ - See Dyer, R. and Kuehl, P. (1978), *A Longitudinal Study of Corrective Advertising*, *Journal of Marketing Research*, Vol. 15, No. 1, pp 39-48.

⁷⁰ - IS 1988 No. 915 was amended later by SI 2003 No. 3183; See also sections 20-26 of Consumer Protection Act 1987, which prohibit any misleading indication of the prices on offered goods to consumers.

⁷¹ - IS 2008 No. 1277

trading practise in the United Kingdom, whereas misleading actions, misleading omissions and aggressive commercial practices are also prohibited if they cause consumers to make a transactional decision which they would not have made otherwise.⁷² The Regulations also have listed 31 unfair trade practices that are prohibited in all circumstances.⁷³ These include falsely claiming that a product is able to cure illnesses, dysfunction or malformations, and describing a product as ‘gratis’, ‘free’, ‘without charge’ or similar if the consumer has to pay anything other than the unavoidable cost of responding to the commercial practice and collecting or paying for delivery of the item, and claiming that products are able to facilitate winning in games of chance.⁷⁴

Moreover, to tackle the lack of enforcing sanctions within self-regulation, other legal regulations such as Part 8 of the Enterprise Act of 2002 has allowed the OFT to back up self-regulation.⁷⁵ The 2002 Act has allowed the OFT to apply to a court for an injunction against any person involved in the publication of a misleading. The power of the OFT to intervene under misleading advertisements regulations was scrutinised by the courts in different cases⁷⁶ in *Director General of the Fair Trading v Tobyward*⁷⁷ where Hoffman endorsed the injunctive powers to support the self-regulatory controls on advertising by granting an injunction that would effectively give legal backing to the ASA’s finding. He also added that the decision is important instilling respect for ASA ruling and in discouraging advertisers from contesting the decision of the ASA through litigation.

However, some scholars have refused the government backup and insist that advertising should be under laissez-faire control, left to individual firms and customers, not to

⁷² - Ross, L., et al, 2010, Op. Cit., p 100.

⁷³ - Schedule 1 of the Consumer Protection from Unfair Trading Regulations (CPUTR) 2008

⁷⁴ - Ibid, CPUTR 2008, paras 16, 17 and 20

⁷⁵ - See Bartle, I. and Vass, P. (2007), *Self-Regulation with in the Regulatory State: Toward a new regulatory paradigm?*, Public Administration, Vol. 85, No. 4, pp 885–905. p 886.

⁷⁶ - See *Office of Fair Trading v Officers Club Ltd* [2005] EWHC 1080

⁷⁷ - [1989] 2All ER 266.

associations or the government. They argued that ‘If competition alone would effectively regulate the market in all circumstances, both laws and self-regulation would be superfluous’⁷⁸.

Whether or not all previous criticisms are justified, it is undoubtedly true that advertising is a very powerful tool, which, if misused, can result in the consumer receiving misleading information. Where this is the case, regulation of misleading advertising practices is justified on the ground that it can correct any market failures resulting from inaccurate information which might otherwise be given to the consumer⁷⁹.

In case the consumer has purchased and signed an agreement with the traders who will provide him with goods or services and he discovers that he was misled by the traders, the question which may be raised here is: Dose the consumer have to go directly to the court to dismiss this contract or there is other legal mean to protect his right to withdraw? The next section will present a unique legal instrument that would give the consumer the right to withdraw from a contract in a specific time without any loss.

5.5 Legal instruments on Contract Unfair Terms

Due to inequality of bargaining power between buyers and sellers was a main justification for the regulation for unfair terms in contracts in the EU countries in general and the UK in particular. The idea was based on that the consumer is in a weak bargaining position vis-à-vis the seller, as regards his bargaining power and his level of knowledge. This leads to the

⁷⁸ - See Rosden, E. and Rosden, P. (1982), *The Law of Advertising*, New York, Matthew Bender. p 40.

⁷⁹ - Oughton, D. and Lowry J., 2000, Op. Cit., p 487.

consumer agreeing to terms drawn up in advance by the seller or supplier without being able to negotiate or influence the content of the terms.⁸⁰

In the UK there are two source of legislations control over unfair terms in contracts. The first is the Unfair Contract Terms Act 1977 (UCTA) bright line rules that voided clauses in relation to liability for physical injuries caused by negligence and consolidated the prohibition on contracting out of the implied terms in the supply of goods in sale and near sale agreements. It also introduced a board standard of unreasonableness to police exclusion and limitation of liability clauses in other consumer contracts.⁸¹ The protection of UCTA applies both to transaction between a business and a consumer and to many business to business transactions. Despite its title, UCTA applies only to exclusion and limitation of liability clauses and to indemnity clauses thus other types of term were not subject to any statutory control.⁸²

The second legislation is the Unfair Terms in Consumer Contracts Regulations which came into force in the UK in 1999⁸³. The regulation covers different principles and includes details on the powers of the director or qualified bodies to apply for in case of disputes. Under Reg 5 (1) of the UTCCR 1999 it outlines the principle of unfair if a contractual term has not been individually negotiate, or the term causes significant imbalance in the parties' rights and obligations and contradict with good faith requirement. Consequently, any contract between a seller and a consumer which includes terms that considered to be unfair is not binding on the consumer any time unless the contract can continue to bind the parties if it is capable of

⁸⁰ - See *Oceano Grupo Editorial S A v Rocio Murciano Qintero* C-240 to C244/98, ECJ 2000, where a jurisdiction clause is included by the company, without being individually negotiated by the defendants, in a contract between consumers and a seller or supplier and where it confers exclusive jurisdiction on a court in the territorial jurisdiction of which the seller or supplier has his principal place of business which considered as an unfair terms.

⁸¹ - Ramsay I., 2007, Op. Cit., p 168.

⁸² - Howells, G. and Weatherill S., 2005, Op. Cit., pp 265-267.

⁸³ - See Statuary Instrument 1999 No. 2083.

continuing in existence without the unfair term.⁸⁴ The Regulation has conferred the power to receive consumer complaints and seek an injunction to various bodies which work under one regulation in sort of uniformity to serve different type of complaints on goods or services. Additionally, schedule 2 of the UTCCR 1999 provides list terms that may be unfair and thus not binding. These examples of terms provide the consumer a sort of subjective protection and help the consumer to act in positive way in case of joining at such unfair contracts.⁸⁵ Moreover, the transparency is required in contracts to ensure that both parties have a clear consent on the duties and rights under the contract. Therefore, Reg 7 of the UTCCR 1999 has required the seller or supplier of goods and services must ensure that any written term of a contract is expressed in plain, intelligible language. This move was attempted to reduce the gap between the parties in term of knowledge as professional (the seller) level of knowledge is greater than the normal individuals such as consumers. Bright has argued that contractual terms should not be in small print or obscure wording and seller or supplier should avoid the use of jargon, complicated definitions, foreign words and phrases (such as force majeure), and reference to statutory provisions which will be meaningless to most consumers⁸⁶.

5.5.1 Comment

It is important to mention the differences between the two approaches in UCTA 1977 and the UTCCR 1999 that should consumer take in the account to process through these acts. Firstly, the UTCA is applicable for all contract types even business to business. Whereas, UTCCR are restricted to standard form of consumer contract that not been negotiated individually such as insurance contracts which were not covered under the UCTA. Secondly, the burden

⁸⁴ - See Reg 8(1)(2) of the Unfair Terms of Consumer Contract Regulations 1999

⁸⁵ - Ramsay I., 2007, Op. Cit., pp 169-197.

⁸⁶ - See Bright, S. (2000), *Winning the battle against unfair contract terms*, Legal studies, Vol. 20, No. 3, pp 331-352. p 351.

of proof in the UTCA is on business to show that a term is fair and reasonable. On the other hand, under the UTCCR the burden of proof is upon the complainant⁸⁷.

The UTCCR has focused on the intelligible language of contractual terms, therefore, terms which are 'unreadable or likely to be misunderstood by consumers because they are not in plain language will be considered unfair terms and not binding on consumers. The act has changed the previous situation which was used by the UK courts in such that apply 'blue pencil' test to illegal terms.⁸⁸

Moreover, a mere declaration of invalidity may not be adequate and effective as a means of control. Therefore, in contrast with the UTCA, the UTCCR has involved administrative bodies (the Office of Fair Trading) and private parties (Consumer Association) with power to determine the validity of terms, resolve disputes and impose penalties on offenders.⁸⁹ This move has taken the matter out of the mainstream court system, it could have the advantage of encouraging consumer usage whilst not overloading the courts. It would also be cheaper and therefore more attractive to the consumer.⁹⁰

After reviewing the United Kingdom both UTCA 1977 and UTCCR 1999 there can be no doubt that the UAE needs unfair contract terms legislation, particularly in the light of the inherent limits of judicial control.

⁸⁷ - See Dean, M. (1993), *Unfair Contract Terms: The European Approach*, The Modern Law Review, Vol. 56, No. 4, pp 581-590; Ramsay I., 2007, Op. Cit., p 179.

⁸⁸ - The blue pencil doctrine is a legal concept in common law countries, where a court finds that a portion of contract is void or unenforceable, but the other part of the contract is enforceable. See Dean M., 1993, Op. Cit., p 588.

⁸⁹ - S. 10 and 11 of the Unfair Terms in Consumer Contract Regulations 1999

⁹⁰ - Dean M., 1993, Op. Cit., pp 588-589.

5.6 The Right of Withdrawal: Cooling-off periods in consumers' transactions

Another issue not mentioned in the UAE legislation on consumer protection was the right to withdraw from a consumer contract. A cooling-off period is a limited period within which a consumer may cancel a contract which would otherwise have become binding on the consumer. The rationales behind the cooling-off periods traditionally have two objectives: (i) to protect individuals against high-pressure sale; and (ii) to allow a consumer the opportunity to have access to more information concerning the proposed purchase⁹¹. They were originally applied to door to door credit sales consummated away from business premises⁹². This protection has been extended to involve distance selling⁹³, including distance sale of financial services⁹⁴, the sale of timeshares⁹⁵ and the provision of extended warranties in relation to domestic electrical goods⁹⁶.

A form of cooling-off also applies to certain consumer credit agreements secured by land⁹⁷ irrespective of where the contract is negotiated. A cancelled contract is treated as if it had not been made and as a consequence each party has to give back what he received under the contract⁹⁸. In these specific types of contracts, the consumer has a right of cancellation because the circumstances of the formation of the contract involve a number of risks to him⁹⁹.

The consumer in this case orders goods and services with no choice to see the condition of

⁹¹- See Weatherill, S. (1997), *EC consumer law and policy*, University of Michigan, Longman. p 60; Bourgoignie, T., 1992, *Op. Cit.*, pp 293-315; Harvey, B. and Parry D., 2000, *Op. Cit.*, p 19.

⁹²- See Consumer Credit Act 1974 s 67-73; Consumer Protection (cancellation of contracts concluded away from business premises) 1987 as amended by consumer protection (cancellation of contracts concluded away from business premises) regulations 1988 and 1998.

⁹³- A contract concluded by exclusive use of means of distance communication reg 3 (1) of CPR for Distance selling Act 2000, it also identified 13 different means of communications in Schedule 1

⁹⁴- See Financial Services Distance Marketing Regulations 2004

⁹⁵- Timeshare Act and the Timeshare (cancellation information) order 2003

⁹⁶- The Supply of Extended Warranties on Domestic Electrical Goods order 2005

⁹⁷- See Consumer Credit Act 1974 s 58

⁹⁸- See CPR 2000, reg. 10(2); CPR 1987, reg. 4(6); CCA 1974, s. 69(4)

⁹⁹- Office of Fair Trading, (2004), *Doorstep Selling: A Report on the Market study*, London, OFT. 716; Howells, G. and Weatherill S., 2005, *Op. Cit.*, pp 361-362; Ramsay I., 2007, *Op. Cit.*, pp 399-342.

goods and services in order to judge whether they meet his expectation and needs. In other type of contracts, such as door-to-door, the consumers need protection as the unsolicited visits by door-to-door salespeople involve a psychological disadvantage to the consumer¹⁰⁰. As the consumer not able to prepare himself with for negotiating with somebody, whereas the salesman has advantage of being trained for this type of selling which leads to rush the consumer into a contract. On the other hand, Rekaiti and Van Den Bergh have raised the possibility of opportunistic behavior by consumers who use the products and then return it and the uncertainty and delay caused by the cooling-off periods that might result in higher prices and reduced offerings by business¹⁰¹. However, the trader has to inform the consumer about the right to cancel¹⁰².

5.6.1 The cancellation period

Ibrahim has argued that although this principle contradicts the binding force of the contract, it would give the consumer some latitude to determine about a decision he/she made within a certain period¹⁰³. The right of cancellation is introduced for the protection of the consumer and it is his choice whether to put the contract to an end. In the Consumer Protection Regulation 2000 for Distance selling, the Consumer protection Act 1987, and the Consumer Credit Act 1974, the consumer has to make use of his right of cancellation within a cancellation period. These periods are rather short and all three acts introduce exact periods.

¹⁰⁰ - Howells, G. and Weatherill S., 2005, Op. Cit., pp 361-362; Ramsay I., 2007, Op. Cit., pp 399-342.

¹⁰¹ - See Rekaiti, P. and Van Den Bergh, R. (2000), *Cooling-off periods in the Consumer laws of the EC Member States A comparative law and Economics Approach*, Journal of Consumer Policy, Vol. 23, p 371, p 381.

¹⁰² - CPR 1987, reg. 4(1)

¹⁰³ - Ibrahim A., 2007, Op. Cit., pp 508-509.

Such exact periods are unknown to the general law of contract, where, for example, the right to rescind a contract may be barred by lapse of a reasonable time¹⁰⁴.

In CPR 2000 and CPR 1987, the periods of cancellation begin with the day on which the contract is concluded which is seven working days¹⁰⁵. However, there are two exceptions in calculating the length of the period for cancellation in case of contracts for the supply of goods on the one hand and in the case of contracts for the supply of services on the other hand. Firstly the supplying goods case, the period is determined as follows: if the supplier has informed the consumer about the details of his right of cancellation, the cancellation period ends on the expiry of the period of seven working days beginning with the day after the day on which the consumer receives the goods¹⁰⁶. If the supplier does not inform the consumer about his right of cancellation at the latest at the delivery of the goods, but if he does so within the period of three months beginning with the day after the day on which the consumer receives the goods, the cancellation period ends on the expiry of the period of seven working days beginning with the day after the day on which the consumer receives the information¹⁰⁷. Secondly, In the case of contracts for the supply of services the crucial day is the day after the day on which the contract is concluded¹⁰⁸. Whereas, the cooling-off periods in the CCA 1974 begins with the debtor signing on the agreement and usually ends at the end of the fifth day following the day on which he received a copy¹⁰⁹.

The various statutory provisions thus differ in the length of the cancellation period. The cancellation period of the CCA 1974 is regularly five days, that of the CPR 1987 seven days and that of the CPR 2000 seven working days. This *lex lata* is problematic for a number of

¹⁰⁴ - See Treitel, G. (2003), *The law of Contract*, London, Sweet and Maxwell, 11th edition, p 385

¹⁰⁵ - See CPR 2000, reg. 11(1) and 12(1) CPR 1987, reg. 4(5).

¹⁰⁶ - Ibid, reg. 11(2)

¹⁰⁷ - Ibid, reg. 11(3)

¹⁰⁸ - Ibid, reg. 12(2) and (4)

¹⁰⁹ - Consumer Credit Acts 1974, s. 68(a)

reasons; firstly, that there is no policy based reason for most of these differences; secondly, that it these differences between cancellation period would confuse the consumers and thirdly, that the conformity of these regulations with EC directives which would provide different periods for the same issue¹¹⁰. Hellwege has argued that the discrepancies in periods between national acts on one hand and the national acts and European directives on the other hand can be solved only by unification of the cancellation periods in each and every act. Thus, the longest cancellation period can be adopted in all acts on consumer protection¹¹¹. Ison has argued that the only effective regulation would be to ban the category of door to door selling which gives rise to abuse itinerant salesmen one type of item on credit terms or who require part-payment in advance.¹¹²

However, if the consumer has exceeded the time and did not use the right to withdraw or redress, he/she still is entitled to recourse (as a first stage) to the OFT to seek other legal instruments to protect him for damage or loss.

5.7 Intervention, Litigation and Consumer Redress

Enforcement of unfair commercial practices law has traditionally been through the use of criminal sanction¹¹³. However, the United Kingdom government has indicated that administrative enforcement will play a significant role in the implementation of administrative enforcement remedies established under Part 8 of the Enterprise Act 2002. Through these steps the government's aim is to establish an enforcement regime that is capable of tackling rouge and unfair practices effectively while minimising burdens on fair

¹¹⁰ - For further discussion see; Hellwege P., 2004, Op. Cit., pp 712-742; Ramsay I., 2007, Op. Cit., pp 330-346; Howells, G. and Weatherill S., 2005, Op. Cit., pp 363-378.

¹¹¹ - Hellwege P., 2004, Op. Cit., pp 712-742.

¹¹² - See Ison, T. (1979), *Credit Marketing and Consumer Protection*, London, Croom Helm, p 119.

¹¹³ - See Hart, H. (1958), *The Aims of the Criminal law*, Law and Contemporary Problems, Vol. 23, No. 3, Sentencing, pp. 401-441. pp 401-404; Cartwright P., 2007, Op. Cit., pp 2-3; Ashworth A., 2000, Op. Cit., p 226.

trading business. The government's emphasises on the importance of providing enforcers with a wide range of enforcement tools so that they can deal effectively with the entire range of enforcement activities, from assisting compliance to prosecuting truly criminal or rogue operators¹¹⁴.

5.7.1 Injunction

Normally there is a considerable delay between the time when a consumer discovers that his rights are being infringed and the time when the matter or issue is heard at court. This puts consumers' interests at risk by allowing the infringer to carry on infringing activities. Therefore, to reduce the harmful consequences from such illegal acts and to ensure that other consumers will not be affected by these continuous activities, the UK regulation has granted to the concerned authorities the right to seek an injunction to stop these activities¹¹⁵. Under the Unfair Terms in Consumer Contracts Regulations 1999¹¹⁶, the Director General of Fair Trading is under a duty to consider all complaints made to him to the effect that a particular variety of term employed for general use in consumer contracts is unfair¹¹⁷ and if he considers the term in question to be unfair, an application may be made for an injunction to prevent the use of that variety of term¹¹⁸. An injunction granted may not just be to the particular term in respect of which the application for an injunction is made, but it may also be applied to any similar term any term having a like effect to that in respect of which the application for an injunction is made¹¹⁹. In addition to the powers of the Director General of

¹¹⁴ - See 5.2.1 Administrative penalties as a quick solution in the UK Model in this Thesis

¹¹⁵ - See Al-Muaini, A. (2009), *The Enforcment of copyright law in the United Arab Emirates*, PhD thesis, University of Aberdeen. p 62

¹¹⁶ - SI 1999/2083

¹¹⁷ - See Article 10 (1) of the Unfair Terms in Consumer Contracts Regulations 1999

¹¹⁸ - Ibid, Article 10 (3) & Article 12 (1)

¹¹⁹ - Ibid, Article 12 (4)

Unfair Trading to seek injunction, similar powers are also extended and conferred on other qualifying bodies¹²⁰, such as the main utility regulators and the Consumer Associations¹²¹.

However, The OFT seeks to ensure that business and all other enforcers are aware of its own general principle for the enforcement of this legislation. These principles are:

- Action is necessary and proportionate, where there is evidence of a breach of the relevant consumer protection law and consumer harm stemming from the breach.
- Before taking any action, business should be given adequate and reasonable time to put the matters right.
- Wherever possible court action will be only taken after undertakings have been sought.

This indicates the primary role of the OFT is to provide traders and manufactures with adequate information and advice to educate them and, on the other hand, to maintain and protect consumer rights sufficiently.

5.7.1.1 Cross-Border Enforcement

Moreover, the role of Office of Fair and the qualifying public bodies may extended even more, as Part 8 of Enterprise Act 2002 (which replaced Part III of the Fair Trading Act 1973) has given the power to take Action against businesses in certain other countries that are infringing certain European based consumer protection legislation. For more instances, in the case *Office of Fair Trading v MB designs (Scotland) Ltd*¹²² the OFT have sought an interim enforcement order against a home improvement company (MB designs) on the basis that the

¹²⁰ - Previously, under Part III of the Fair Trading Act, 1973 the power to Take Action was exclusive only on the OFT.

¹²¹ - See Article 12 (2) of the Unfair Terms in Consumer Contracts Regulations 1999

¹²² - [2005] Scot CS 85

Local Trading Standards office had received 299 complaint about their products quality in the periods between 2001–2004. The TLS officers have contacted the company on several occasions and the company accepted the claims of defective installation. The OFT tried to seek undertakings from the company whereas the company refused to provide any undertakings. Lord Drummond Young granted an interim enforcement order on both national and European levels. He justified his decision on the basis of two laws; for national infringements Sale of Goods Act 1979 and the Supply of Goods and Services Act 1982, and for European infringements Part 8 of the Enterprise Act 2002 which involves contravention of European Union legislation¹²³.

Therefore, the OFT as an allocated body may take action in European Economic Area (EEA) States under the provisions of Part 8 of the Enterprise Act 2002 section 221 which confers on the OFT and other nominated ‘Community Qualified Entities’ (CQE) the power to take action in other EU countries against businesses which contravene EU consumer protection legislation, whether laws, regulations or administrative provisions and harm the collective interests of consumers¹²⁴. The OFT argues that ‘the most significant hurdle to effective cross-border public enforcement of consumer law has been the lack of a fully effective network of enforcers’¹²⁵. Norbert Reich has presented another argument on the insufficient of cross-border that no representative consumer association exists worldwide which could promote or at least monitor and support these standards in some sort of collective consumer interest.¹²⁶

¹²³ - [2005] Scot CS 85

¹²⁴ - See Part 8 sections 212 and 221 of Enterprise Act 2002.

¹²⁵ - See Kaye, S. (2005), *No place to hide: EU cross-border enforcement*, Consumer Policy Review, HighBeam Research, available at <http://www.highbeam.com/doc/1P3-910968141.html>, accessed date 25/10/2011, p 420.

¹²⁶ - See Reich, N. (2009), *Transnational Consumer Law-Reality or Fiction?*, Penn State International Review Vol. 27, No. 1, pp 859-868, p 863; Rott, P. (2001), *The Protection of Consumers’ Interests After the Implementation of the EC Injunctions Directive Into German and English Law*, Journal of Consumer Policy, Vol. 24, No. 3-4, pp 401–442, pp 404-405.

Despite that the OFT does not have any power under Part 8 to impose civil penalties or obtain redress for consumers who suffer damage as a consequence of the breaches by the trader, however, Part 8 merely provides that an enforcement order is admissible as evidence in civil proceedings and shifts the burden of proof to the defendant to show that act did not occur.¹²⁷

5.7.2 Consumer Redress

In Chapter Two of this thesis it has indicated the difficulties that the consumer in the UAE face in seeking for redress and the absence of legal provisions to seek for legal assistance from administrative bodies. This section will explore the situation in the UK model and how effective is the role of administrative bodies in providing legal assistance for the consumer.

In the UK if the consumer and the public agency have failed to restore compensation through administrative or inexpensive means of enforcing channels, the consumer on the other hand might recourse to legal function in respect of defective goods or services for restitution¹²⁸. Even though the legal system is open to everybody, however, obtaining legal advice and taking legal proceedings can be expensive and complicated¹²⁹. To tackle such difficulties in obtaining compensation, the United Kingdom legal system have provided different means whereby the consumers can obtain advice on legal rights and obligations through Local authority, Consumer Association (CA), Consumer National Council (CNC) and Citizens Advice Bureaux (CAB)¹³⁰. Thus, before pursuing any legal action, the consumers must know

¹²⁷ - Ramsay I., 2007, Op. Cit., p 496.

¹²⁸ - See Twigg-Flesner, C. (2003), *Consumer Product Guarantees*, Ashgate Dartmouth, pp 71-74.

¹²⁹ - William Whitford commented on consumer's litigation by stating that 'Many consumer disputes are potentially as complicated, in terms of the needed factual investigation and the complexity of the legal issues, as highly litigated commercial disputes'. See; Whitford, W. (1994), *The Ideal of Individualized Justice: Consumer Bankruptcy as Consumer Protection, and Consumer Protection in Consumer Bankruptcy*, *The American Bankruptcy Law Journal*, Vol. 68, pp 397-417, pp 397-398.

¹³⁰ - See 5.10 The Effective Role of Consumer Protection Associations in the UK in this thesis

what are their rights, how to enforce those rights and how to obtain legal advice to allow them to pursue a claim with a comprehensive view on the case¹³¹.

5.7.2.1 Redress through Civil Claim

Compensation through civil procedure is available for injured consumers or those who have suffered from fake goods and services or been misled by defective advertisements or unfair terms. Under the Legal Aid Act of 1988, civil legal aid was available in any noncriminal litigation, including personal injury cases, contract disputes, negligence, matrimonial and debt matters; however, this situation has changed since the enactment of the *Access to Justice* Act of 1999. Now, certain types of cases have been removed from the legal aid system, including personal injury cases, with the exception of cases of medical negligence.¹³²

There is always concern that civil action may be unsuccessful and the consumer might face an order to pay the costs in the event that a consumer has to take legal civil proceeding without government aid.¹³³ This would encourage the judge at first instance to deal with the case through informal procedures, such as negotiation, mediation, and other means of alternative dispute resolution in the settlement between the parties.¹³⁴

However, there are a number of considerations that deter consumers from pursuing civil proceedings, for instance, a general feature of the civil law is that the consumers must take the initiative in commencing proceedings and prove the *Actus Reus* that led to the infringement of his rights.¹³⁵ Moreover, there are other reasons why consumers do not litigate: there may be a lack of motivation to take the matters further; the cost may appear too

¹³¹ - Macleod J., 2007, Op. Cit., pp 96-97; Ramsay I., 2007, Op. Cit., pp 222-224.

¹³² - Oughton, D. and Lowry J., 2000, Op. Cit., pp 76-77.

¹³³ - Howells, G. and Weatherill S., 2005, Op. Cit., p 604; Woodroffe, G. and Lowe R., 2007, Op. Cit., pp 202-204.

¹³⁴ - See Hensler, D. (2004), *Our Courts, Ourselves: How the Alternative Dispute Resolution Movement Is Reshaping Our Legal System*, 108 Penn St. L. Rev, pp 165-197, p 166; Ramsay I., 2007, Op. Cit., p 235.

¹³⁵ - Al-Muaini A., 2009, Op. Cit., pp 102-103.

high; the formality and remoteness of the courts may appear too daunting; and the amount that the consumer stands to recover, if he succeeds, may not make litigation worthwhile.¹³⁶

This indicates the positive role of the government in the United Kingdom in establishing various advisory bodies as well as enabling consumer association to act positively – both of which have eased litigation procedures. The main beneficiary of the positive role of the advisory bodies (governmental or voluntary) prior to the commencement of any legal action is the consumer, as the consumer will be able to make an informed decision which helps him to pursue legal action against rogue and unscrupulous traders more confidently and successfully.

5.7.2.2 Redress through Criminal Sanction

Other consumers may prefer to seek adjudication through criminal procedures to detect and prosecute violations of the law and to punish lawbreakers with legal penalties. Examples of consumer protection statutes based wholly or largely on the imposition of criminal sanctions, fines and imprisonment are the Trade Descriptions Act of 1968, the Consumer Protection Act of 1987 (Part 3), the Food Safety Act of 1990, Enterprise Act of 2002 (Part 8) and Section 20 of the General Product Safety Regulations of 2005. Moreover, the new Consumer Protection from Unfair Trading Regulation of 2008 retained strict criminal liability for almost all

¹³⁶ - Ramsay, in his study 'on redress for poor quality and defective goods', indicated that consumer complaint and two-party negotiations between buyer and seller might play an important role in protecting the consumer against defective and poor-quality products. See; Ramsay, I. (1981), *Consumer Redress Mechanisms for Poor-Quality and Defective Products*, The University of Toronto Law Journal, Vol. 31, No. 2, pp. 117-152. p 127; See also; Cranston, R. (1984), *Consumers and the Law*; Law in Context series, 2nd edition, Weidenfeld & Nicolson, pp 81-83.

contraventions of the misleading actions or omissions and aggressive commercial practices.¹³⁷

Cartwright has indicated that the main objective of punishing through criminal law in the context of consumer protection offences is probably deterrence.¹³⁸ On the same trend, Wells argues that “most corporate crime theory has been deterrent-based, in the sense that the purpose of instituting sanctions has been to discourage violations and encourage good practice.”¹³⁹ Thus, the main aim of the criminal sanctions is not to provide compensation for individuals who suffer at the hands of a wrongdoer but to encourage improved trading standards through the deterrence of violators.¹⁴⁰

Despite these general observations on the role of the criminal sanctions as a means of consumer protection, Part 6 of the Powers of the Criminal Courts Act 2000 has now given a criminal court the power to award compensation to the victim of crime provided that civil proceedings have not been concluded before the date of the offender’s conviction *Hammertons Cars Ltd v Redbridge London Borough Council*.¹⁴¹ In order for the compensation provisions to apply, there must be a conviction and the victim must be able to show that he has suffered loss in the form of personal injury, loss and damage.¹⁴²

Therefore, before laying on criminal procedures, consumers have to bear in mind the two main indicators of seriousness that would convict the defendant and give consumers the right

¹³⁷- See The Consumer Protection from Unfair Trading Regulation 2008 regs, 5,6,7 and Schedule 1.

¹³⁸- Cartwright P., 2007, Op. Cit., p 12.

¹³⁹- See Wells, C. (2001), *Corporations and criminal responsibility*, 2nd edition, Oxford, Oxford University Press, p 31.

¹⁴⁰- Macleod J., 2007, Op. Cit., pp 199-120.

¹⁴¹- [1974] 2 All ER216, the court awarded the plaintiff a compensation and held that if a victim (U) brought civil proceedings, and those proceedings were brought to an end, they should be regarded as quite independent of the criminal proceedings and no compensation order should be made in the criminal proceedings in respect of liabilities which arose, or might have arisen, in the civil proceedings. Accordingly, the appeal would be allowed and the compensation order quashed.

¹⁴²- Oughton, D. and Lowry J., 2000, Op. Cit., p 88.

to recourse to criminal proceeding: (1) the degree of *mens rea* and (b) the degree of harm (actual or potential) involved, which means that when the consumer is a victim of serious wrongdoing, it is frequently appropriate for criminal law to intervene. For example, if a consumer was killed by a product that its suppliers knew to be dangerous, it is conceivable that a prosecution for manslaughter might follow.¹⁴³

These two elements were indicated in Section 14 of the Trade Description Act of 1968,¹⁴⁴ which requires the prosecution to prove either that a statement was made recklessly, or that it was known to be false when made. Although the main part for accusation is the fact that criminal intent (*mens rea*) is difficult for prosecutors to prove, some have argued that the *mens rea* in consumer protection cases does not need to be proved and already exists whenever infringement has occurred.¹⁴⁵ Accordingly, the offender criminal's intent is established directly by offering defective goods or services or publishing misleading advertisements.¹⁴⁶ Thus, the accused will usually carry the burden of making out the defence, which means that presumption of *mens rea* in this matter is the general rule, and anyone claiming against that is obligated to prove otherwise *Cottee v Douglas Seaton (Used Cars) Ltd.*¹⁴⁷ Nonetheless, the due diligence defence¹⁴⁸ which is common to a number of consumer

¹⁴³- Constructive or unlawful act manslaughter requires proof of intention to do an act which is unlawful and dangerous but imposes strict liability as to the causing of death. Death or serious harm need not be foreseeable: see Regina v Mallet [1972] Crim LR 260. Manslaughter by gross negligence requires proof of gross negligence.

¹⁴⁴- This Act has been amended with The Consumer Protection from Unfair Trading Regulations 2008 Part 3 Reg 8. (IS 2008 No. 1277)

¹⁴⁵- Ibrahim A., 2007, Op. Cit., pp 61-62.

¹⁴⁶- See Hamed, T. (1993), *Al-aqed Wa Al-Eradah Al-munfaredah*, 1st edition, dar alnahdhah alarabiyah, p 59 also see; *R v Southwood* [1987] 3 All ER 556, a second-hand car dealer was charged with false trade descriptions to vehicles in the course of his business by substantially reducing the mileage on the odometer before sale. He appealed against this decision and his appellant was dismissed by the Court which held that(1) Section 1(1)(a) of the 1968 Act was clearly intended to impose strict liability on a person who applied a false trade description in the course of business and a disclaimer by a car dealer regarding the mileage reading on a car's odometer could not provide a defence to an offence under s 1(1)(a) since, by his initial action in falsifying the description, the dealer had effectively disqualified himself from claiming that he had taken reasonable precautions to guard against a false description.

¹⁴⁷- [1972] 3 All ER 750 The car trader W has bought a car without any knowledge that it has previous accident, then he sold the car to S, the Judge have dismissed legal action against the trader and held that since

protection offences, may permit the exoneration of the careful trader.¹⁴⁹ The availability of such a defence, however, requires a practical means that the trader has taken rigorous precaution to avoid committing prohibited acts.

Some scholars were against criminal action for redress and state that it should be applicable for certain type of infringements. Ashworth has suggested that to minimise the use of criminal law, it should be concerned only with serious wrongdoings.¹⁵⁰ Ball and Friedman, on the other hand, argue that the word ‘crime’ has symbolic meaning for the public and the criminal law is permeated so deeply with notions of morality and immorality, public censure and punishment, that labelling an act as ‘criminal’ often has consequences far surpass mere administrative effectiveness. They conclude that businessmen abhor the idea of being branded a criminal, and thus that fear of prosecution is an effective deterrent to all traders.¹⁵¹

Another argument is that, with a *mens rea* offence, it would be difficult to secure a conviction against a large corporation.¹⁵² Ramsay has mentioned that some companies, when making decisions to violate the law, calculate costs and benefits of the probable profits to be obtained through violation, the probability of prosecution, and the amount of any punishment. He

W had no such knowledge, he was not guilty of an offence under that subsection and consequently the respondents had not committed an offence under s 23 of TDA 1968.

¹⁴⁸ - s. 39(1) of consumer protection Act 1987 stated that ‘In proceedings against any person for an offence to which this section applies it shall be a defence for that person to show that he took all reasonable steps and exercised all due diligence to avoid committing the offence.’

¹⁴⁹ - In *Wings Ltd v Ellis* [1984] 3 All ER 577, the House of Lords was unmoved by claims that its interpretation of the relevant offence under Trade Description Act 1968 would criminalise the innocent precisely because of the availability of statutory defences. For example, Lord Templeman saw no need to require carelessness as an ingredient of the offence because s. 24 permits defence to the careful trader.

¹⁵⁰ - Ashworth A., 2000, Op. Cit., p 229.

¹⁵¹ - See Ball H., and Friedman, L. (1965), *Use of criminal sanctions in the enforcement of economic legislation: A sociological view*, Stanford Law Review, 17, pp 197–223. pp 216-217.

¹⁵² - See: *Tesco Supermarkets Ltd v Natrass* [1972] 2 All ER AC 153 Tesco was charged with mispricing offence contrary to section 11 (2) of the Act, however, Tesco appealed in its defence that the offence was due to the act or default of its branch manager and that it had taken all reasonable precautions to avoid committing the offence. HL upheld the appeal, holding that the B-M was another person within s 24 and the company satisfied the due diligence defence by having an adequate chain of command and an efficient working system of supervision to ensure that its shops were managed properly.

added that if the costs of violation are likely to exceed the benefits, then the law will be obeyed.¹⁵³

However, there are other arguments that hurdles encountered in the pursuit of criminal prosecution, such as the availability of a wide range of administrative sanctions and the increased evidential burden would reduce the use by enforcers of criminal sanctions where they were not appropriate.¹⁵⁴

5.7.3 Class Action¹⁵⁵ as a Means of Litigation

One of the most favourable remedial procedures in the area of consumer protection is the class action suit.¹⁵⁶ In recent years, class actions have been recommended as a legal recourse for consumers, particularly in cases where it may be too costly for each individual to proceed against traders' illegal practices, or where the potential return from each individual suit would be negligible.¹⁵⁷ From a legal viewpoint, this is a lawsuit in which a representative of a large number of people who have similar claims against the same defendant can sue on behalf of him and the others similarly situated.¹⁵⁸ When this loss is multiplied by the thousands of

¹⁵³- Ramsay I., 2007, Op. Cit., p 361.

¹⁵⁴- Cartwright P., 2007, Op. Cit., pp 15-16.

¹⁵⁵- "A class action is a legal procedure which enables the claims (or parts of the claims) of a number of persons against the same defendant to be determined in one suit". See; Mulheron, R. (2004), *The Class Action In Common Law Legal Systems*, Hart, p 3.

¹⁵⁶- In some instances, particularly in product liabilities cases involving design defects, a wide range of consumers may be affected by a single act on the part of a manufacturer. See; Oughton, D. and Lowry J., 2000, Op. Cit., pp 86-87.

¹⁵⁷- In Harvard Law Review, *Development of the law – Class Action*, the Article has emphasised the importance of a class action which provides both compensation and deterrence. Moreover, the Article drew a further distinction between individually recoverable and non-recoverable claims. A claim is individually recoverable if it warrants the costs of separate litigation; and it is non-recoverable if it would not justify the expense to an individual of independent litigation, but would justify the lesser expenditure required to obtain a share of a class judgment. See Harvard Law Review, (1975-76), *Development of the law – Class Action*, 89 Harv L Rev, 1319, p 1356.

¹⁵⁸- *Akely v. Kinnicutt*, 238 N.Y. 466, 144 N.E. 682 [1924] in the case of Insull Utilities Investments, the top holding company in the Insull hierarchy. Nearly two hundred investors who were the victims of fraud and mismanagement were able to obtain relief in a single action. See Kalven, H. and Rosenfield, M. (1941) *The Contemporary Function of the Class Suit*, The University of Chicago Law Review, Vol. 8, No. 4, pp 684-721, p 686.

consumers who may have been deceived, however, such a suit is reasonable and desirable. Moreover, many individual consumers may fail to bring suit because simply because they are ignorant of their rights. Class actions are permitted where certain conditions apply; for example, the suit should be based on one or more facts or questions of law that are common or similar in the claims of all members of the group. For example, the plaintiffs must share similar nature of claims, demand for relief, and cause of action. This provides that these conditions must be fulfilled by all plaintiffs, and thus one or more members of the class may sue on behalf of all.¹⁵⁹

From an economic perspective, Coase¹⁶⁰ has explained that class action may be an effective method of requiring firms to internalise the costs of failures in contract performance, ensuring that private cost equal social costs. Class action suits enable all complainants to receive their equal redresses either through judicial economy of a single damage decree for multiple claims or through a class settlement achieved between the representative plaintiff and the defendant. Even more the latter situation would reduce the transaction costs, which were identified by Coase and Wright as the major obstacle to achieving an efficient solution to the problem of social cost.¹⁶¹

Contemporary class action for protecting the collective interests of consumers have been categorised into the following three forms:¹⁶²

- (i) The private initiative model: In this model, an individual consumer initiates the claim in the name of a group of consumers.

¹⁵⁹ - *Westren Candian Shopping Centres Inc v Dutton* [2001] 2 SCR 534

¹⁶⁰ - See Coase, R. (1960), *The Problem of Social Cost*, Journal of Law and Economics, Vol. 3, pp 1-44, pp 15-19.

¹⁶¹ - See Wright, G. (1969), *The cost-internalization case for Class Actions*, Stanford Law Review, Vol. 21, No. 2, pp 383-419, p 383; Coase R., 1960, Op. Cit., pp 41-44.

¹⁶² - See Nordh, R. (2001), *Group Actions in Sweden: Reflections on the Purpose of the civil litigation, the need for Reforms, and a forthcoming proposal*, Duke Journal of Comparative & international law, Vol. 11, pp 381-404, pp 396-398; Howells, G. and Weatherill S., 2005, Op. Cit., pp 639-640; Deutch S., 2004, Op. Cit., p 181.

- (ii) The consumer organisation claim model: In some countries, consumer associations have the authority to initiate class actions. Consumer associations have standing to apply to courts for an injunction or prohibition order regarding unfair commercial practices.
- (iii) The administrative authority model: According to this model, authorities have the power to sue in the interest of consumers.

Therefore, class action may be an important method to transform private trouble into public issues¹⁶³ and create pressure for public action or at least increased public engagement with an issue.¹⁶⁴ However, class action as a legal remedy is the subject of controversy. Consumerists have proposed its implementation as a deterrent to future unfair practices by businessmen. Likewise, opponents of class action have pointed out the danger of their producing legalised ‘blackmail’, when unfair settlements are extorted from defendants afraid of the high costs of litigation. Cohen and Ramsay have stressed that the primary beneficiaries may be ‘entrepreneurial lawyers’ rather than consumers.¹⁶⁵ To illustrate this further, Coffee has stressed that lawyers may have an interest in maximising their fees from a case through a settlement that may not necessarily be in the best interests of consumers as a class. Alternatively, they may refuse a reasonable settlement that would be in the best interest of their client.¹⁶⁶ Moreover, class actions have also been criticised for overburdening the courts; the huge costs, excessive amount of time and effort expended in class litigation all raise legitimate concerns.¹⁶⁷ The opponents of class action have taken a step further by describing

¹⁶³ - See Mills, C. (1961), *The Sociological Imagination*, Oxford University Press, p 12.

¹⁶⁴ - Ramsay I., 2007, Op. Cit., p 255.

¹⁶⁵ - See Cohen, D. (1975), *Remedies for Consumer Protection: Prevention, Restitution, or Punishment*, The Journal of Marketing, Vol. 39, No. 4, pp. 24-31, p 30; Ramsay I., 2007, p 255.

¹⁶⁶ - See Coffee, J. (1995), *Class Wars: The Dilemma of the Mass Tort Class Action*, Columbia Law Review, Vol. 95, No. 6, pp. 1343-1465. pp 1346-1347.

¹⁶⁷ - For example, in the United State in the case of *Eisen v. Carlisle & Jacqueline*, 417 U.S. 156 [1974] the Supreme Court ruling overturned the lower court decision, and required that five million notices be sent and that the complainant pay for the notification. For more, see; Handler, M. (1971), *The shift from substantive to*

it as a "punitive, quasi-criminal device intended primarily to deter alleged wrongful conduct by inflicting severe loss on the alleged wrongdoer regardless of whether any consumer redress is effectuated."¹⁶⁸

5.7.3.1 English Group Litigation Model

The English legal community knew of no specific class or group action procedure; although, the courts have appeared to be more lenient with such action.¹⁶⁹ For example, it has been held that where a representative action is brought, it is open to a member of that class to treat the decision in the representative action as *res judicata*, but it will still be necessary for him to prove damage in a separate action.¹⁷⁰ Class actions in England are viewed as a case management tool as opposed to a societal tool for improving consumer and injured party access to justice. In England, there are two main types of collective action: the representative action and the Group Litigation Order (GLO).¹⁷¹

procedural innovations in antitrust suits 'The twenty-third annual antitrust review', Columbia Law Review, Vol. 71, No. 1, pp 1-36, p 7; Cohen D., 1975, Op. Cit., p 29.

¹⁶⁸ - See Report of the National Institute for Consumer Justice, (1973), *Redress of Consumer Grievances*, Washington, D.C., p 42.

¹⁶⁹ - Ramsay I., 2007, Op. Cit., p 257; Oughton, D. and Lowry J., 2000, Op. Cit., p 86; Howells, G. and Weatherill S., 2005, Op. Cit., p 643.

¹⁷⁰ - *Prudential Assurance Co. Ltd v Newman Industries Ltd* [1979] 3 All ER 507,521 in this case J. Vinelott attempted to widen the test from 'same interest' to 'common ingredient'

¹⁷¹ See Howells, G. and Weatherill S., 2005, Op. Cit., pp 638-650; collective claims for damages in respect of antitrust violations, permitted by Competition Act 1998, c 41, s 47B, which was inserted by the Enterprise Act 2002, c 40, s 19. The provision is entitled, 'Claims brought on behalf of consumers'. Relevant subsections permit a 'specified body' to institute an action for 'consumer claims' on behalf of at least two consumers. For recent informal consultation on this area, see Office of Fair Trading, *Private Actions in Competition Law: Effective Redress for Consumers and Business* (April 2007). Consultation closed in June 2007.

5.7.3.1.1 The Representative Rule

The representative action has been a part of English law for over 300 years¹⁷² and is now enshrined in Civil Procedure Rule 19.6,¹⁷³ which was formerly under the Rules of Supreme Court Order 15, Rule 12, which mentioned that the court can provide a mechanism for representative action where numerous persons have the same interest in any proceeding. There is, however, a major obstacle to such actions in that it has been held that damages cannot be recovered on the part of the class in a representative action because the merits of each individual plaintiff's case might differ.¹⁷⁴

5.7.3.1.2 The Group Litigation Order

The new system was introduced by Lord Woolf in his civil procedure reforms '*Access to Justice*' and came into force on 2 May 2000. Under Civil Procedure Rule 19.10, the Court can make a GLO for the case management of claims that give rise to common or related issues of fact or law.¹⁷⁵ These issues are wider than the interests under the representative rule. For example, super complaints may be made by designated consumer organisations to the OFT under section 11 of the Enterprise Act of 2002. Under this section, a designated consumer body can make a complaint to the OFT that any feature, or combination of features, of a market in the United Kingdom for goods or services is or appears to be significantly

¹⁷² - See Yeazell, S. (1979-80), *From Group Litigation to Class Action - Part II: Interest, Class, and Representation*; 27 UCLA L. Rev. p 1086; Lascelles, G. (2011), *Collective or Class Actions: Trends and Developments in England*, The International Comparative Legal Guide to: Litigation and Dispute Resolution, Global Legal Group Ltd, London, p 2.

¹⁷³ - As contained within rule 19.6 of the CPR.

¹⁷⁴ - See *Markt & Co. Ltd. v. Knight S.S. Co. Ltd.* [1910] 2 KB 1021 The Decision of the English Court of Appeal has required that parties in representative actions should have same interest, which means that individuals with different contracts and individual damage claims could not be aggregated within a common representative action.

¹⁷⁵ - Civil Procedure Rule 1998 s 19.10

harming the interests of consumers.¹⁷⁶ Other qualified bodies also may act in cases involving the consumer interest; bodies such as the Consumer Association appear to have some role to play.¹⁷⁷

The current group litigation order differs substantially from the class action procedure. The GLO required an individual to opt-in and actively participate in the action; therefore, it differs fundamentally from the concept of the representative claimant who sues on behalf of all similarly situated individuals who may opt out of the litigation but are otherwise not active participants.¹⁷⁸ Moreover, the GLO mechanism provides a skeletal regulation of the various issues that might arise in the course of the action.¹⁷⁹ Registering can be a voluntary matter; however, the court has the power to force all parties to register for case management issue. Once they have registered in GLO, any verdict or judgment concerning a claim on the group register is obligatory to all parties in all other claims.¹⁸⁰

Ramsay has mentioned that GLO “is designed to allow representative proceedings to be treated, not as a rigid matter of principle, but as a flexible tool of convenience in the administration of justice, and should be applied, not in any strict rigorous sense, but according to its wide permissive scope”.¹⁸¹

In contrast, Mulheron has argued that the opt-in procedures in GLO tend to stack the costs for those represented toward the beginning of the litigation, and constitute one of the reasons

¹⁷⁶ - Lascelles G., 2011, Op. Cit., p 2.

¹⁷⁷ - *Woodman v Photo Trade Processing Ltd* [1981] (Unreported, Exeter County Court), Lawson (1981) 131 NLJ 933, 935, the Association’s chief legal officer appeared in the County court to argue one of the first cases to be heard under the Unfair Contract Terms 1977 to sponsor the test case.

¹⁷⁸ - For more discussion on preferring Opt-in and Opt-out regimes, see; Mulheron, R. (2007), *Justice Enhanced: Framing an Opt-Out Class Action for England*, Modern Law Review, Vol. 70, No. 4, pp 550-580.

¹⁷⁹ - As contained within Part 19.III of the Civil Procedure Rules (CPR), in particular, rules 19.10-19.15.

¹⁸⁰ - Howlles, G. and Weatherill S., 2005, Op. Cit., p 647.

¹⁸¹ - Ramsay I., 2007, Op. Cit., p 257.

why the procedure is generally considered to provide a less favourable avenue for access to justice.¹⁸²

However, public agencies are well placed to perform a policing role on behalf of consumers. Organisations such as the OFT and Consumer Associations build up a substantial amount of experience in trading practices and are sufficiently aware of commercial reality to arrive at sensible judgements about what constitutes reasonable business conduct.¹⁸³

Moreover, the United Kingdom has provided an alternative means for compensation by enhancing the role of administrative bodies and encourages alternative dispute resolution for redress. It has created a model that combines legal and administrative enforcement to satisfy consumers and enable them to choose which method of restitution they prefer.

5.8 The Matter of Jurisdiction in Consumer Contracts

One of the critical issues in consumer protection is the matter of jurisdiction in cross-border consumer contracts because of its negative impact on consumers; however, the UK has handled the issue through the implementation of Brussels Regulation. This matter would not create a problem where the parties of a contract or commercial transaction are between a supplier and consumer within the jurisdiction of one country. Hence, such conflict may appear in cases of cross-border transactions, where the matter of jurisdiction often arises as a significant barrier impeding consumers from purchasing online. Therefore, this barrier has turned into a challenge facing consumers and needs to be resolved by the government.¹⁸⁴

¹⁸² - Mulheron R., 2007, *Op. Cit.*, pp 550-580.

¹⁸³ - See Bright, S. (2000), *Winning the battle against unfair contract terms*, *Legal Studies*, Vol. 20, No. 3, pp 331-352, pp 333-335.

¹⁸⁴ - See Danov, M. (2010), *The Brussels I Regulation: Cross-Border Collective Redress Proceedings and Judgments*, *Journal of Private International Law*, Vol. 6 No. 2, p359-393. pp 359-360

5.8.1 The Brussels Regulations

Both sellers and consumers face the challenge of jurisdiction as a result of the rapid development of technology which has led to a huge dependency on online transactions and the completion of the internal market. This new situation leads consumers to lack confidence about using the new possibilities of such opened-up markets unless there is some assurance that they will not be seriously disadvantaged by doing so. This is a challenge that needs to be resolved, and our aim in this thesis is provide consumers with sufficient protection even in cross-border cases.¹⁸⁵

The Brussels Regulations came into effect in the United Kingdom on the first of March 2002,¹⁸⁶ upgrading the Brussels Convention of 1968¹⁸⁷ and handling jurisdictional issues.¹⁸⁸ Therefore, it is applicable in all EU member states except Denmark.¹⁸⁹ The problem is that a jurisdictional dispute might arise even if the only contract occurring is the fact that the website of a trader has been accessed from another country. This situation might give the right to shift jurisdiction over a dispute in that country. In some cases, a trader might be engaged in a transaction within a jurisdiction with which he did not intentionally want to be

¹⁸⁵- Dean M., 1993, Op. Cit., p 582.

¹⁸⁶- See Hornle, J. (2002), *the legal issue of Electronic Commerce and communications*, 2EBL 8, 8.

¹⁸⁷- Brussels Convention is applied on contractual and tort disputes; the convention is applicable to parties of a contract from different states as long as both states are members of the Brussels Convention. This Convention is marked by the following, Firstly, suing a person who is domiciled in an EU member state could be carried out in that member state. Secondly, in contract issues, it is possible to sue a party in the court where a questionable obligation is performed. Thirdly, as far as tort is concerned, the place of the harmful event occurring is where a party could be sued. Fourthly, regarding a consumer's contracts, the consumer can take legal action in either their country or the other party's country, the only choice for the trader is the country where a consumer is domiciled.

¹⁸⁸- See Phillipsohn, S. (2002), *Tackling e-fraud: getting your money back or stopping the crime*, 4EBL 8, 9. 1 September 2002, Before the introduction of Brussels Regulations, countries were relying on Brussels Convention (1968), which is the case in EU member states, and members of EFTA (European Free Trade Association) were relying on Lugano Convention (1988), which resembles the Brussels Convention in its rules

¹⁸⁹- See Morrison, P. and Fraser, F. (2002), *Jurisdiction – International issues*, Construction Law, 13 3 Const LJ 26. 1 April 2002

engaged. Therefore, to handle jurisdiction issue, there is a serious need for a regulation that is clear and enforceable from the time of implementation.¹⁹⁰

5.8.1.1 Scope of the Brussels Regulations

The Brussels Regulations cover legal disputes of a civil or commercial nature. Since the implementation of the Brussels Regulations, their main aim has been to clear up any uncertainty about jurisdiction of cases in order to preserve consumer rights as the regulation has brought into force once again the country-of-destination principle.¹⁹¹ According to this principle, the consumer can sue the buyer in the consumer's jurisdiction and under the laws of his country.

The regulation handles issues related to jurisdiction of a dispute arising in a consumer contract in Article 15-17. The meaning of 'jurisdiction' is "the power of a particular country, through its courts, to hear and adjudicate upon a dispute".¹⁹² Certainly, deciding which country has jurisdiction over a dispute in commercial transactions in general, and in online transactions in particular, is a critical issue. It is even more important for companies to know clearly their situation, and to which jurisdiction they are subject, before commencing their advertising and selling goods and products in markets.

¹⁹⁰- See Rothchild, J. (2006), *Two Facets of the United States law applying to e-commerce Transactions: Jurisdiction over Online Disputes, and the Uniform Computer Information Transaction Act*, in A. Schulz, *Legal Aspects of an E-commerce Transaction*, International Conference in the Hague 26 and 27 Oct 2004, European Law Publishers, p 136.

¹⁹¹- See Farah, Y. (2008), *Allocation of jurisdiction and the Internet in the EU law*, E.L. Rev, Vol. 33, No. 2, p 264, in case of jurisdiction, the country-of-destination principle would favour consumers in online transactions; whereas the principle of country of origin would favour businesses' interests. According to Farah, these two theories are deficient. He gave an example of an online transaction where a consumer transacts online in an EU country rather than the country of his domicile; where the consumer articles in the Brussels Regulation could be invoked.

¹⁹²- See Kendrick, R. (2003), *Cyber-risks at law*, 153 *New Law Journal*, 395.

Nevertheless, the Brussels Regulations aim at improving consumers' confidence over all types of commercial transactions by granting them the right to bring legal proceedings in the court of their place of domicile. Moreover, the objective of the new Brussels Regulations is to tackle the jurisdiction obstacle as most consumers are more familiar with regulations of their place of domicile.¹⁹³

Moreover, in Article 23, the Brussels Regulations insists on the right of the parties to choose and agree on a jurisdiction. Furthermore, in the absence of an expressed agreement between the parties regarding jurisdiction, the defendant could only be sued in a court in his country, irrespective of his nationality. The criteria here are the country of domicile not the nationality.¹⁹⁴

The new regulation came as a relief to all different types of consumers whether they were doing their purchasing direct form the vendor or through a website. The regulation broadens the scope of consumers' home court jurisdiction. According to the Regulations, the court of the consumer's place of domicile in member states would have jurisdiction over disputes arising from a contract by a foreign trader who has any commercial or professional activity or by 'any means' targets consumers in member states with such activity (the contracts) or falling within the scope of such activities.¹⁹⁵

Furthermore, the Regulations focus more on the type of activity targeting consumers in a member state than the need for a consumer to contract specifically from that member state. Accordingly, this condition has demolished the previous requirement established by the previous Brussels Convention, which required the consumer to take steps to conclude the contract in his own country in order to be able to sue the trader within his domicile country.

¹⁹³ - Al-Hassan K., 2009, Op. Cit., p 138.

¹⁹⁴ - See Article 23 of Brussels Regulation 2001

¹⁹⁵ - See Brussels Regulation 2001 Article 14 sec 4.

This condition enhanced consumers' confidence in the ability of regulation to challenge any issues related to jurisdiction.¹⁹⁶

Additionally, Article 17 of the Regulation has banned the consumer from joining in any agreement that includes any conditions in the contract stating that the courts of his home of domicile shall not have jurisdiction. Thus, if such a condition exists, it shall be void. This trend by the legislature was supported by Commissioner Byrne, who strongly believes in not allowing the consumer to abandon his right to sue a trader in the courts of the consumer's place of domicile. He pointed out that this condition is a pillar in the process of boosting consumer confidence in commercial transactions.¹⁹⁷

5.8.1.2 Critique

It is arguable that businesses around the European Union and United Kingdom will have to bear in mind the variety of jurisdictions to which they are exposed, and to have full knowledge of each legal system of each member state. This is due to the fact that the consumer in an online transaction might be accessed from any country, resulting in their being exposed to a suit at any time being brought up by a consumer, as consumers will have the right to sue traders in court of their own place of domicile. Moreover, it is arguable that the Brussels Regulations might favour consumers as suppliers or traders when litigating abroad will incur additional charge, which might result in extra costs on goods or services provided to consumers. In addition, for small businesses, these new regulations might deter them from selling their products or supplying their services in other member states in order to

¹⁹⁶ - See Fenner, A. and Farquharson, A. (2002), *Where can we be sued*, 152 New Law Journal, 26.

¹⁹⁷ - See Byrne, D. (2003), *Cyberspace and consumer confidence*, Speech By David Byrne European Commissioner for Health and Consumer Protection to the Annual Conference of the Kangaroo Group of MEP's on 18 September 2003 available at http://ec.europa.eu/dgs/health_consumer/library/speeches/speech55_en.html, accessed on 12/12/2011.

avoid potential litigation costs abroad. All of these factors could have a negative impact on the progress of online transactions.¹⁹⁸

The opponents of the Regulations accuse it of exaggeration in its provisions, claiming that the previous Brussels Convention rules are more than enough to protect consumers. They are convinced that the old provisions were appropriate for online transactions and have provided consumers with protection by the courts of their own place of domicile with some requirements.¹⁹⁹

In addition, the enforcement of the court judgment on a trader in a foreign country was another concern; this difficulty arises when the trader is not represented in the jurisdiction of the consumer's country, if it is a member state. Moreover, opponents do not believe that Article 15 of the Regulations would particularly boost consumer confidence in online contracting, in light of consumers' other concerns, such as fraud and confidentiality.²⁰⁰

The Regulation was criticised further, as technology has allowed consumers to gain more from it. According to the provisions of the Regulations, even if the consumer concluded the online contract in the traders' country, away from his country of domicile residence, he is still eligible to gain the jurisdiction of his country of domicile.²⁰¹ In contrast, Al-Hassan has backed such a trend because of the imbalance of power between sellers and consumers. He argued that if traders face more cost when sued abroad, then they should, from the beginning, be sure to avoid any breaches of consumers' rights. He added that traders should be

¹⁹⁸ - See Cordera, M. (2001), *E-Consumer Protection: A Comparative Analysis of EU and US Consumer Protection on the Internet*, Rutgers Computer and Technology Law Journal, Vol. 27, No. 2, pp 231-263, p 246.

¹⁹⁹ - Fenner, A. and Farquharson A., 2002, Op. Cit.

²⁰⁰ - Ibid

²⁰¹ - See Motion, P. (2001), *The Brussels Regulation and E-Commerce- A Premature Solution to a financial problem*, C.T.L.R., Vol. 7, No. 8, pp 209-215.

transparent with consumers in all stages of the contract and should take all necessary steps to conduct business fairly.²⁰²

Despite the previous discussion, the United Kingdom has covered the jurisdiction issue by the Brussels Regulations, which can strength consumers' position as they can sue rogue traders in their domicile country, where they are more familiar with the legislative situation. In contrast, the UAE did not cover this important issue of conflicts that may arise between parties from different countries. The situation in the United Kingdom is more appropriate for the consumer as jurisdiction issues were regulated in such a way as to give consumers the opportunity to understand the whole situation, even in the case of dispute.

5.9 Role of Alternative Dispute Resolution in Settling Consumer Disputes

In the UAE regulations on consumer protection, parties are encouraged to use ADR mechanisms to settle their disputes; however, the actual practice of this mechanism remains unclear to most consumers as there are no provisions covering any type of ADR mechanism within the UAE.²⁰³ Therefore, this section will examine the best practices of ADR mechanisms under the UK model to create or adopt a similar model within UAE regulations. In many cases, consumers may refuse to take any legal action, and this is due to a variety of reasons: the lengthy and complicated procedures of litigation, the amount of money or subject of dispute are generally too small to be worth litigating, and the legal system and lawyers often appear unfamiliar to the average consumer so only the more educated consumers are aware enough to respond to infringements of their rights and take advantage of the law.²⁰⁴

²⁰² - Al-Hassan K., 2009, Op. Cit., p 140.

²⁰³ - See 2.7.3 Alternative dispute resolution in this thesis

²⁰⁴ - See Brennan, C. and Gallagher, K. (2002), *Consumer Support Networks: improving consumer advice in the UK*, International Journal of Consumer Studies, Vol. 24, No. 3, pp 227-238, p 229; Rawlings, P. and Willett, C.

In his Report *Access to Justice*, Lord Woolf envisaged a new legal landscape in which people would be encouraged to initiate civil court action only as a last resort after using other, more appropriate, means.²⁰⁵ Thus, Alternative Dispute Resolution is becoming a more appropriate means to seek redress, preserve consumer rights, and tackle all previous difficulties that may be faced by the consumer, including frustration with the costs and delays associated with going to court. Nevertheless, ADR should guarantee several are independency, impartiality, fairness and effectiveness²⁰⁶ in order to prove that it would be effective alongside administrative and judicial mechanisms. In the United Kingdom, there are various different ADR mechanisms – e.g., arbitration, mediation, and conciliation – all of which have been covered by various studies. This study, however, will focus mainly on the ombudsman as an effective method to resolve consumer disputes for different reasons that will be explained in the following sub-sections. Moreover, the UAE's government in need for such scheme to protect consumer rights and to control over maladministration at concerned bodies. It will also provide a secure mechanism to examine the reasons for the current weakness of administrative authorities, as mentioned in Chapter Three.²⁰⁷

5.9.1 Why an Ombudsman is preferred by Consumers

Various different means have been set out by which disputes may reach a binding settlement through court action or arbitration; however, the parties may prefer the much more impartial and cheaper alternative methods²⁰⁸ by which the parties may settle their differences by way of

(1994), *Ombudsman Schemes in the United Kingdom's Financial Sector: The Insurance Ombudsman, the Banking Ombudsman, and the Building Societies Ombudsman*, Journal of Consumer Policy, Vol. 17, No.3, pp 307-333, p 307; Howells, G. and Weatherill S., 2005, Op. Cit., p 604:622; Ramsay I., 1981, Op. Cit., pp 123-124.

²⁰⁵ - See Doyle, M., Ritters, K. and Brooker, S. (2004), *Seeking Resolution: the availability and usage of consumer to business alternative dispute resolution in the United Kingdom*, National Consumer Council, DTI, pp 5-6. p 5.

²⁰⁶ - Rawlings P. and Willett C., 1994, Op. Cit., pp 312-314.

²⁰⁷ - See 3.8 General analysis of the Available Administrative Regime on Consumer Protection in this Thesis.

²⁰⁸ - Oughton, D. and Lowry J., 2000, Op. Cit., pp 52-53; Woodroffe, G. and Lowe R., 2007, Op. Cit., p 198.

a non-binding ADR, which has been described as a “collective description of methods of resolving disputes otherwise than through the normal trial court”.²⁰⁹ The objective of providing such methods is to improve consumer redress since court action is perceived as being costly, complex, intimidating and lengthy.²¹⁰ It is desirable, therefore, that consumer protection efforts be channelled into the least costly and most effective mechanisms and institutions.²¹¹

The ombudsman mechanism has become an important complaint instrument for redress in consumer markets.²¹² When ombudsmen first arrived in common law, little attempt was made to define their functions precisely. The generally accepted image, derived from the Scandinavian prototypes, was that of a "Citizen's Defender" or "Complaints Man".²¹³ This mechanism has proved very successful; not so much in resolving individual disputes but in monitoring market practices.²¹⁴ In the United Kingdom, the notion was originally imported to deal with complaints by private citizens against activities of Government Departments under the Parliamentary Commissioner Act of 1967,²¹⁵ and separate ombudsman schemes were subsequently established for other public authorities, including central and local authorities, to deal with complaints about particular sectors of the services industries, such as banking

²⁰⁹- See Michaelson, J. and Maples, J. (2005), *Arbitration and ADR Supplement: Taking Clients to ADR*, New Law Journal, pp 725-726. P 725; Clark, B. (2002) *ODR: The new kid in town*, New Law Journal, 152 (1710) 152.; Macleod J., 2007, Op. Cit., p 107.

²¹⁰- See Office of Fair Trading, (2007), *Private actions in competition law: effective redress for consumers and business*; Recommendations from the Office of Fair Trading, 916. pp 5-8; Ramsay I., 2007, Op. Cit., p 577.

²¹¹- Ramsay I., 1981, Op. Cit., p 119.

²¹²- See Morris, P. and Little, G. (1999), *The Ombudsman and Consumer Protection*, in P. Cartwright (ed), *Cosnumer Protection in Financial Services*, The Hague, Kluwer; Morris, P. (1987), *The Banking Ombudsman*, Journal of Banking Law 133, p 131:199; Rawlings, P. and Willett C., 1994, Op. Cit., p 307.

²¹³- See Whincup, W. (1980) *Consumer legislation in the United Kingdom and the Republic of Ireland*, New York: Van Nostrand Reinhold, p 10; Harlow, C. (1978), *Ombudsmen in Search of a Role*, The Modern Law Review, Vol. 41, No. 4, pp. 446-454, p 454.

²¹⁴- See Wilhelmsson, T. (1992), *Administrative Procedures for the Control of Marketing Practices - Theoretical Rationale and Perspectives*, Journal of Consumer Policy, Vol. 15, No. 2, pp 159-177, p 169.

²¹⁵- See Section 14 (2) of the Parliamentary Commissioner Act 1967.

and insurance.²¹⁶ All of the schemes have one thing in common – namely, they exist to deal with complaints from members of the public about the way in which members of the schemes carry out their businesses, for example. There is no contradiction in role between ombudsman and other regulators such as Ofcom²¹⁷ and Ofwat,²¹⁸ as the sole function of ombudsmen is to provide redress to individuals, not to control or supervise a business sector. Bradley has remarked that the ombudsman mechanism gives control over the administration; he mentioned that the ombudsman may serve as a general auditor, inspector or management consultant.²¹⁹ For instance, Seneviratne asserts that administrative bodies can use these complaints as feedback about their performance, which would help these public bodies to improve their procedures and practices as complaints reveal failures in the system. Ombudsmen thus perform a quality control function and provide general oversight of the administration in addition to assisting in raising standards in public services, thereby improving the position of citizens in general.²²⁰

In *Raising Standards of Consumer Report*, it was demonstrated that many consumers have preferred to settle their complaints and seek for a redress through ombudsmen. It also indicates that ombudsman schemes aroused considerable interest as an effective redress mechanism among consumers:²²¹ they are free to consumers; and the ombudsman's ability to

²¹⁶- The others were the Banking ombudsman, Building Societies ombudsman, Investment ombudsman, Personal Investment Authority ombudsman, Securities and Futures Authorities Complaints Bureau and Arbitration Service, Insurance ombudsman, Personal Insurance Arbitration ombudsman, Financial Services Authority Direct regulation Unit and Independent Investigator. See; Rawlings, P. and Willett C., 1994, Op. Cit., pp 307-308; Woodroffe, G. and Lowe R., 2007, Op. Cit., p 200.

²¹⁷- Office of Communications; this is an independent telecommunications regulator and communications authority for the United Kingdom. The regulator was established in the United Kingdom to govern UK broadcasting as well as other areas of the media and telephone industry.

²¹⁸- The Water Services Regulation Authority is the body responsible for economic regulation of the privatised water and sewerage industry in England and Wales.

²¹⁹- See Bradley, A. (a 1980), *The Role of the Ombudsman in Relation to the Protection of Citizens' Rights*, The Cambridge Law Journal, Vol. 39, No. 2, pp 304-332, pp 306-312; Bradley, A. (b 1962), *The Redress of Grievances*, The Cambridge Law Journal, Vol. 20, No. 1, pp 82-98, p 84.

²²⁰- See Seneviratne, M. (2002), *Ombudsmen: Public Services and Administrative Justice, Law in Context*, London: Butterworths, p 310.

²²¹- See Office of Fair Trading, (1999), *Raising Standards of Consumer Care*, 259, London, OFT.

pursue an investigatory procedure;²²² and the general perception that ombudsmen are impartial.²²³

This official support for ombudsmen was preceded by judicial support in the shape of Lord Woolf, whose proposed litigation reforms in his Report *Access to Justice*, which came into force in April 1999, where he recommended that:²²⁴

- The retail sector should be encouraged to develop private ombudsman schemes to cover consumer complaints similar to those which now exist in relation to service industries; the government should facilitate this,
- The relationship between ombudsmen and the courts should be broadened, enabling issues to be referred by the ombudsman to the courts and the courts to the ombudsman with the consent of those involved.

Bradley, however, has argued that there are other facts that would affect the valuable performance of the ombudsman mechanism, and he stressed that excluding some bodies from the ombudsman's authority and giving the Council the authority to refuse transfer of a complainant would render the role of the ombudsman deficient. He also mentioned that just as the court can protect the citizen's right to enforcement of the law in matters that directly affect him, so can the ombudsman be a valuable means of protecting the citizen's interest in, or right to, good administration.²²⁵ On the same trends, R. James and M. Seneviratne have argued that the ombudsman should have the power to act of his own accord, making unannounced inspections of the professional bodies, viewing files at random. They added that another factor that would decrease its supervisory efficiency is the lack of enforcement

²²² - Harlow C., 1978, Op. Cit., p 448.

²²³ - Oughton, D. and Lowry J., 2000, Op. Cit., p 53; Howells, G. and Weatherill S., 2005, Op. Cit., p 625.

²²⁴ - See Woolf, H. (1996), *Access to Justice: final report to the Lord Chancellor on the civil justice system in England and Wales*, London: HMSO, para 296-297.

²²⁵ - Bradley A., 1980, Op. Cit., pp 331-332.

powers when he is dissatisfied with the way in which the professional bodies are operating, as his main weapon is recommendations.²²⁶

5.9.1.1 The Criteria of Ombudsman

The consumer's main concern about the ombudsman is his neutrality, but this was handled by the British and Irish Ombudsman Association (BIOA), so consumers can be sure that any ombudsman scheme approved by BIOA is entirely independent and that any adjudication on a particular dispute will be completely impartial. This is because, in order to be approved by BIOA, the scheme must satisfy the four basic criteria of independence, effectiveness, fairness and public accountability.²²⁷

1-Independence:

The one area where the Department exerts real control is in budget approval and staffing; otherwise, it seems that the Lord Chancellor's Department has maintained a laissez-faire approach in its dealings with the ombudsman, who is left to administer the scheme as he sees fit.²²⁸ Therefore, the ombudsman must be visibly and demonstrably independent from those whom the ombudsman has the power to investigate. The ombudsman must be appointed for a minimum of five years period, however, the appointment must not be subject to premature termination unless in case of incapacity or misconduct or other good cause.

²²⁶- See James, R. and Seneviratne, M. (1995), *The Legal Services Ombudsman: Form versus Function?*, *The Modern Law Review*, Vol. 58, No. 2, pp. 187-207, pp 206-207.

²²⁷- Oughton, D. and Lowry J., 2000, *Op. Cit.*, p 53.

²²⁸- Furthermore, some complainants who were dissatisfied with the ombudsman's decision complained directly to the Department and were told that the Lord Chancellor cannot interfere with the ombudsman's decision.

2-Public accountability:

The main mechanism for implementing this accountability is through the Annual Report, which is formally presented to the Lord Chancellor who, in turn, lays it before Parliament²²⁹. However, in other schemes such as legal services unlike most private sector ombudsmen, the Legal Services Ombudsman has no Council to whom he is accountable²³⁰. This may have advantages since a Council would have to include representatives from the profession who might exert an influence on the scheme and it also provides greater autonomy for the post-holder. On the other hand, there are disadvantages in that the ombudsman has no body to which he can look for support, in contrast to many other ombudsmen, particularly those in the private sector. For example, the Building Societies Ombudsman has an independent Council which has supported him in requests to the Building Societies Ombudsman Company for increases in budget and staffing²³¹.

3-Effectiveness:

The office of the Ombudsman must be adequately staffed and funded, either by those subject to investigation or from public funds, so that complaints can be effectively and expeditiously investigated and resolved. Whenever the ombudsman has started his investigation, he should expect that subject matter have accessible and fair internal complaints procedures which would enable him to redress or settle consumer complaint effectively gives²³².

4-Fairness:

The Ombudsman should be impartial, proceed fairly and act in accordance with the principles of natural justice. Moreover, the ombudsman should make reasoned decisions in accordance with what is fair in all the circumstances, having regard to principles of law, to good practice

²²⁹ - See Courts and Legal Services Act 1990, s 21(6) and Sched 3, para 5(1).

²³⁰ - James, R. and Seneviratne M., 1995, Op. Cit., p 191.

²³¹ - Ibid

²³² - See Hill, L. (1974), *Institutionalization, the Ombudsman, and Bureaucracy*, The American Political Science Review, Vol. 68, No. 3, pp. 1075-1085, p 1981; Howells, G. and Weatherill S., 2005, Op. Cit., p 625.

and to any inequitable conduct or maladministration. In all cases where it is decided not to accept the complaint for investigation, the ombudsman should notify the complainant of that decision and the reasons for it²³³.

5.9.1.2 Ombudsmen Procedures

In the public and private sector normally have a requirement that, before a complaint can be investigated by the ombudsman, the authority or organisation concerned must have had an opportunity to deal with the complaint internally. Ombudsmen, therefore, traditionally become involved where a complainant is dissatisfied with the outcome of the internal process²³⁴. Once the ombudsman that such procedures have been exhausted, then the ombudsman will try to resolve the dispute on conciliation and negotiation rather than command²³⁵.

If conciliation fails, the ombudsman will commence a formal investigation and collect all the relevant evidence. Here, the ombudsman has different ways to collect those relevant evidences as he may set a personal interview to visit complainants at the place where the complaint arises²³⁶. Generally there will not be an oral hearing as the decision will be based on written evidence only. There are different matters must take in the account in reaching for a decision such as the terms of the contact, code of practice and previous decisions based on fair and reasonable facts²³⁷. The ombudsman's duties end with the submission of reports; it is not for him to follow up on the reports, or to ensure that any remedial action that he may have

²³³ - See British and Irish Ombudsman Association Schedule 1

²³⁴ - James, R. and Seneviratne M., 1995, Op. Cit., 190.

²³⁵ - Harlow C., 1978, Op. Cit., p 448; Woodroffe, G. and Lowe R., 2007, Op. Cit., p 201.

²³⁶ - C. Harlow, 1978, Op. Cit., p 448.

²³⁷ - Woodroffe, G. and Lowe R., 2007, Op. Cit., p 201.

thought necessary is in fact undertaken²³⁸. However, if the complainant rejects the ombudsman man decision, litigation in the court are always still available.

5.9.1.3 Types of ombudsman remedies

The adequacy of remedies available under an ombudsman scheme is also a measure of its effectiveness. As noted above, the main aims of ombudsman is to try to improve the quality of service in a particular government bodies or industry. For, example, under section 23 of the Courts and Legal Services Act 1990, the ombudsman has the power to recommend that the professional body reconsider the complaint or exercise any of its disciplinary powers and also to recommend that compensation be paid, either by the lawyer complained about or the professional body, for the loss, inconvenience and distress suffered by the complainant²³⁹. Thus, if the ombudsman upholds a complaint, he may well make a recommendation that the business practices or procedures of the respondent organisation should be altered and improved to prevent a repetition of the problem. Sometimes an apology by the business will satisfy a complainant and often the complainant may seek a financial compensation which is identified in some schemes and no limits have been provided for compensations in others²⁴⁰.

However, questions may arise in case the government body or business sector refuses to accept an award or recommendation by an ombudsman? The answer depends on a particular scheme. Some monetary awards are legally binding on the government bodies²⁴¹. In other schemes, the recommendation and award by an ombudsman are not legally enforceable, but the business institution with rare exceptions complies with the ombudsman decision. The ultimate remedy for noncompliance is publicity, as every ombudsman publishes an annual

²³⁸ - Garner J., 1968, Op. Cit., p 162.

²³⁹ - See The Courts and Legal Services Act 1990 s 23

²⁴⁰ - See Financial Ombudsman Service, (2006), *Financial Ombudsman Service Annual Review*, 375, London, FOS.

²⁴¹ - See Financial Services and Market Act 2000 under Ombudsman Scheme, s 228 (5)

report, which will normally give examples of complaints made in the previous year and statistics on the number and type of complaints without naming the organisations involved. However, if an organisation were to fail to comply with a decision, in some schemes the ombudsman would have the power to name the culprit; it is the fear of the commercial effect of such adverse publicity which stimulates businesses into compliance²⁴².

5.10 The effective role of Consumer Protection Associations in the UK

The UAE consumer Association role was very limited as there are no legal provisions or activations for the role of consumer associations within the UAE. This section will provide a comprehensive view of the role of consumer association within the UK model to seek solutions to improve civil community role in the UAE.

In normal cases, an individual consumer's interest in any product or service will be usually so small that it will not worth his while registering of his dissatisfaction with the item to business, government, or a government's regulatory services. This situation has encouraged the community to seek for countervailing power through the pluralism of interest groups.²⁴³

In his book *Social Movements and the Legal System*, Handler has identified this concept by mentioning that "the core of pluralist thought is that society is composed of many autonomous interest groups including government, creating multiple centres of power and that public interest is served through the competition of the various groups... Pluralists believe that as long as there are many competing interest government will not be controlled by one interest"²⁴⁴. The rise of consumerism and consumer groups was witnessed in the

²⁴²- Woodroffe, G. and Lowe R., 2007, Op. Cit., p 202.

²⁴³- See Trebilcock, M. (1975), *Winners and Losers in the Modern Regulatory System: Must the Consumer Always Lose?*, Osgoode Hall Law Journal, Vol. 13, No. 3, pp 618-648, pp 620-625.

²⁴⁴- See Handler, J. (1980), *Social Movement and the Legal System: Theory of Law Reform and Social Change*, New York Academic Press, pp 3-4.

1950s and 1960s and the United Kingdom was affected by this movement, which emerged as a ‘key political objective’²⁴⁵.

In the United Kingdom, a number of voluntary bodies were established to provide information or in some other way provide services of assistance to consumers. The most important bodies of these are the Citizens’ Advice Bureaux, the Consumers’ Association, the National Federation of Consumer Groups and the British Standards Institution²⁴⁶.

One of the main voluntary bodies is the Citizens’ Advice Bureaux (CABx), which receives its funding from two levels²⁴⁷; the first is from the central government which makes a grant to the National Association of Citizens’ Advice Bureaux, and the second is received from local authorities on a local basis, even though their functions overlap with consumer advice²⁴⁸. The CABx offices can be found across the United Kingdom with different functions that touch directly the basic needs of consumers. Although the CABx do employ staff on a full-time basis, they are also heavily dependent on voluntary workers and some with legal professional skills to serve consumers on rota basis.²⁴⁹

The Consumers’ Association is another voluntary group that concern on consumer protection issues. The CA was set up in 1957 as a company limited by guarantee and it became a charity in 1987 with primary aim to provide consumer information on competing products and services by introducing Which? magazine. It campaigned extensively on a variety of issues,

²⁴⁵ - See Ilmonen, K. and Eivind, S. (1997), *The Consumer in Political Discourse: Consumer Policy in the Nordic Welfare States*, in P. Sulkunen, J. Holmwood, H. Radner and G. Schulze (eds) *Constructing the New Consumer Society*. London: Palgrave, p 200; Ramsay I., 2007, Op. Cit., p 19.

²⁴⁶ - Oughton, D. and Lowry J., 2000, Op. Cit., p 46.

²⁴⁷ - While historically most US consumer groups have been privately financed, in Europe, government funding has been commonplace; see Martin, J. and Smith, G. (1968), *The Consumer Interest*. London: Pall Mall Press, p 241.

²⁴⁸ - Macleod J., 2007, Op. Cit., p 82.

²⁴⁹ - For the scope of their services, see; Scott, C. and Black, J. (2000), *Cranston's consumers and the law: Law in context*, third edition, Cambridge University Press, p 107.

including unfair contract terms, the introduction of Consumer Advice Centres and the abolition of the solicitors' conveying monopoly²⁵⁰.

The Consumer Association has played an effective role in regulating status, as it has sponsored various successful private members' Bill including the Property Misdescriptions Act 1991, Cheques Act 1992, Sale and Supply of Goods Act 1994, Private Hire Vehicles 'London' Act 1998 and Health Services Commissioner (amendment) Act 2000. Furthermore, The CA has increased its role occasionally by sponsoring test cases *Woodman v Photo Trade Processing Ltd*²⁵¹ to challenge the exclusive jurisdiction that the UK government conferred to the OFT to implement the UTCCR 1999. Moreover, this legitimate interest in protecting the collective interests of consumers becomes well recognised by the court. In *R v Secretary of State for Trade and Industry, ex p Consumers' Association and Which? Ltd*²⁵² the CA has become the only voluntary body designated under the legislation, namely the Consumers' Association under Schedule 1 Part Two of the UTCCR 1999. The voluntary groups (Consumers Association) have been conferred with an important new power. Where previously the power to seek an injunction in respect of a perceived unfair term was exclusive to the Director General of Fair Trading, the UTCCR 1999 extended the power to the qualifying bodies' which include Consumers Association²⁵³. After this extending, both the empowered Consumer Association and the various other public regulatory authorities which are empowered to act under the legislation²⁵⁴ have to notify the primary public body the OFT

²⁵⁰- See Burgess, A. (2001), *Flattering Consumption: Creating a Europe of the consumer*, Journal of Consumer Culture, Vol 1, No 1, 93-117. pp 99 -100; Ramsay I., 2007, Op. Cit., p 26.

²⁵¹- [1981] (Unreported, Exeter County Court), Lawson (1981) 131 NLJ 933, 935. Op.Cit.

²⁵²- See ; (Case C-82/96 R v Secretary of State for Trade and Industry) this was after the Consumers' Association brought a judicial review against the government for failure to implement the Directive correctly, and the government caved in. The Unfair Terms in Consumer Contracts Regulations 1999, SI 1999 No 2083, Schedule 1, Part Two.

²⁵³- See reg 12 (2) of the UTCCR 1999.

²⁵⁴- Burgess has described the development in the role of Consumer Association by stating that "Heading the UK offensive against overpricing and other consumer causes lies a 'movement' of advocacy groups drawn into intimate embrace with the state, most importantly the influential Consumers Association (CA)... The CA has

with 14 days' notice before any action is taken and of the outcome of any proceedings²⁵⁵. This legal authority that approved for Consumer Association has its positive impact on the other voluntary groups that does not have the same legal position. For instance, the standards which are set by British Standard Institution²⁵⁶ are a matter of choice rather than compulsion. However, in some cases, where there is a potential for serious personal injuries, compliance with the BSI is made compulsory. For example, a producer who dose choose to comply with a BSI standard may apply for certification of his product and may then display the BSI 'Kitemark' on it, though he must be prepared for subsequent inspections by the BSI to ensure that are being properly maintained²⁵⁷. The role of the voluntary groups has developed gradually in the UK by recognising of consumer groups in different acts²⁵⁸. Ramsay has identified some general benefits claimed to accrue from extending public interest interventions by private groups are that they compensate for regulatory failure, develop valuable precedents and act as a catalyst for political change. Moreover he added that legal actions by private groups may more accurately reflect consumer preference than dose

frequently set the news agenda in recent years....Representatives of the CA are consulted on a wide array of issues and have influenced government policies in areas as diverse as pensions, healthcare, legal reform and financial services Government demand for the consumer group perspective is such that it threatens to outstrip the CA's capacity to provide such advice. Organisations like the CA have achieved a semi-official status through participating in government in this way. See ; Burgess A., 2001, Op. Cit., p 99

²⁵⁵ - Oughton, D. and Lowry J., 2000, Op. Cit., p 47

²⁵⁶ - The British Standards Institution was set up in its present form in 1929 and it was established to sets standards, dimensions and specification for manufactured goods.

²⁵⁷ - See *Balding v Lew-ways Ltd* [1995] 159 JP Rep 541. Toys R Us had supplied a toy, namely a "Tipper Trike", which did not satisfy the essential safety requirements set out in Schedule 2 to the 1989 Regulations, in that it had an accessible protrusion which was not so designed and constructed that the risks of physical injury from contact with it were reduced as much as possible, contrary to regulation 12 of the 1989 Regulations and section 12(1) of the 1987 Act, and the commission of the offence was due to the act or default of Lew Ways Ltd who was guilty of the offence by virtue of section 40(1) of the 1987 Act.

²⁵⁸ - 1- Super complaint process under the Enterprise Act 2002; 2- The possibility of bringing damage actions under section 47B of the Competition law 1998; 3- the possibility of being a designated enforcer under Part 8 of the Enterprise Act 2002 and the possibility of consumer groups bringing representative action on behalf of consumers.

government action and provide a valuable addition to democratic participation and the opportunity for the development of public value²⁵⁹.

5.11 Media role in consumer protection and raising awareness

The media has a major role to play in developed countries as it is the pillar of a civilised and democratic structure; the role is to back up consumers in their dilemma with the fast growing economy²⁶⁰. Media can act effectively against misleading advertisements and may sometime prevent the publication of such advertisement. Byrne has insisted on such action by media despite advertising revenues are important to newspapers and magazines, especially when the economic climate is difficult, however the continuance of printed advertising for products that damage the health of consumers was, quite simply, morally and politically unsustainable²⁶¹.

In the United Kingdom, the media has involved in the process which give the consumer an advance and effective tools for immunity against lawbreaker traders. This step was necessary because of the growing influence of the mass media on public opinion in line with the rapid development of information and communication technology²⁶². The media in the UK has a strong interest in informing and educating consumers and was supported by court decision *R v Director General of Fair Trading, ex p FH Taylor & Co*²⁶³. It provides programmes such as Watchdog and You and Yours that would educate consumers on their rights as well as

²⁵⁹ - Ramsay I., 2007, Op. Cit., pp 133-134.

²⁶⁰ - See Kaptan, S. and Khan, S. (2004), *Media and Consumer Protection*, 1st edition, India, Sarup & Sons, pp 3-4.

²⁶¹ - See Byrne, D. (2004), *Media Freedom versus Consumer Protection – How they can be reconciled*, Media Forum North-Rhine Westphalia Cologne, 21 June 2004, Association of German Newspaper Publisher.

²⁶² - See Yeung, K. (2005), *Government by Publicity Management: Sunlight or Spin?*, Public Law, pp 360-383, p 382.

²⁶³ - [1981] I. C.R. 292 (Q.B.) The court upheld that the general power to publicise assurance under Part III of the Fair Trading Act, but were careful to point out that the adverse publicity to the individual firm not to be purely sanctionary, but must be ancillary to the information and warning function that it serve.

altering them to current issues and scams²⁶⁴. Harker and Wiggs have insisted that the involvement of media in consumer protection process would increase the chances of compliance among traders and manufacturers with codes and legislation. It also will support the role of administrative bodies in handling the complaint and they describe the benefit from involving media in the process as those bodies are given ‘teeth’²⁶⁵.

In his study, Gellhorn has outlined the different types of functions that publicity agency can play. First, it may act as an Educational tool since it provides information for both the public and regulated industries which would increase the level of compliance. Second, it may also play as a Warning tool for both side consumers and businesses. Third, it may serve as an Enforcing tool as publicity may act as a sanction to punish, deter or to force a settlement on infringer traders and manufacturers²⁶⁶.

Therefore, the media can play a positive role in strengthen consumer protection as its indicated that consumers who are provided with useful information on products, services and their rights are empowered to make more effective purchases and to resolve problems when they occur²⁶⁷. Hence well-educated or informed consumers will act as a first defence line in tackling or make report on any rogues traders that would infringe consumers’ rights.

5.12 Obstacles to the UK model

Although this chapter has concentrated on the positive side of the regulations and administrative and ADR schemes within the UK model, however, there are majors’ obstacles that may affect the sufficient implementation of those previous advanced measures. Firstly,

²⁶⁴ - Ramsay I., 2007, Op. Cit., pp 13-14.

²⁶⁵ - Harker, D. and Wiggs G., 2000, Op. Cit., p 5.

²⁶⁶ - See Gellhorn, E. (1973), *Adverse Publicity by Administrative Agencies*, Harvard law Review, Vol. 86, No. 8, pp 1380-1441, p 1393.

²⁶⁷ - Brennan, C. and Gallagher K., 2002, Op. Cit., p 227.

sellers in the market might intend to elude these regulations by targeting consumers in the jurisdiction of other member states rather than the EU. Some of the traders act smartly to avoid the enforcement of consumer regulations or penalties by opting to relocate their businesses in another country outside the jurisdiction of member states, so regulations cannot be enforced on them. Moreover, relocating may help them to appear to consumers that they are a different institution or company. One of the suggestions given here is to have an agreement that could deal with companies that move their location outside the jurisdiction of EU member states as well as companies that were already established there²⁶⁸.

Secondly, although the cross-border enforcement of consumer protection regulation was successful in preventing traders from targeting consumers in other member states²⁶⁹, however, there is still a problem represented in stopping the very same damage which occurs for a consumer in to happen to another consumer in another member states. Therefore, the eradication of the differences between the UK and the Member States is required so that consumers know that they will have the same level of protection wherever they shop within the Union²⁷⁰.

Finally, the *lex lata* concerning consumer protection is very complex. This is in itself a problem which calls for reform. The legislator when drafting acts for the protection of consumers should at least try to formulate the provisions in such a way, that the consumer himself has the chance to understand his rights. For example, the legislator cannot simply point to the fact that the European directives are equally complex because the addressees of the European directives are the individual national legislators whereas the addressees of the

²⁶⁸ - Al-Hassan K., 2009, Op. Cit., p 148.

²⁶⁹ - [2005] Scot CS 85

²⁷⁰ - See Wilhelmsson, T. (2004), *The abuse of the 'Confident Consumer' as a Justification for EC consumer law*, Journal of Consumer Policy, Vol. 27, No. 3, pp 317-337, p 324.

British acts are the individual consumers. Thus, a national legislator should not simply implement a European directive word by word²⁷¹.

5.13 Conclusion

This Chapter has concentrated on the second Model that the UAE can rely on to improve its current consumer protection regulation to achieve an adequate and comprehensive protection for consumers. The United Kingdom Model which has provided a comprehensive system that would enable the consumers to achieve a confident, secure, trust and monitored market. These features may only be achieved through well-combination and cooperation between all entities that work under the umbrella of consumer protection field.

The first entity is UK legislation and self-regulation that covers all consumer transactions and provides a degree of balance between competing parties by identifying consumer and trader rights and duties. It can be said that better regulation mechanisms are system-based controls which enable effective accountability mechanisms for both the regulators and the regulated based on transparency and scrutiny²⁷².

The second entity is the judicial system that can protect consumer rights effectively, backed with element of condemnation to provide the plaintiffs with an adequate compensations and even deterrent rogues traders from the market to protect the public and national economy and increase the level of trust among consumes on markets.

The third entity is the Administrative bodies presented by the office of Fair Trading supported by the Consumer Association, which acts as a backup tool for protection for

²⁷¹ - Hellwege P., 2004, Op. Cit., pp 741-742.

²⁷² - Bartle, I. and Vass P., 2007, Op. Cit., p 902.

consumers. It has a wide range of Sanctions that would give the officer a degree of discretion to judge what sort of administrative sanction that may work effectively to tackle each type of infringements of consumers' rights. These sanctions would address some of the problems identified earlier about the use of civil or criminal litigation.

The fourth entity is the media, which may act in two ways, firstly as a warning tool for consumer about defective goods and services, and secondly as an educational element that can help consumers make good decisions based on accurate information. These four entities if they work with each other effectively, without any inconsistency between their works, the consumer would be able to assume that his rights will be protected fairly.

Therefore there are different advantages the UAE can learn from the UK model as a prospective in consumer protection fields which can provide comprehensive and adequate protection for consumers.

In terms of administrative problems, the UK model has addressed most of the UAE current challenges such as consistency between administrative bodies. Consistency among administrative bodies can enhance their role and increase consumer confidence on the administrative bodies. With such consistency between administrative bodies and supported with legal assistance this sort of advantages would encourage the consumer to complain even if the amount of loss is simple.

In terms of misleading advertisement and unfair terms, the UK model has provided a separate regulation to handle misleading advertisement issue and have allocated a special department to deal with which have a monitor authority to control advertisement within UK. It also has granted the OFT the authority to interfere and seek for an injunction against the use of unfair terms under Article 10 of UTCCR 1999. On the contrary, in the UAE the issue of advertising

has been handled with one Article under the current Consumer Protection Regulation. The UAE can adopt such exist schemes on unfair terms and misleading advertisements to monitor and tackle the issue of misleading advertisement which has risen dramatically through online and classic markets.

In terms of the right to withdraw, the UK has granted the consumer with the right to cancel some specific type of contracts such as distance selling and selling outside business premises. This sort of protection does not exist in the UAE which give the consumer the right to withdraw or cancel an agreement.

In terms of legal assistances by the concerned authority and Consumer protection Association, the UK have granted to both the OFT and Consumer Protection Association and other qualified bodies to act on behalf the consumer to preserve his rights and because of their ability to monitor and provide the consumer with sufficient protection against any unfair practices. Even if the consumer has pursue legal action independently, those qualified bodies and other department can provide him with legal assistance to maintain his rights. Such role in the UAE is remaining inactivated, where the only body has the right to act on behalf of consumer is Consumer Protection Department.

In terms of consumer awareness, in the UK model the Media and consumer protection association has played an essential role in increasing consumer awareness, on the contrary such role was banned or faced a lot of legal obstacles by the government in the UAE that have minimise the role of these to instrument in educating and protecting consumer rights.

One the main disadvantages that the UAE can face after the adoption of such advanced legal provisions and schemes is that the surrounding neighbourhood countries remain does not have a specific regulation on consumer protection which might affect the adequate

implementation of consumer protection regulation bearing in mind that those countries have recently approved the free movement of goods and products between the countries which might put a huge pressure on the concerned authorities in tackling unfair practices and redress the consumer adequately. The main step needed here is international and regime cooperation, through meetings and efforts to tackle these problems. The joint effort internationally would be a successful tool in deterring rogues traders.

The next chapter will draw a prospective model based on the previous examination on both Islamic and European models. A model that does not contradict with Islamic Teachings and in the same time protect consumer rights adequately.

Chapter Six

A Proposed Model to Enhance Consumer Protection in the UAE

6.1 Introduction

Norman Silber stated that:¹

“The deficiencies of particular laws, however, indicate only that good consumer protection rules are difficult to devise; harder to enact; and even harder to implement”.

In order to promote better protection for consumers and attract their trust and confidence in the UAE market, solutions provided to remedy the shortcomings of consumer protection regulations must revolve around two points. Firstly, the main factor in the whole process is consumers' confidence and trust that the market and regulations will protect their rights. All solutions provided by the government and concerned authorities should focus on how to build and increase trust and confidence between both parties in order to encourage people and businesses to participate in a fair and equal market. The spread of new technologies that enable consumers to shop online and be subjected to various misleading advertisements has established a new area that the government needs to cover and support with appropriate legislation. Edwards argued that consumers, whether shopping from a brick-and-mortar vendor or an online entity, must enjoy and receive the same level of freedom and protection.²

¹ - See Silber, N. (2006), *From the Jungle to The Matrix: The Future of Consumer Protection in Lights of its Past*, in J. Winn, 'Consumer Protection in the Age of Information Economy', Abingdon, Oxon, GBR, Ashgate Publishing Limited. p 15.

² - See Edwards, L. (2003), *Consumer Privacy, On-Line Business and the Internet: Looking for Privacy in all the Wrong Places*, International Journal of Law and Information Technology, Vol. 11, No. 3, Oxford University Press, pp 237-239.

Secondly, all efforts to create a legal framework should be unified at both the federal and local levels for the sake of creating a safe, trusted and organised single market that could protect consumer rights rather than having a market that contains contradictory laws. In the latter situation, if the government has enacted new measures, for example, they can collide with existing regulations and lead to inadequate protection for consumers and an inability to enforce sanctions for noncompliance. Therefore, efforts by the government and concerned authorities to enact new regulations would be useless in dealing with consumer protection issues if the new regulations collided with other local and federal regulations.³

Some have argued that when enacting new legislation on consumer protection, it is highly imperative to bear in mind some factors to strengthen consumer protection regulations. Al-Hassan has indicated that three factors must be considered by the legislature when enacting new law. Firstly, when putting forward a new regulation, priority should be given to basing the new system on consumers' understanding of its type and provisions, meaning that the newly created rules should be created such that consumers can easily comprehend them. Secondly, the new regulation must clearly address the risks facing consumers and the standards of the protection provided.⁴ Finally, Edwards claimed that new regulations remain ineffective without considerable consumer education as to how they work and what their limits are. Therefore, it is always important for a person, and in this case the consumer, to be fully aware of their rights and duties.⁵

Another argument, by Professor Lawrence Lessig in his book *Code and Other Laws of Cyberspace*,⁶ explained that the market is not solely organised by laws but also by customs, the market itself, and other factors. Therefore, in the efforts to handle this new phenomenon,

³ - Ibid, at p 247.

⁴ - See Al-Hassan, K. (2009), *Consumer Confidence in E-commerce: The Need for Reform in the UAE*, a PhD thesis, University of Aberdeen. p 208.

⁵ - Edwards L., 2003, Op. Cit., p 249.

⁶ - See Lessig, L. (1999), *Code and Other Laws of Cyberspace*, Basic Books.

laws are not the only available means of regulation. Even if laws were the only method of resolving a conflict, that might not always be the most efficient method. A good example is provided by the traffic regulations regarding speed that are constantly ignored. Nevertheless, they can be enforced by building speed bumps on the road as a deterrent measure to reduce speed.⁷ Indeed, the same situation is applicable to consumer protection, as laws are not always sufficient to stop the constant infringing of consumers' rights. Thus, the solution is a combination of regulations in conjunction with technological advances and government efforts to increase consumer awareness and knowledge about potential risks that may face consumers and how to act in order to avoid such situations. As it is well known, the main aim of enacting law is twofold: to play an organising role, and to enforce penalties after a breach. However, the preferred method of protecting consumers is to discourage and stop rogue traders from infringing consumers' rights rather than compensating consumers after their rights have been infringed.⁸

On the same trend, David Levi-Faur has identified five characteristics to be combined with consumer protection regulations in order to achieve best implementation and results:⁹

- 1- Increased delegation of regulations through various forms of self-regulation;
- 2- Greater regulation within the government to prevent the classic problem of regulatory capture and to maintain public trust;
- 3- The emergence of new instruments of regulation that involve increased internal monitoring by corporations;
- 4- Increased international regulations through technical standards; and
- 5- The worldwide diffusion of regulatory ideas through regulatory networks and international regulatory competition through increased international benchmarking.

⁷ - Ibid, at p 50.

⁸ - Al-Hassan K., 2009, Op. Cit. p 209.

⁹ See Levi-Faur, D. (2005), *The Global Diffusion of Regulatory Capitalism*, Annals of the American Academy of Political and Social Science, Vol. 598, pp 12-32, p 27.

Hence, in order to have a comprehensive model for a consumer protection regime in the UAE, the model must include and concentrate on three elements – enacting legislation, sufficient implementation by administrative bodies, and raising consumers’ awareness –the latter two of which complement the first. If these three areas are covered and worked within a level of consistency, consumer protection would be more comprehensive and effective and the UAE market would be safer and inspire more confidence in consumers.

This chapter will begin by indicating the main features of the three models discussed earlier and the difference between them. The chapter will then explore the legal risks currently facing consumers in the UAE and how they can be amended. The chapter will also discuss other factors that affect the adequacy of consumer protection in the UAE and how it should be modified to benefit consumers.

6.2 Differences between the UAE, the UK and Islamic approaches:

After analysing the legal framework for consumer protection in the UAE, Shari’a law and the UK in commercial transactions between consumers and businesses, the following differences between the three systems were evident.

Firstly, the Shari’a law approach, which was derived from Islamic teachings, covered most of the difficulties that consumers face as discussed earlier.¹⁰ The added benefit of following Islamic rules would be their consistency with the social norms of Emirati society, and it would be acceptable to the masses with the least resistance from the businessmen; however, these teachings have been neglected by governments in the Arab world, as indicated within this thesis. Thus, these teachings remain undeveloped and not implemented adequately by the

¹⁰ - See 4.6 Why does Shari’a law concentrate on consumers and what sort of protection it provides? in this Thesis.

concerned authorities. Therefore, although this approach has great influence on UAE society, it is difficult to implement this approach directly.¹¹

Secondly, in terms of the UAE and UK approaches, the United Kingdom has been dealing with consumer protection as a legal concern since 1962 as discussed earlier, resulting in long experience of tackling certain threats facing consumers in the market and heavily affected by the EU convention, directives and regulations.¹² In contrast, the UAE legislation is considered very new in this field and is not supported by the regional countries. The gap between the two jurisdictions is apparent, especially considering that the term ‘consumer’ was not mentioned or addressed in the UAE legal system until 2006.¹³ Thus, it is not surprising that some aspects of consumer protection were not covered by new laws, such as distance selling, the right to withdraw, and other new fields that require protection such as e-commerce; this is because the legislature started to regulate direct transactions and conflicts between consumers and vendors in the markets as a first stage. Therefore, it seems that the legislature aimed to handle consumers’ issues in the traditional market first in order to strengthen the legal position of consumers and create a level of equality in the UAE market.

Moreover, the legal framework of consumer protection in the United Kingdom is constituted of provisions and laws crafted specifically to address consumer issues, such as unfair terms, unfair practices, misleading advertising, distance selling and the right to withdraw in some cases. However, in the UAE – apart from the consumer protection law, which lacks many critical provisions on issues related to distance selling, right to withdraw and e-commerce – all that is available are general provisions scattered across the civil code, the penal code, the

¹¹ - See 4.8 Can the current situation of Shari’a law be a possible solution? in This Thesis.

¹² - See Chapter Five: The United Kingdom Model on Consumer Protection in this Thesis.

¹³ - Ibid.

Constitution, and some other laws, which could potentially be applied to consumers' issues but not designed specifically to them.¹⁴

Thirdly, the UK model handled issues that may cause risks for consumers by passing a bulk of laws addressing each issue individually with a set of rules included in each law. Moreover, the UK model has supported these legislations with consistency between concerned authorities and consumer associations and wide range of ADR mechanisms. Conversely, the only law concerning consumer protection in the UAE came as a whole set of rules to protect consumers; however, it did not address all issues that may occur as mentioned in the paragraph above. Certainly, this ambiguity may lead to the legal fact that without a specialised law or provisions to handle and organise consumers' issues comprehensively, there will be inadequate protection for consumers' rights against unfair practices committed by traders.¹⁵ This claim is based on the general rule mentioned in the UAE Constitution, Article 27, which states that "Crimes and punishment shall be defined by the law; no penalty shall be imposed for any act of commission and omission committed before the relevant law has been promulgated".¹⁶

In the researcher's viewpoint, based on the previous remarks that gives a clear idea about the main aim of this thesis, which is to identify the weak points of current consumer protection law in the UAE and adopt a legal framework that would not contradict with Islamic Shari'a law and, at the same time, would consider other advanced law from developed countries, to be contained in one comprehensive piece of law and implemented in the UAE. By adopting such advanced legislations on consumer protection would narrow the gap in legislations between the UK and the UAE in the field of consumer protection and would enhance consumer confidence in the UAE market and traders. Additionally, it will help create a

¹⁴ - See 2.4 The Regime of consumer protection in the UAE in this Thesis.

¹⁵ - Al-Hassan K., 2009, Op. Cit., pp 275-276

¹⁶ - See UAE Constitution Article 27.

starting point for a unified set of rules globally and encouraging neighbouring countries to do likewise, which will lead to a sort of monitoring system over national and international markets.

6.3 Actions require the facing of potential risks:

After considering the points made in the previous chapters of this thesis, there is a serious need for an action to be taken to face risks that could occur and might put consumer rights in jeopardy. Therefore, risks such as defective products that cause injury or death of a consumer, unfair terms, the right to withdraw, misleading information, jurisdictional protection and applicable law will be discussed below.

6.3.1 Personal safety and the right of cancellation:

In terms of personal safety, the UK law on consumer protection has emphasised the importance of providing a set of rules that can tackle any infringements that may harm consumers' life and health by criminalizing those infringing acts. The liability of a person or body¹⁷ increases when infringing acts occur and consumers suffer damages, which are defined in Part 1, section 5 of the Consumer Protection Act of 1987 as a "death or personal injury or any loss of or damage to any property (including land)". On the same trend, some neighbouring Arab countries have adopted similar provisions to provide comprehensive protection for consumers especially when those defective goods and products may affect consumers' life, health and safety.¹⁸ Thus, legislators in the UAE must act with an iron hand

¹⁷- See Parts 1 Sec 2 of the UK CPA 1987 (a)the producer of the product; (b)any person who, by putting his name on the product or using a trade mark or other distinguishing mark in relation to the product, has held himself out to be the producer of the product; .(c) any person who has imported the product into a member State from a place outside the member States in order, in the course of any business of his, to supply it to another.

¹⁸ - See 2.4.4 If Fake Goods Severely Affects Consumers, Are there Severe Sanctions? In this Thesis.

in response to any excess infringements by merchants with strict penalties that will enhance confidence among consumers in regard to the effectiveness of consumer protection law.

Ibrahim has pointed out that rapid development in the production of goods and products when unaccompanied by adequate legal protection might weaken consumers' position and put their essential rights in jeopardy. Therefore, the government must accept its responsibilities by amending the current regulations that govern consumer protection to include some provisions that criminalise any acts that endanger consumer health and safety; otherwise, the risk of the serious effect of these goods and product on consumers' health will not achieve sufficient redress.¹⁹

In terms of the right to cancellation, in the UK and most European countries, mandatory rights of withdrawal exist for transactions that take place via phone or Internet, and other transactions that do not fully take place on the premises of the seller. Depending on the type of transaction, consumers may have as long as two weeks to return the goods for a refund. These rules apply to a range of transactions, including ordinary goods, services and loans, and sellers cannot opt out of them. In this way, UK law recognises the consumer's "right to withdraw". There is no such generic right in the consumer protection regulations or in the Uniform Commercial Code of the UAE. The recognition of a default version of such a right would be an incremental change, one that could be implemented by a legislature or developed by courts on the basis of precedent. Support for the right to withdraw rests on general features of commercial transactions, not on traditional notions of consumer protection, which raises the question of whether commercial buyers should have a right to withdraw.

From the researcher's point of view, an extension of the right to withdraw beyond consumer transactions would be unnecessary. For instance, in the case of business-to-business sales parties purchasing inventories from suppliers and manufacturers, buyers typically have a

¹⁹ - See Ibrahim, A. (2007), *Hemayiat Al-Mustahlik 'Dirasah Muqarenah'*, First edition, Manshorat al-Halabi. pp 579-580

great deal of information about the products because they constantly buy, hold and resell them. They sample and inspect the goods prior to completing the purchase and negotiate payments and setoffs according to ex-post measures of quality. Accordingly, there is less reason, compared to the consumer setting, to believe that the buyers need a post-sale interval to learn about the products that they purchase.

6.3.2 Unfair Terms

The UK handles unfair terms in consumer contracts by dealing with it in a separate regulation, the Unfair Terms in Consumer Contracts Regulations of 1999, whereas in the UAE, the new consumer protection law did not address the issue of unfair terms in consumer contracts, which has resulted in consumers suffering from adhesion contracts and having their rights infringed.²⁰

For instance, the UK model has backed consumer contracts with a separate regulation that organises consumer transactions from the beginning to avoid any unfair terms or obligations on consumers, due to the imbalance between parties. Additionally, it gives an example of pre-formulated standards for adhesion contracts or other type of contracts not negotiated individually. Moreover, Article 7 states that the contract terms must be expressed in plain, intelligible language, and any doubts as to the meaning of a term must be interpreted giving the most favourable interpretation to consumer interests.²¹ If an unfair term is drawn up for general use in contracts concluded with consumers, then the director of qualifying bodies has the authority to seek an injunction to stop the use of such contact or terms.²²

²⁰ - See Abu-Amro, M. (2011), *Mujaz Ahkam Qanoon Hemaiyat Al-Mustahlik*, 1st edition, Lebanon; Beirut, alhalabi legal publication. p 172; Al-Hassan K., 2009, Op. Cit., p 216

²¹ - See Article 7 of Unfair Terms in Consumer Contracts Regulations 1999

²² - Ibid, Article 10

To make sense of the terms, Howells has made the following categorisation, which appears to be a sensible rationalisation. The following terms categories can be used as a model of the current UAE regulations:²³

- a) Terms giving one party control over the contract terms or the performance of the contract;
- b) Terms which govern the duration of the contract;
- c) Terms which prevent the parties from having equal rights; and
- d) Exclusion, limitation and penalty clauses.

In contrast, as mentioned above, the legislature in the UAE has not addressed the issue of unfair terms either in consumer protection law or other law available in the UAE, and these circumstances are increasing the need for a comprehensive set of rules that affect consumer decisions. This unclear situation could be misused by companies or traders in commercial transactions who could easily include terms that limit consumers' rights by including terms that exclude their legal liability. Therefore, the UAE can take the UK model to regulate such an important field to clear up this ambiguity among consumers and enable consumers to act practically as a first line of defence against rogue traders.²⁴

6.3.3 Misleading advertising

In terms of unfair business practices that mislead consumers, many sellers would comply, but not all, and sellers usually have no legal obligation to take back conforming goods that do not satisfy buyers unless agreed to by contract. In the UK model, the UK considered some practices to place pressure on consumers to agree to purchase some goods or products even if

²³ - See Howells, G. (1995), *Consumer Contract Legislation 'Understanding the New law'*, Blackstone press limited. pp 46-48

²⁴ - Al-Hassan K., 2009, Op. Cit., pp 270-271 ; Abu-Amro M., 2011, Op. Cit., pp 167-169

they are not in need of these products, and it introduced a separate regulation on unfair business practices and misleading advertising to tackle such issues that might rise in order to protect consumer rights.²⁵ Furthermore, it was indicated in Chapter Five that the ASA works alongside the Office of Communication (Ofcom) as the body to deal with complaints about advertising within this legal framework to make sure that advertisements provided are not misleading. Moreover, the ASA, as an independent body, is able to refer advertisers to Ofcom for legal action those who refuse to work with it and persistently make misleading claims. The OFT is able to act under the Consumer Protection from Unfair Trading Regulations 2008, which governs how businesses interact with consumers.²⁶ Under the latter regulation, any commercial action or even omission of information to deceive consumers into purchasing a product is considered misleading. Thus, these regulations that control misleading advertising can enable consumers to protect themselves through subjective protection.²⁷

On the contrary, there are no sufficient provisions under current UAE consumer protection law that control misleading advertising. The only article that could potentially handle misleading advertising is Article 1 of Law No. 4 of 1979 on Suppression of Fraud and Deceit in Commercial Transactions discussed earlier.²⁸

Moreover, there is no clear definition in the UAE legislation regarding misleading advertising in consumer contracts or a set of criteria to handle this aspect which affects consumers' decisions seriously.²⁹

²⁵ - See the Control of Misleading Advertisements Regulations of 1988 and the Consumer Protection from Unfair Trading Regulations of 2008

²⁶ - See sections 3-7 of the the Consumer Protection from Unfair Trading Regulations 2008

²⁷ - Al-Hassan K., Op. Cit., p 217.

²⁸ - See 2.4.2 Federal Law No. 4 of 1979 on Suppression of Fraud and Deceit in Commerical Transaction

²⁹ - Al-Hassan K., 2009, Op. Cit., p 217; Ibrahim A., 2007, Op. Cit., p 580.

6.3.4 Jurisdictional Protection:

The UK model has also dealt with disputes related to jurisdiction. Such protection was granted to consumers to prevent exposure to a lawsuit in a jurisdiction other than that of their country of residence. The UK model gave consumers the option and the protection concurrently, as Article 16 of the Brussels Regulations states that in cases where the consumer is the one to bring a proceeding against the other party in the contract, the consumer has the option to bring proceedings in the court of the member state of the other party, or the court of the consumer's country of residence.³⁰ Moreover, if the proceeding is brought against the consumer, it could be only in the courts of the consumer's country of residence,³¹ whereas Article 17 of the Brussels Regulations has banned any waiver to this right unless the consumer agrees to abandon his right after the dispute arises.³² Actually, such protection was needed and granted to the consumer to safeguard him from being subject to foreign jurisdiction.

This matter was not addressed by the UAE legislature in its consumer protection law, and consumer contracts remain out of justified arrangement; hitherto, they have been left without regulation, which subjected consumers in the UAE to foreign jurisdiction, especially in online transactions.

6.3.5 Revocation of defective goods and products

The legislature in the UAE has obligated suppliers of goods and products in which defects or faults are found to withdraw such goods and products in fourteen days.³³ The legislature in this Article did not distinguish between types of defect, in terms of whether it has a serious

³⁰ - Article 16 para 1 of Brussels Regulation states that 'A consumer may bring proceedings against the other party to a contract either in courts of the Member state in which that party is domiciled or in the courts for the place where consumer is domiciled'

³¹ - Ibid, Article 16 para 2

³² - See Article 17 of Brussels Regulation 2000.

³³ - See Article 11 of Executive Regulation of Consumer Protection Law No. 12 for 2007

effect on consumer safety and health or not. The question that may arise in this situation is when goods and products must be recalled or not. Drs. Merfit Abdul-Aa'l and M. Abu-Amro have argued that the legislature should differentiate between normal defects and those that would harm consumer safety and health. They argue that the current provision gives suppliers enough time to sell defective products without any legal liability. They added that there are two considerations that the ministry in charge should take in the account in cases of recall. The first is whether the defect is such that there is a reasonable probability that it will affect all or a material proportion of a certain type or batch of products. For example, in the case of some dirt being trapped in a single camera lens during production while the other entire lenses were unaffected, it would clearly be unreasonable for the entire product line to be recalled even though this type of fault would be classified as a defect under the regulations.³⁴ The second consideration is when the impact of a potential defect obviously puts the health and safety of consumers at risk.³⁵ Ibrahim suggests that UAE consumer law must involve a separate provision with an immediate recall of goods that would affect consumers' health and safety.³⁶

From the researcher's viewpoint, the legislation in the UAE should contain provisions that give the concerned ministry power to immediately recall the defective goods and products (in cases of health and safety) if the result of a laboratory examination was positive, rather than waiting for a court judgment.³⁷ It also would be better for the legislature to give the concerned federal authority the ability to challenge decisions made by local authorities if there was any concern over public health and safety. Therefore, it is recommended to review the current consumer protection law and adopt some different consumer protection law

³⁴ - See Abdul-Aa'l, M. (2004), *al-Iltezam bil-Tather Fi Majal Aqed al-Bayie'*, dar alnadhah alarabiyah, Egypt; Cairo. p 106; Abu-Amro M., 2011, Op. Cit., p 289.

³⁵ - Abdul-Aa'l M., 2004, Op. Cit., p 106; Abu-Amro M., 2011, Op. Cit., p 289.

³⁶ - Ibrahim A., 2007, Op. Cit., pp 583-584.

³⁷ - See Article 19 of UAE consumer law has given the court the authority to withdraw defective goods, products and equipment used in infringing consumer protection law.

provisions that give different periods categories depending on seriousness of harm of goods and products.³⁸

Moreover, to ensure the trust of consumers in the products they are attempting to purchase, the concerned authorities must introduce a system of ‘certificates’ for services and products and other foodstuffs. The function of such a label is to certify that the products conform to certain technical and qualitative requirements as only certain approved organisations are authorised to issue such certificates.³⁹

6.3.6 Criminal Sanctions

In Chapter Two of this thesis, it was indicated that the current federal law in the UAE on consumer protection contained inadequate criminal sanctions. Bearing in mind that one of the main sanctions in deterring rogue traders from continuing infringement is by providing effective and sufficient criminal sanctions, Cartwright has pointed out that criminal sanctions would serve as an appropriate tool for dealing with corporate wrongdoing in the consumer protection area.⁴⁰

Therefore, an amendment should be made to Article 18 of the UAE Consumer Protection Law of 2006, which levies on the offender as a consequence of violating this law a fine of AED. 1000 and if the trader did not alert consumers to the risks of using the goods, products and services, a fine of no less than 10000 AED. These penalties include monopolies, cartels and misleading advertising exercised by traders in the UAE.

“Without prejudice to any other stringent penalty as stipulated in any other law, a fine not less than 1000 AED shall be imposed against any violation to this law and any decisions

³⁸ - See Articles 7 and 8 of Egyptian Consumer Protection Law No. 67 for 2006; Article 15 of Omani Consumer Protection Law No. 81 for 2002.

³⁹ - See Minor, P. (1984), *Consumer Protection in French Law: General Principles and Recent Developments*, *International and Comparative Law Quarterly*, 33: 108-133, doi:10.1093/iclqaj/33.1.108, p 119.

⁴⁰ - See Cartwright, P. (2007), *Crime, Punishment, and Consumer Protection*, *Journal of Consumer Policy*, Vol. 30, No. 1, pp 1-20. pp 1-2.

issued pursuant thereto, provided that the fine will not be less than 10,000 AED if the Supplier has not alerted, in an obvious way, with the risks of using the Goods or Services and damages were encountered”.⁴¹

In contrast, in the UK model, criminal sanctions have been steadily increased. In Consumer Protection Law 1987, section 12, subsection 5, the criminal sanctions were imprisonment for a term not exceeding six months or a fine not exceeding level 5 (£5000).⁴² In the consumer protection from unfair trading regulation 2008, Regulation 13 has imposed on conviction a fine or imprisonment for a term not exceeding two years or both.⁴³ Moreover, the UK model has tackled cartels and monopolies with adequate criminal sanctions to deter businesses from exercising such unfair trading practices. In the Enterprise Act of 2002, under section 190, the offending cartel will be punished by imprisonment for a term not exceeding five years or a fine, or both.⁴⁴

On an international level, the UN Guidelines for Consumer Protection require member states to introduce⁴⁵ effective measures and provisions on abusive business practices which may be harmful to consumers in order to provide deterrent remedies to stop further infringement. Given the concern about the increased infringement of consumer rights which was mentioned by the Executive Director of Commercial Compliance and Consumer Protection in Dubai, Omer Bu-Shuhab has indicated that since the implementation of the consumer protection law, the number of infringement cases has increased 108% in the last three years.⁴⁶ Therefore, the

⁴¹- See Article 18 of UAE Federal Consumer Protection Law No. 24 for 2006

⁴²- See Section 12 (5) of Consumer Protection Act 1987.

⁴³-See Regulation 13 of the Consumer Protection from Unfair Trading Regulation 2008.

⁴⁴- See Section 190 of Enterprise Act 2002.

⁴⁵ - Guideline 17 of the UN for consumer protection states that “Governments should develop, strengthen or maintain, as the case may be, measures relating to the control of restrictive and other abusive business practices which may be harmful to consumers, including means for the enforcement of such measures”. See; *United Nation Guideline for Consumer Protection ‘as expanded in 1999*, (2003), Department of Economic and Social Affairs, available at: http://www.un.org/esa/sustdev/publications/consumption_en.pdf, accessed date 15/11/2011.

⁴⁶- See Bu-Shuhab, O. (2012), *DED: 5.8 billion dirham loss of the local economy in the absence of control*, an article published by Emaratallyoum Newspaper, available at: <http://www.emaratallyoum.com/business/local/2012-02-23-1.462998>, accessed date 03/03/2012.

UAE legislature should amend the amount of fines provided and include imprisonment in the consumer protection law to strengthen criminal penalties. In the current consumer protection law, the criminal penalties may not be enough to provide a true deterrent for rogue traders. Ibrahim has stressed that penalties must be increased to provide an adequate deterrent to discourage rogue traders from infringing consumers' rights.⁴⁷

6.4 Rapid development in market: The need to review the legislation

Analysis of the UAE legal system reveals that the UAE legal framework has been favouring traders over consumers.⁴⁸ This justification was based on different reasons; firstly, this preference results from the absence of any regulation of commercial operations in the UAE until late 2006. Certainly, the Commercial Agency law (exclusive agencies) and the protection granted to traders under the regulation gives traders the power to control the market without any legal pursuit,⁴⁹ whereas such legal concept contradicts the free market and the rapid development and depends on online marketing.⁵⁰

Secondly, the weakness of consumer protection was due to the existence of some general provisions in Commercial Agency law that could legitimise unfair trading practices such as cartels and monopolies, and thus lead to insufficient consumer protection. Thirdly, the variety of laws, regulations and decrees enacted at both federal and local levels and the differences in procedures resulted in consumers' failure to complain to a certain authority or to put enough pressure on the government to accelerate the enactment of legislations covering consumer

⁴⁷ - Ibrahim A., 2007, Op. Cit., p 294.

⁴⁸ - The UAE courts had rejected a lawsuit challenging commercial agency exclusivity as violative of anti-monopoly principles that exist within Islamic law. See Stovall, H. (2008), *Recent revision to Commercial law in the United Arab Emirates*, Arab Law Quarterly, pp 307-330, p 312.

⁴⁹ - Ibid at p 312. There have been arguments around the exclusive rights provided to registered agencies; however, due to the price increase in the market and other unfair practices exercised by rogue traders which have direct effects on consumers, the UAE government began to draw a link between price increases and exclusive agents. That is why the modifications to the law took place irrespective of the surrounding argument.

⁵⁰ - See Al-Hosani, K. (2010), *Consumer protection Association call for the government intervention*, in Arabic, available at: http://www.uaescp.ae/ar/news_details.asp?news_id=1681 accessed on 29/12/2011

protection adequately. Finally, the legal framework on consumer protection in the UAE is still new compared with other countries legal system frameworks. Hence, being part of the international community and due to the urgent calls for a free market,⁵¹ the UAE was under pressure to address consumer rights in the market and to combat counterfeit goods and products, both of which need to be regulated adequately.⁵²

In brief, consumer protection was and still is subject to various sorts of legislation that would put consumers' interests in jeopardy. The influence of old regulations continues to affect the modern market, which requires serious interference from the government to tackle this contradiction in regulations.

To address this dilemma, the UAE, as a first stage, enacted a Consumer Protection Law in 2006, which was considered a cornerstone in establishing a legal basis for consumer rights, protection and handling of disputes. This movement shows the intention of the lawmakers in the UAE to create a more modern set of rules that consider the interests of both parties in the market in general and those of the consumer as the weaker party in particular.⁵³

Currently, however, a second stage is urgently needed; revisions and amendments must deal with any contradictions between old and new regulations. Recently, the UAE government has begun with the UAE Commercial Agency Law, as H.H. Sheikha Lubna⁵⁴ has explained, "to bring it fully in conformity with the laws and regulations of other jurisdictions as far as concerns commercial contracts and exclusive agencies rights."⁵⁵ Certainly, these revisions and amendments are required to protect consumers from the effect of the old regulations, which legitimate monopoly exercised in the market, and to conform to the international

⁵¹ - The UAE is a member in the World Trade Organisation (WTO) since 1996.

⁵² - European Commission Taxation and Customs Unions, *Summary Of Community Customs Activities on Counterfeit and Piracy, Results at the European Border-2006*, Op. Cit.

⁵³ - Ibrahim K., 2007, Op. cit., p 44; Abu-Amro M., 2011, Op. Cit., p 29.

⁵⁴ - H. H Skeikha Lubna Bint Khalid is the UAE current Minister of Foreign Trade.

⁵⁵ - See Grant, J., Golawala, F. and Mckechnie, D. (2007), *The United Arab Emirates: The Twenty-First Century Beckons*, Thunderbird International Business Review, Vol. 49, No. 4, pp 507–533. p 507.

trends and treaties that insist on free markets. The revision resulted in amendments to Commercial Agency law in 2006, which had decreased the protection provided to traders.⁵⁶

One of the main changes was to Article 23 of the law, which bans any importation of products and goods to the UAE and is covered by an exclusive registered agency, unless approval was obtained from the holder of exclusive agency or the Ministry of Economy.⁵⁷

The amendment to this Article will reduce the previous right granted to the traders to block the importation of certain goods without his sole permission.⁵⁸

The Minister of Foreign Trade has stated that “the new amendments will certainly boost the competitive economic climate in the UAE ... This law was promulgated out of the desire to enhance and maintain stability in prices and ensure that agencies are not manipulated to increase prices”.⁵⁹ Actually, maintaining control over price increases is recognition of consumers’ demands and a consideration of their interest in the market. Applying the concept of free market adequately would definitely enhance fair competition in the market, which will have a positive effect on consumers, with various options.

However, other regulations should be targeted with similar amendments to tackle the weaknesses and create a level of stability between old and new regulations in order to boost consumers’ confidence in the UAE markets.⁶⁰ This is particularly the case since it will not be possible for the UAE Consumer Protection Law to contain all of the necessary provisions.

Therefore, consumer protection law and other related regulations on both federal and local

⁵⁶- Historically, the UAE has been much more active than other Arab Gulf states in enforcing the exclusivity rights of a qualified local agent. For example, in the mid-1980s (shortly after enactment of the Commercial Agency Law), Dubai municipality required new applicants for trade licenses to execute a written undertaking and not directly import products that were the subject of a registered commercial agency agreement. See Stovall H., 2008, Op. Cit., p 311.

⁵⁷- Article 23 of the UAE Agency Law 1981.

⁵⁸- Stovall H., 2008, Op. Cit., p 316.

⁵⁹- Ibid at p 312.

⁶⁰- See Al-Dhahri, H. (2011), *Minister of Justice Statement at Zayed University*, Al-Bayan Newspaper, issue No 11298, available at <http://www.albayan.ae/across-the-uae/news-and-reports/2011-05-28-1.1445905>, accessed date 28/05/2011.

levels must be revised to reach a level of harmony and consistency, and to tackle any weaknesses.

6.4.1 Purchased goods are non-refundable and non-exchangeable

For decades, traders in the UAE market have been engaging in some practices that infringe consumers' rights, according to advanced legislation on consumer protection that prohibits such unfair trading practices. However, because of the absence of relevant laws, these practices, which reflect traders' power in the market, continued without any deterrents to stop them. On top of these practices is a condition that used to be written on all goods and products receipts: "purchased goods are non-refundable or non-exchangeable".⁶¹ This condition leads to two facts; first, that the buyer (consumer) will keep the product even if the product is defective or does not satisfy his desire; and second, that the seller's legal liability will be completed directly after the completion of transaction. These two facts represent a clear breach of consumers' rights of exchange, return, repair and refund. In contrast, the UK has provided a set of regulations that cover all aspects such as the Sale of Goods Act of 1979, The Consumer Protection (Distance Selling) Regulations of 2000 and Consumer Protection from Unfair Trading Regulations of 2008, which organised the whole trading process and allowed consumers to return or exchange products or cancel the whole transaction if unsatisfied. This condition does not exist in the UAE market, frustrating consumers and depriving them of their basic rights to choice, redress and safety. The new UAE law on consumer protection prohibits such condition in article 12, which requires the dealer, when a customer returns any defective product, to repair it, exchange it or return its cost to the

⁶¹ - See Al-Shamsi, Z. (2011), *Al-Shamsi: al-Jahel be-Qanon Hemaiyat al-Mustahlik Yohder Hoqooq Mushtareen*, An article published in Emaratyoum Newspaper, 15/10/2011, Available at: <http://www.emaratyoum.com/local-section/other/2011-10-15-1.430346> , Accessed date 20/01/2012

consumer with no extra charge.⁶² However, the article applies only to defective goods, whereas services and products in good condition remain uncovered with sufficient legal protection. In other words, in cases where a consumer has bought an item (without any fault) and then changes his mind and decides to return the item, it will be up to the seller or supplier to refund or exchange the purchased items.⁶³ Therefore, consumers in the UAE market still face such problems, which require serious measures and instruments to tackle this condition:

- 1- Organising business operations, especially in retail stores that are always far from adequate control by concerned authority;
- 2- The adoption of laws regulating the sale of goods and services; and
- 3- An increase in the number of qualified observers to ensure the adequate implementation of current legislation.

6.5 Developing the role of judicial authority

As the judicial authority is the highest authority in charge of enforcement, its role in the enforcement of consumer protection law should be no different from its ordinary role; however, some factors could affect the judges' role in the enforcement of consumer protection law. For example, a consumer protection law is internationally and statutorily recognised and must be respected.⁶⁴ The judge also must know that there is a solid connection between judicial system performance and economic development. Therefore, judges should be fully aware of the seriousness of consumer protection infringement and how to handle not

⁶² - Article 12 of UAE Federal Consumer Protection Law No. 24 for 2006

⁶³ - Ibrahim A., 2007, Op. Cit., pp 508-511.

⁶⁴ - See Ho, S. (2001), *Growing Consumer Power in China: Some Lessons for Managers*, Journal of International Marketing, Vol. 9, No. 1, pp 64-83, p 66.; Ramsay, I. (2007), *Consumer law and policy 'text and Materials on regulating consumer markets'*, 2nd edition, Hart Publishing. p 222.

only the infringers, but also the infringing goods and products.⁶⁵ Their judgments should have a deterrent effect, and a destruction or disposal order will prevent infringing goods finding their way back into the commercial operation. Different scholars have argued that judges lack understanding of the importance of consumer protection law enforcement. Their viewpoint is based on the fact that the UAE is not a manufacturing base for most goods and products protected by the consumer protection law.⁶⁶ The hypothesis of criminal liabilities for consumer rights infringements is quite new in the Arab region in general and in the UAE in particular. As such, there have been few precedents from judicial bodies in the Arab region and in the UAE on consumer protection to serve as guidance. Available evidence suggests that some judges lack the requisite skills to make adequate judgments because they lack proper understanding of consumer protection law.⁶⁷ The following will recommend some valuable ways to strongly reinforce judicial performance over consumer protection cases within the UAE:

1- Activating the role of consumer protection court

The creation of UAE courts specialised in consumer protection was considered a good step towards promoting consumer rights. This specialised court has jurisdiction over both civil and criminal cases on consumer protection in Sharjah, Ajman, Um-Alquwain and Fujairah.⁶⁸ However, the suspension of these courts in the main Emirates of the UAE, such as Abu Dhabi and Dubai, which are the more popular Emirates, has weakened the aim of creating these

⁶⁵- See Macaulay, S. (1979), Lawyers and Consumer protection laws, Law and Society Review, Vol. 14 No. 1, pp 115-171. pp 118-119.

⁶⁶- Ibrahim A., 2007, Op. Cit., p 578.

⁶⁷- For example, a statistic about the verdicts in Lebanon in 2001, 2002 and 2003 covers the Court of Appeals of Beirut and indicates that there are weaknesses in the judicial role. The statistics show that the number of sentences in 2000 were 29, in 2001 were 19, and in 2003 were 27. This indicates that there is a sort of inefficiency in prosecution and judicial authority after detecting procedures by the concerned authority which makes legal provisions is unable to support the administrative role responsible for the implementation of the law. See; Rabah, G. (2011), *Hemaiyat Al-mustahlik Al-jadeed 'al-Mabada', al-Wasa'el, wa al-Mulahagah*, 2nd edition, Lebanon; Beirut, Maktabat zain alhuqqiyah. p 192.

⁶⁸- Ministerial Decree No. 332 for 2009 on establishing consumer protection court.

courts.⁶⁹ The activation of consumer courts would increase judges' experience with and knowledge about consumer protection disputes. They will be able to deal with disputes more quickly, which suits the nature of such disputes. Accordingly, it will avoid any losses that might occur in case that disputes take several years to reach a final verdict.⁷⁰

Moreover, such courts can play a vital role in enhancing dispute resolution mechanisms for consumer protection disputes. Currently, most settlements take place within the Department of Consumer Protection, which might affect the integrity of the decision. Thus, the establishment of groups of judges to settle consumer protection disputes through different types of alternative dispute resolution mechanisms within the Court will improve and strengthen the role of these courts.⁷¹ Furthermore, these courts could be a vigorous source for the UAE legislature in terms of amending some provisions by submitting annual proposals on the current consumer protection law.⁷²

2- Litigation costs

Under UAE Court Fee Law No. 1 of 1994, Article 19 states that the court fee from litigation is 7.5% of 100,000 Dirhams, a very high amount for some consumers. Chairman of Dubai Civil Court Judge Ahmed Saif has mentioned that some consumers in Dubai are unable to bring a legal suit against any type of infringement because of the high litigation cost.

⁶⁹ - See; *Ministry of Economy transferred 12 case*, A statistic revealed by Ministry of Economy in the UAE has transferred 21 case to Consumer Courts in periods between 2007-2009, available at <http://www.uaeec.com/news-action-show-id-33457.htm>, accessed date 13/12/2011.

⁷⁰ - See Al-Yosouf, Y. (2007), *Dirasat Halat Dowlat al-Emarat al-Arabiyah al-Motahedah*, Published in Book *al-Fasad Wa-lhukm al-Saleh Fi al-Bilad al-Arabiyah*, 2nd edition, markez dirasat alwehdah alarabiyah. p 582; Middle East and North Africa (MENA) Development Report, (2003), *Better Governance for Development in the Middle East and North Africa: Enhancing Inclusiveness and Accountability*, The International Bank for Reconstruction and Development, ISBN 0-8213-5635-6. p 93

⁷¹ - Ramsay I., 2007, Op. Cit., pp 215-217.

⁷² - Rabah G., 2011, Op. Cit., p 187.

Accordingly, this means that the consumer would bring suit only if the amount of a particular action results in enough market loss to justify the cost of bringing suit.⁷³

It is recommended that the court reduce the cost of litigation in consumer protection disputes because, as long as the cost of litigation is low, it will encourage consumers whose rights have been infringed to act and bring suit to the court. This act by the consumer will provide the court with valuable precedents; even though judges are not obligated to apply these precedent cases, they will serve as guidance.⁷⁴ Therefore, the court will be a possible solution to achieve cost-effective, efficient and consistent decision making.

3- Training and Expertise

The development of new technology and means of production has affected the consumer protection area heavily in the UAE⁷⁵ and has created commercial opportunities for businesses.⁷⁶ Without such proper training, the judges cannot serve as an avenue for the protection of consumers, a problem which is compounded by the complexity and thoroughness of the consumer protection law. Al-Muaini has recommended that to enhance judges' ability to provide fair judgments, they must be trained in the field in which they specialise.⁷⁷

Moreover, the court should employ more experts in consumer protection in order to assist the judges when requested. It is noted that the experts' role would be to provide advice to the

⁷³- See Saif, A. (2012), *Affected from medical errors complaining about the high fees of litigation*, an Article published in Emaratyoum Newspaper, available at; <http://www.emaratyoum.com/local-section/accidents/2012-03-10-1.467234>, accessed date 11/03/2012.

⁷⁴- See Al-Muhairi, B. (1996), *The Development of the UAE Legal System and Unification with the Judicial System*, Arab Law Quarterly, Vol. 11, No. 2, pp 116-160, p 159.

⁷⁵- In 2008, statistics indicated that about 64% of the UAE population had the ability to trade online; See "Unites Arab Emirates", Op. Cit.

⁷⁶- See Salaun, A. (1999), *Consumer Protection- Proposals for improving the protection for online consumers*, Computer law and Security Review, Vol. 15, No. 3, pp 159-167, p 159.

⁷⁷- See Al-Muaini, A. (2009), *The Enforcmnt of copyright law in the United Arab Emirates*, PhD thesis, University of Aberdeen. p 182.

judges with regards to the application of consumer protection law on cases that require experts' opinion.⁷⁸

4- Cooperation with other enforcement authorities

Cooperation between the judicial authority and other concerned authorities will create a sort of integration to achieve the main goal – namely, protecting consumers' rights. Joint efforts will establish a valuable database for the community on the number of consumer infringement cases, names of the infringing establishments, and the names of repeated infringers.⁷⁹ Rabah has suggested that the judiciary with its involvement in cooperation with other enforcement authorities would be more involved in the society and will play a vital role in increasing consumer awareness on the importance of pursuing legal action against any infringer in deterring such acts.⁸⁰

6.5.1 Precautionary Measures

The current UAE legislation on consumer protection has stated several precautionary measures, which work in line with international standards. As this study has explained, these precautionary measures play an essential role in evidencing the infringement and protecting consumer rights; thus, these measures serve as an important form of enforcement. In the UAE, the federal-level Article 20 of the Consumer Protection Act of 2006 and Article 36 of the Executive Regulation for 2007 have conferred the authority solely to the Consumer Protection Department to seek an injunction if the traders or violators did not comply with the

⁷⁸ - In the case of Chelsea and Nathan D'Souza (Lotus Gardens Restaurant Company v. Chelsea & Nathan D'souza [2009] 15044), the Dubai Cassation Court convicted the defendants – a manager, a cook and a supervisor – of being responsible for the deaths of five-year-old Nathan D'Souza and his seven year-old sister, Chelsea. They died of food poisoning after eating at The Lotus Garden Restaurant in 2009. The judge based his judgment on an expert opinion. (unpublished Case)

⁷⁹ - Ibrahim A., 2007, Op. Cit., p 579.

⁸⁰ - Rabah G., 2011, Op. Cit., p 192.

provisions of consumer protection law. Ibrahim has argued that this exclusive authority for the Consumer Protection Department has prevented consumers from obtaining speedy intervention, which might enable traders to continue their infringements.⁸¹

In contrast, the UK model has conferred the legal ability to seek an injunction or precautionary measures' to different competent departments, authorities and consumer associations with a degree of consistency between these concerned authorities.⁸² This variation in the competent authorities has ensured consumers speedy intervention by the concerned authorities to stop infringing traders from continuing infringements. Therefore, it is recommended that the UAE legislature confer similar power to various concerned authorities and Consumer Associations in the UAE.⁸³

Additionally, the UK model has depended on Customs to implement the Consumer Protection Act effectively. Under the UK model, Section 31 of the Consumer Protection Act 1987 allows the UK Border Agency to detain any importation of suspected unsafe goods for up to two working days in order to enable a local Trading Standards officer (TSO) to decide whether to inspect them and if any further action is necessary.

Rabah has emphasised the importance of Customs' role in combating counterfeit goods and that a similar role is necessary within consumer protection law as Customs is one of the competent authorities in the UAE. Since the Customs authorities are the first line of surveillance over imported goods and products, this will enable the Customs to act in a speedy manner. Furthermore, he added that the role of Customs would more effective if the agency handed in reports on seized goods and products directly to the court of jurisdiction

⁸¹- Ibrahim A., 2007, Op. cit., pp 579-581.

⁸²- See Part 8 of Enterprise Act 2002 and Schedule 1 of the Unfair Terms in Consumer Contracts Regulations 1999.

⁸³- Abu-Amro M., 2011, Op. Cit., p 214.

without referring the case to another authority. This step would save time and protect consumers' and traders' rights at the same time.⁸⁴

6.5.2 Class Action and Group Litigation Order

One proposal for reforming the current consumer protection law in the UAE is to focus on optimising the deterrence of infringement of consumer rights and ensuring the receipt of adequate compensation. As discussed in the UK model, class action or representative action is a form of lawsuit in which a large group of people collectively bring a claim and in which a class of defendants is being sued.⁸⁵ Consumers suffering the economic losses that result from cartels, misleading advertisement and other violations of their rights usually do not present a need, or even a practical opportunity, to receive compensation from civil damage awards. Normally, these losses are diffusely spread across a large population and contain small amounts of money. In such cases, there is no pressing guarantee for compensating the losses, and even the cost of litigation may exceed the benefits.⁸⁶

Under the UK model, within Civil Procedure (as amended in 2000) s. 19.10, consumers are allowed to bring suit against a defendant if his act has harmed their collective interests. This type of suit has not been added to the UAE legislation despite the previously mentioned fact that consumers in the UAE are facing problems in proceeding with legal action due to high cost, lengthy procedures and lack of knowledge about litigation procedures.⁸⁷

⁸⁴- Rabah G., 2011, Op. Cit., p 189.

⁸⁵- See 5.7.3 Class Action as a means of litigation in this thesis.

⁸⁶- See Rosenberg, D. and Sullivan, J. (2006), *Coordinating Private Class Action and Public Agency Enforcement of Antitrust Laws*, Journal of Competition Law and Economics, Vol. 2, No. 2, pp 159-187, p 172; Nordh, R. (2001), *Group Actions in Sweden: Reflections on the Purpose of the civil litigation, the need for Reforms, and a forthcoming proposal*, Duke Journal of Comparative & international law, Vol. 11, pp 381-404. p382.

⁸⁷- For more exploration on the difficulties facing consumer in the Arab world in general and UAE in particular, see: Al-Yosouf Y., 2007, Op. Cit., p 582; Al-Muaini A., 2009, Op. Cit., p 129; Ibrahim A., 2007, Op. Cit., pp 579-580; Rabah G., 2011, Op. Cit., p 190.

Therefore, the adoption of such provisions as those in the UK model would bolster efforts of consumers in the UAE to tackle the difficulties they face while bringing a legal action. By adopting such provisions from the UK model, the UAE can achieve different advantages. For example, class action and Group Litigation Order (GLO) can increase the efficiency of the legal process and lower the costs of litigation. Class action or GLO may avoid the lengthy necessity of repeated appearances of the same witnesses and examination of exhibits in similar cases. Moreover, such legal proceeding ensures that all plaintiffs receive relief and that early-filing plaintiffs do not raid the fund.⁸⁸

Thus, consumers in the UAE can receive various benefits from class action or GLO, which would enhance consumers' confidence in the judiciary role and help to streamline litigation procedures. Adopting the UK model would result in a transition towards a new type of legislative technique in which judicial practice will play an increasingly important role.

6.6 Mediation, Arbitration and Ombudsman

As mentioned in Chapter Two of this thesis, cases in the UAE Federal court normally take more than 559 days, according to Middle East and North Africa Development report released in 2003.⁸⁹ Therefore, the most obvious goal is to reduce the delays in the enforcement process caused by the court, which are lengthy, subject to various delay procedures, and subject to appeal proceedings, whereas alternative dispute resolution such as mediation offers speedy procedures to settle disputes.⁹⁰

Some companies use arbitration to settle their disputes with consumers rather than referring the case to the court; however, Al-Hassan questioned the neutrality of the scheme provided

⁸⁸ - Nordh R., 2001, Op. Cit., pp 394-395.

⁸⁹ - See MENA Development Report, 2003, Op. Cit.

⁹⁰ - See 2.7.3 Alternative dispute resolution in this thesis

by the company, as if its being free of charge might affect its quality. On the other hand, if the ADR scheme was funded solely by the company, that would affect its impartiality.⁹¹

In the UAE, the government encouraged consumers to refer their disputes in the first stage to mediation for settlement; however, there is no provision in the law indicating the mechanism that must be followed by parties to reach an agreement. For example, Article 17 of the UAE Consumer Protection Law states that “*the Directorate shall undertake any settlement related to Consumer protection provided that its decision in this regard may be challenged to the Minister*” however, Ahmed has argued that consumers must have a clear idea about the step they want to take; otherwise consumers may be less motivated to settle their disputes through mediation or other ADR mechanisms.⁹²

Therefore, the legislator in the UAE should add some provisions regarding the cases to be transferred to ADR and the mechanisms to be followed by the parties. There are good examples provided by other legislations that can be useful to follow as a model and to amend the current UAE law on consumer protection. For instance, in Lebanon, Consumer Protection Law No. 659 for 2005 presented the mechanism that must be followed by the Consumer Protection Department in the case of a case being referred to mediation:⁹³

- Cases below three million LBP (7500 AED) must be referred to mediation;
- The mediator must be neutral, and one or more personnel must be at the third grade and above in the ministry concerned;
- The mediator calls conflicting parties within three days from the date of approval to resort to mediation for a session;
- All parties in the dispute or their representatives must attend all mediation stages;

⁹¹- Al-Hassan K., 2009, Op. Cit., p 239.

⁹²- See Ahmed, B. (2011), *United Arab Emirates*, Richard Clark (Ed), *The Dispute Resolution Review*, 3rd edition, Law Business Research Ltd. p 845.

⁹³- Articles 82-96 of Lebanese Consumer Protection Law No. 659 for 2005

- The mediator can seek assistance of experts; and
- Mediation must be ended in fifteen days from the first session and can be extended to the same period if all parties agree.

Another good example is provided in the UK model, in which an ombudsman acts as a trusted intermediary between the state or organisation and consumers. This approach is free, more impartial, and gives consumers independence. This approach can play a dual role while investigating consumers' complaints. Firstly, it can satisfy consumers' desire as it is a free service, independent, and its decision is not binding on consumers; if they feel the decision reached by ombudsman is not satisfying, and then they can resort to the court.⁹⁴ Secondly, this model can be effective for administrative bodies in the UAE as investigating the complaint can reveal maladministration, which is considered one of the obstacles to implementing consumer protection adequately.⁹⁵

6.7 Consistency in the government's role and legal protection

Government agencies occupy a strong position in safeguarding compliance with the law. As representatives of the public interest, the authorities have been involved in the influence and formation of developments in several central legal areas. In consumer protection, the government participates through enacting laws and regulations to govern and monitor all aspects that constitute the market, which include assigning supervisory bodies to ensure traders' compliance with the laws implemented. Thus, it is undeniable that the government plays a main role as a first barrier to rogue traders in controlling the market.⁹⁶ They have the neutral role of creating balance in the market, as they are the main references in deciding

⁹⁴ - See 5.9.1 Why an ombudsman is preferred by consumers? in this thesis

⁹⁵ - See 3.6 The Problem of Nepotism in Administrative Authorities in this thesis

⁹⁶ - Nordh R., 2001, Op. Cit., p 392.

what sort of business, advertising and contract should be allowed in the market. Docherty and Fletcher highlighted the role of government in controlling the market as commercial interests represented by retailers and business cannot be trusted to provide adequate protection for consumers' interests.⁹⁷

In Chapter Three, while analysing the role of administrative authorities in the UAE, it was indicated that administration and agencies at both federal and local levels have been established with different schemes tasked with enforcing consumer protection regulations.⁹⁸

It was mentioned that the current situation may make it difficult for consumers to visit or liaise with the different administrative authorities to seek redress or take action granted under the consumer protection law. It has also been indicated that the current situation is not helping speedy action because of the differentiation between federal and local administrative bodies' actions that are limited to certain Emirates.⁹⁹ In evaluating the UAE administrative authorities' progress, it is clear that the adequate actions and enforcement measures of one Emirate may be weakened because of the inadequate of actions or nonexistence of enforcement procedures in another Emirate where consumer rights infringement is rampant.¹⁰⁰ In contrast, the UK model has shown a sort of consistency between concerned authorities in implementing consumer protection regulations. Part 8 of the Enterprise Act of 2002 confers power on both local Trading Standards Offices and the OFT to seek enforcement orders and undertakings where businesses harm the collective interests of

⁹⁷- See Docherty, M. and Fletcher, R. (2000), *Responding to the legal problems of electronic commerce*, at p 3 Cited in L. Gillies, (2008), *Addressing the "Cyberspace Fallacy": Targeting the Jurisdiction of an Electronic Consumer Contract*, International Journal of Law and Information Technology, Vol. 16, No. 3, pp 242-269, p 249.

⁹⁸- See 3.8.1 Contradiction in Measures in this Thesis

⁹⁹- See Fatak, A. (2007), *Ta'theer al-Munafasah Ala al-iltezam Bidhaman Salamat al-Muntooj*, Egypt; Alexandria, dar alfiker aljame'i. pp 319-326; Al-Muaini A., 2009, Op. Cit., p 139; Ibrahim A. , 2007, Op. Cit., pp 289-299

¹⁰⁰- See 5.2 Administrative Bodies: Consistency and the Structure of Enforcement in the United Kingdom in this thesis

consumers.¹⁰¹ In addition, to ensure consistency within the UK, Part 8 gives the OFT lead enforcement responsibility for action taken in the UK in respect to either type of infringement, including the responsibility for the coordination of action by all law enforcers. Moreover, the UK government has established LACROS to support the OFT to ensure uniform enforcement by local authority, to ensure action taken by the appropriate body, and to avoid redundancy of approaches.¹⁰²

Therefore, the fight against infringement of consumer protection regulations carried out onto the commercial scale would have a tremendous chance for success if it was a coordinated one, involving all the relevant administrative enforcement agencies, and dealing with all problems facing consumer protection implementation. The UK model has shown steadiness in administrative enforcement and coordination. Consequently, it will tackle the problem of lack of coordination which was identified by many experts, and it will identify a cooperative mechanism and coordinate efforts to protect UAE's consumers.¹⁰³

Therefore, it was recommended that those UAE administrative agencies would have further success in fighting the infringement of these regulations if they were exercised in coordination with each other alongside other civil groups interested in consumer protection, such as the consumer protection association. These administrative agencies and civil groups can work effectively side by side in drafting new legislation, developing the current

¹⁰¹- Section 211 (1) of Enterprise Act 2002

¹⁰²- Ramsay I., 2007, Po. Cit., pp 486-487.

¹⁰³- See Al-Towaim, N. (2012), *Al-Ghuraf al-Tejariyah Tt-amer dhed Hemaiyat al-Mustahlik*, article published in 20/03/2012, available at; <http://www.alyaum.com/News/art/46020.html>, accessed date 01/04/2012; Al-Tamimi, E. (1999), *Current UAE copyright law and how it compare with WTO's TRIPs agreement and the Berne convention*, The Journal of World intellectual property, Vol 2, No. 3, pp 371-391. p 377; Al-Jabri, A.(1998), *Dawer aljamarek fi Hemaiyat al-Mstahlik*, a paper presented in Forum title 'Consumer Protection in Shari'a and law' held in Abu-Dhabi, 6-7 December 1998. p 49; Al-Bustawesi, I. (2011), *al-Maso'liyah Un al-Gheish Fi al-Sela' 'dirasah muqarenah bain alfiqh alislamy wa alqanoon altejari'*, Egypt, dar al kutub alqanonyah, p 25.

regulations, and creating a level of consistency and cooperation in enforcement against any infringements on consumer protection regulations.¹⁰⁴

Many goals will be achieved by creating a level of consistency between both federal and local levels, including coordination of enforcement activities, development of better expertise, particularly among Customs officials at all points of export and import, the enhanced involvement of the consumer protection association, and the establishment of a benchmark with a standardised unit across all concerned administrative bodies.

Obviously, it would be a great achievement if there were one federal body in the UAE responsible for organising, implementing and tackling consumer protection regulations infringements. The establishment of such a federal body in the UAE given the full authority for the administrative enforcement would prove beneficial to the UAE's aim to combat the continuous infringing on consumer protection law.¹⁰⁵

Consequently, with one federal body, the process would be easier for consumers and their representatives to reach the body involved in the processing of their action. Consistency between these concerned authorities that share one scheme and one database would reduce the number of infringing cases and provide an adequate and effective view of UAE markets throughout all Emirates.

6.8 Consumer education to reduce the number of infringements

Certainly, this is the most important element in securing consumers' rights from being infringed by rogue traders. Indeed, in most cases, consumers' rights have been infringed due to their lack of knowledge and awareness about various types of misleading advertisements,

¹⁰⁴ - Ibrahim A., 2007, Op. Cit., pp 587-588; Rabah G., 2011, Op. Cit., pp 189-190.

¹⁰⁵ - See 3.8 General Analysis of Available Administrative Regime on Consumer Protection in this Thesis

unfair contract conditions, and how to handle such circumstances; in fact, in some cases, consumers fail to bring legal action because of the length and cost of litigation.¹⁰⁶ Al-Shamsi, Legal Adviser and Head of the Jurists' Association in the UAE, has pointed out that the success of any law depends on achieving its aims. For instance, he argued that all efforts made by the concerned authorities at both federal and local levels cannot be successful unless consumers in the UAE have effectively participated in the monitoring the implementation of the law.¹⁰⁷

The UAE legislation has emphasised that the concerned authorities should educate consumers adequately to enable them to combat rogue traders and to act in a speedy manner in case their rights have been infringed.¹⁰⁸ Ibrahim has stressed that concerned authorities and the Consumer Association must work together to educate consumers about their rights and seriousness of the failure to claim their rights, and its negative impact on their health and safety as well as the national economy.¹⁰⁹

Moreover, consumer law has been introduced as an academic module taught in the universities in many countries due to the importance of its contemporary effect upon business society. For example, in the UK, many universities are teaching consumer law as a supportive element to develop the business society that appreciates the importance of consumer protection and its benefits. Therefore, it is recommended that governmental universities and private universities in the UAE begin teaching consumer law as an academic module to raise awareness of the benefits of consumer protection law among potential practitioners in the law and business sectors.

¹⁰⁶- Al-Muaini A., 2009, Op. Cit., p 129.

¹⁰⁷- Al-Shamsi Z., 2011, *Al-Shamsi: al-Jahel be-Qanon Hemaiyat al-Mustahlik Yohder Hoqooq Mushtareen*, Op. Cit.

¹⁰⁸- Article 4 (4) of the UAE Consumer Protection Law of 2006 states "Coordinate and cooperate with the concerned authorities to increase the consuming awareness in the State in relation to Goods and Services and to familiarise the Consumers with their rights and how to claim them"

¹⁰⁹- Ibrahim A., 2007, Op. Cit., pp 586-587.

Furthermore, in the researcher's view, the UK model has proven the effectiveness of media in raising consumers' awareness and encouraging consumers to claim their rights more freely. Thus, the concerned authorities and Consumer Associations can use any means of media to educate consumers effectively to combat counterfeit goods and rogues traders.

6.9 The importance of engaging Islamic teaching

The Islamic religion has covered various aspects of the consumer protection issue that emphasise honest and ethical practices in business. Business transactions are not left to the individual, as the Islamic teachings have provided and encouraged adherents to follow the ethical codes. These ethical codes are reinforced by legal enactments based on the authority of the Quran, Sunna and the verdicts of the jurists derived therefrom.¹¹⁰ The existence of a central authority and an honest leadership was essential to applying those legal and administrative enactments. Thus, the Prophet Mohammed [PBUH] ordered the appointment of a leader to observe the adequate enforcement on the ground that would protect the consumers' rights and educate and influence the traders.¹¹¹ The Islamic teachings spell out principles, both of a general and a specific nature, regarding the implementation of business ethics. They were very strict about the importance of contracts, the prohibition of monopolies and the concept of standardised weights and measures, which were well advanced in Islamic society to maintain justice and equity in said transactions.¹¹² According to Islam, profits are just a means to keep business alive; the ultimate end is consumer satisfaction. Thus, for a Muslim businessman, there is no other way than to satisfy a consumer. Even if the market

¹¹⁰- See Hamaish, A. (2004), *Hemaiyat al-Mustahlik Min Mandhoor Islami*, U.A.E: Sharjah, Sharjah University press. p 28.

¹¹¹- See Khan, K. and Aftab, S. (2000), *Consumer Protection In Islam: The case of Pakistan; monopoly control authority*, Vol. 39 issue 4, Blackwell Publishers Ltd, University of Adelaide and Flinders University of South Australia, pp 484– 485. p 495; Hamaish A., 2004, Op. Cit., p 232.

¹¹²- Khan, K. and Aftab S., 2000, Op. Cit., pp 488-492.

and economic forces drive down the profits, the trader still has to ensure that his consumers are satisfied. This has been well expressed by Dr. Abdalati:¹¹³

‘The main purpose of Islamic legislation on economics and commerce is to secure the rights of the individual and maintain the solidarity of society to introduce high morality to the world of business and enforce the law of god in that sphere of enterprise’.

Nonetheless, it also encouraged that traders and suppliers of services and goods seek lawful means of business to gain profits through the production and sale of goods of high quality, avoid fraud, and comply with the specifications that would reflect positively on consumers and markets.¹¹⁴ To ensure consumers’ satisfaction and provide consumers with the essential protection of their rights, Islamic Shari’a law has provided an independent institutional framework so that individuals and society at large can share the responsibility and foster the reform of inadequate regulatory practices and regulations.¹¹⁵ In contrast with the current situation in the UAE in respect to the role of consumer associations, Shari’a law has encouraged society to establish non-governmental organisations that play a vital role as a neutral party for consumer interests and to work on spreading proper consumption awareness without any intervention from the state since these NGOs are practising their role in accordance with Islamic values.¹¹⁶

Nevertheless, as an Islamic country, the people of the UAE have tended to consider some events related to life, business and society in terms of religion. Hence, individuals have to take into account the injunctions of Islam in pursuing different activities, such as business. It is argued that there should be initiatives by concerned authority represented by the Ministry

¹¹³ - See Abdalati, H. (1985), *Islam in Focus*, 2nd edition, Dar Al-Elm Printing and Publishing Co., Saudi Arabia ; Jeddah, p 96.

¹¹⁴ - Khan, K. and Aftab S., 2000, Op. Cit., pp 485-486; Hamaish A., 2004, Op. Cit., pp 44-47.

¹¹⁵ - See Al-Razeen, R. (2008), *hemaiyat al-mustahlik min Al-ghishh al-tijaari fi al-shari’ah al-islamiyah*, Nadwat hemaiyat almustahlik Wa mukafaht alghishh altijaari, by Arab Organization for Administrative Development. pp 102-103.

¹¹⁶ - Hamaish A., 2004, Op. Cit., pp 254-256.

of Economy to cooperate with the Ministry of Religious Affairs to involve imams and preachers to educate Muslims about the importance of honest transactions and to encourage labouring workers to improve their products and raise the standards of quality as high as possible.¹¹⁷ Moreover, those Muslim scholars can also play a vital role in mosques by raising people's awareness and better understanding the value of Islamic teachings that prohibit any business dealing that involves injustice or cheating or exploitation as cancellable by the law. The added benefit of involving some Islamic guidelines would be their consistency with the social norms of the UAE society and their acceptability to the masses and traders alike.¹¹⁸

In their study, Kishwar and Aftab have indicated an effective way to enhance consumer protection through Shari'a law, which the researcher is predicting will be beneficial as a first step toward remedying the currently weak role of Shari'a law:¹¹⁹

- The institution of Muhtasib should be strengthened in accordance with Islamic Teachings.
- Research should be conducted on other countries' consumer protection legislations, especially those following Islamic Teachings, as a first source of legislation and ways to effectively accommodate those Islamic teachings in codified legislations.
- Academicians, Ulemas (religious scholars), and consumer representatives (Association) should be involved in the research to identify recent issues in consumer protection. The results of their research – namely, the identification of core issues in specific sectors/trading practices, along with recommendations – should be directed to government, industry and the general public.

¹¹⁷- Abdalati H., 1985, Op. Cit., p 96; Rabah G., 2011, Op. Cit., p 191.

¹¹⁸- See Abdah, M. (2002), *Hemaiyat al-Mustahlik fi al-fiqh al-eqtasadi al-islami*, 1st ed, Majdalawi press. p 335; Ibrahim A., 2007, Op. Cit., p 589; Al-Bustawesi I., 2011, Op. Cit., p 299.

¹¹⁹- Khan, K. and Aftab S., 2000, Op. Cit., pp 501-502.

These points require joint efforts from both the government and individuals, as in an Islamic sense, government should work towards strengthening consumer-related institutions. Individuals, on the other hand, should follow the guidelines provided by the Holy Quran and Sunna.

6.10 The need to change utilities services disputes

The government or regulator tasked with consumer protection often has to balance the interests of consumers with those of the sellers or suppliers of goods and services. The Federal Law No. 24 for 2006 on consumer protection covered transactions related to goods and products, whereas the other part of consumer protection – namely, services – remained unorganised. Since most of the services are controlled by adhesion contracts, which are generally prepared by the suppliers of services, there was a great need to find an adequate mechanism that would preserve the rights of consumers and traders.¹²⁰

Al-Reyami has explained the current situation of state services in the UAE, which applies to all service sectors:

(The) services issue in the UAE is very complicated and complex. What is happening is very strange, and exacerbate the problem, the absence of an official authority to take action to protect consumers rights, companies still have the upper hand in everything, in spite of its inability to fulfil its promises, and completion of the projects sold in full, and received their money from people, and in spite of everything, but they are still exert

¹²⁰ - See Akinbami, F. (2011), *Financial services and consumer protection after the crisis*, International Journal of Bank Marketing, Vol. 29 No. 2, pp. 134-147, p 135; Ibrahim A., 2007, Op. Cit., pp 579-580; Rabah G., 2011, Op. Cit., p 191.

pressure to impose their own laws, which are undoubtedly against people's rights and their legitimate demands.¹²¹

According to many scholars, there are two approaches to preserving consumer rights on services.¹²² The first is a non-interventionist approach, which emphasises allowing the consumers and suppliers the freedom to make bargains and contracts without external interference from government or regulators.¹²³ This approach is based on the promotion of competition between the different suppliers and sellers and the use of *caveat emptor*.¹²⁴ One of the main supporters of non-interventionist approaches is the Chicago School of Economics.¹²⁵ Its argument is based on the efficacy of the free market as a means of organising or allocating resources since, in the absence of government intervention, the free market functions at least as well as, and probably better than, any other type of economic arrangement.¹²⁶ The reason for this, according to the Chicago School, is that voluntary exchange between the consumers and suppliers is the most efficient method of allocating resources and promoting individual choice.¹²⁷ This approach has been criticised by the claim that people do not usually make rational choices and individuals can, and often do, make

¹²¹- See Al-Reyami, S. (2012), *People Want Solutions*, in Arabic- available at <http://www.emaratalyoum.com/opinion/2012-01-30-1.456881> accessed date 2/2/2012.

¹²²- See McMeel, G. and Virgo, J. (2001), *Financial Advice and Financial Products: Law and Liability*, Oxford University Press, Oxford; M. Friedman and R. Friedman (2002), *Capitalism and Freedom*, University of Chicago Press, Chicago, IL.; Howells, G. (2005), *The potential and limits of consumer empowerment by information*, *Journal of Law and Society*, Vol. 32, pp 349-370; Jacoby, J. (2000), *Is it rational to assume consumer rationality? Some consumer psychological perspectives on rational choice theory*, *Roger Williams University Law Review*, Vol. 6, pp 81-162.

¹²³- See Yeung, K. (2005), *Government by Publicity Management: Sunlight or Spin?*, *Public Law*, pp 360-383

¹²⁴- McMeel, G. and Virgo J., 2001, *Op. Cit.*

¹²⁵- For more about the origin of the Chicago School of Economics, see; McTeer, B. (2002), *Frank H. Knight Origins of the Chicago School of Economics*, *Federal Reserve Bank Of Dallas Volume 7*, No 3.

¹²⁶- See Wall, D. (1972), *Introduction*, in Wall, D. (Ed.), *Essays in Economic Development*, University of Chicago Press, Chicago, IL.

¹²⁷- Friedman, M. and Friedman R., 2002, *Op. Cit.*

inferior decisions with regard to their welfare decisions that they would not have made if they had complete information, unlimited cognitive abilities, and unlimited self-control.¹²⁸

The second approach to consumer protection is interventionist, which is characterised by the greater involvement of government or regulators in the monitoring of suppliers of services through bans, regulations and risk-sharing in a bid to protect consumers' interests.¹²⁹ Jacob Jacoby has argued that there are various factors that play an important role in our choices, including psychological, sociological, cultural and environmental as well as economical factors. Jacoby added that a non-interventionist approach will not work for all markets, all consumers, all of the time or in all situations since some consumers are not provided with adequate information, which may affect their choice.¹³⁰ On the same trend, Stephen Breyer (now a U.S. Supreme Court Justice) claimed that inadequate information is caused in markets that may simply not be competitive enough to provide all the information that consumers are willing to pay for. He added that even if the necessary information is provided, the buyer may be unable to evaluate all the characteristics of a service on offer; for example, it would be difficult for a normal consumer to evaluate the competence of a doctor or lawyer where the supplier of the service has more knowledge about the quality of the goods on sale than the buyer.¹³¹ Therefore, it is clear that information inadequacy poses a very strong justification for regulations to protect buyers against the adverse consequences of information inadequacy, poor-quality products, unbalanced contract terms, and bad marketing practices that would lead to undermine confidence in the markets.¹³² Matthew Hilton has suggested that a non-interventionist system can be applied only if the consumers can "exercise their rights to ask

¹²⁸ - See Jolls, C., Sunstein, C. and Thaler, R. (1998), *A behavioural approach to law and economics*, Stanford Law Review, Vol. 50, pp. 1471-1550, pp 1477-1479.

¹²⁹ - Howells G., 2005, Op. Cit., pp 365-368.

¹³⁰ - Jacoby J., 2000, Op. Cit., p 4-15.

¹³¹ - See Breyer, S. (1982), *Regulation and its Reform*, Harvard University Press, Cambridge, MA.

¹³² - Howells G., 2005, Op. Cit., p 366.

questions and to choose between one source of supply and another that the manufacture and traders are able to serve a market effectively and genuine competition is likely to exist”.¹³³

The UAE government is dealing with services through the first approach which gives the consumer the right to choose the services he needs without any laws governing the relationship between the parties, bearing in mind that all of the main services in the UAE, such as telecommunication, Internet, electricity, gas and water, are provided by one company in each Emirate, which decreases the level of competition. Consequently, those adhesion contracts may include some clauses that restrict and limit their liability.¹³⁴ Since adhesion contracts are organising these relations, it is important to arrange and control this type of contract through legislation that would protect consumer rights and settle disputes. Hence, the second approach is more desirable and appropriate in the UAE to tackle infringements on services. The UK model provides a good example of intervention by government authority to equalise the bargaining balance between consumers and traders.¹³⁵ Article 10 of the UTCC Regulations imposes a duty on the OFT and Consumer Associations and other qualified bodies to consider any complaint made to it that a contract term drawn up for general use is unfair.¹³⁶ Another solution provided within the UK model is the ombudsman scheme, which enables consumers to bring their disputes with service providers to a neutral, independent and fair body.¹³⁷

In the researcher’s view, the implementation of the ombudsman scheme would tackle such issue effectively, as an ombudsman can play a dual role: firstly, as an impartial free party appointed by the government to receive consumer complaints, investigating and addressing

¹³³ - See Hilton, M. (2003), *Consumerism in twentieth-century Britain*, Cambridge University Press, p 264.

¹³⁴ - Ramsay I., 2007, Op. Cit., pp 167-168.

¹³⁵ - Ibid at p 194.

¹³⁶ - See Article 10 of Unfair Terms of Consumer Contracts Regulation 1999

¹³⁷ - See 5.9.1 Why an ombudsman is preferred by consumers? In this thesis.

complaints reported by individuals; secondly, as an observer of administrative bodies to investigate any weaknesses in their role toward consumers or their clients.

6.11 Conclusion

This chapter has examined several aspects of proposed measures to be amended or incorporated into the legal framework for consumer protection in UAE. The recommendations have been inferred from the discussions throughout the chapters of this thesis regarding the adequacy of legal and administrative protection provided for consumers in the UAE.

Hence, the main aim of this chapter was to create a prospective model for the UAE to enhance the application of consumer protection and increase consumers' trust in UAE markets by amending or to establish new legal provisions or regulations, bearing in mind that all of these recommendations do not contradict the Islamic Teachings on commercial transactions provided in the Qur'an and Sunna.

The current UAE federal legislation on consumer protection has failed to introduce several issues that should relate to the application of sound consumer protection, and such failure has undermined consumers' rights. The current consumer protection law was introduced mainly to curb unjustified price hikes;¹³⁸ consequently, a recommendation was made to include in consumer protection law several legal provisions to cover issues currently outside legal protection, such as personal safety, the right to withdraw, unfair terms, unfair trading practice, ADR and sufficient penalties. Another recommendation was to change the current situation on service providers since most services are controlled by adhesion contracts which

¹³⁸ - See Speech of UAE Foreign Trade Minister, (2007), *Qanoon Hemaiyat al-Mustahlik Yamnah al-Iqtisaad Shari'yat al-Tasadi L'artefaa al-Asaar*, published by Alitihad newspaper on 05/03/2007 available at; <http://www.alittihad.ae/details.php?id=101214&y=2007&article=full>, accessed date 12/05/2010.

are generally prepared by the suppliers of services. Therefore, there was a serious need to cover those service providers with an adequate mechanism that would preserve consumer rights and traders.

In regard to administrative authorities, it is recommended that the UAE legislature introduce a unified consumer protection legislation to facilitate their duties and enable consumers to understand measures by concerned authorities instead of the current situation in UAE which features a division between federal and local levels. Currently, such administrative authorities are governed by a variety of laws and regulations in addition to the overlapping role of governing authorities. Therefore, establishing a unified law will ensure good monitoring, effective implementation, and procedures for complaints because administrative duties will be clear and any maladministration or attempt to interfere will be discovered.

In regard to settling disputes, it was recommended to develop a judicial role by activating the role of the consumer protection courts that were established in 2009. It was also recommended to unify and reduce the amount of litigation to enable consumers to pursue legal proceedings. Another recommendation was that the UAE legislature should add some provisions covering the cases that should be transferred to ADR and the mechanisms that should be followed by the parties in such situations.

Moreover, strengthening the legal position of the Consumer Association is one of the main recommendations of this thesis to enhance consumer protection in the UAE. This association will improve consumers' knowledge about the current legislation that is in place to protect their rights against the malpractice of sellers, traders and provider of services. This will also enable the concerned association to cooperate with media to increase consumers' awareness, which will enable consumers to act immediately in the case that their rights are infringed.

Chapter Seven

General Conclusion and Future Research

7.1 Introduction

This chapter is not intended to provide a review of the entire contents of the thesis but rather to point out the most important and interesting aspects, and add some supplemental information and reflections. This thesis examined the regime of consumer protection and found that some areas need quick intervention by lawmakers in the UAE because they have a direct negative impact on individuals and country alike. Areas such as misleading advertising, unfair business practices, unfair terms, monopolies and seeking of redress were mentioned in previous chapters with no clear legal provisions to cover those areas, thereby leaving consumers' position vulnerable in the UAE market. The reality of the market has already indicated that businesses and traders have greater power and are more highly organised, professional and sophisticated than consumers. Surely, consumers – not traders – are the ones who need protection. Consumers are less informed, less well funded, plagued by collective action problems, and generally less able to secure compliance with their side of the bargain.¹

Therefore, the primary aims of this thesis were firstly to assess the sufficiency of the current legal instruments on consumer protection. Secondly, the thesis aimed to examine administrative authorities' response to recently enacted regulations on consumer protection in the UAE. And lastly, it aimed to examine other available models, such as Islamic shar'ia law and the United Kingdom. The purpose of such an examination and analysis was to impose

¹ - See Ben-Shahar, O. (2010), *Consumer protection without law*, Regulation, Vol. 33 No. 2, pp 26-30, Retrieved from <http://search.proquest.com.v-ezproxy.brunel.ac.uk:2048/docview/606983600?accountid=14494> accessed date 05/06/2012

and propose better protections for the consumers against unfair businesses practices, to promote good governance by reforming state institutions, to strengthen the rule of law and to activate the voice of the people. Also, it is to ensure that consumers have confidence in the market system.

The following sections will briefly present the results of this thesis by indicating first the problems of the consumer protection regime in the UAE. Then, it will represent the UAE government's commitment to promoting consumers rights and striking a balance between both sides – consumers and businesses. It will also suggest ways to increase the efficiency of with which administrative agencies tackle consumer protection law infringements. Then it will focus on joint efforts as a main element in strengthening the consumer protection regime in the UAE and improving consumers' and traders' confidence in UAE markets. Finally, general conclusions will be given with advice for future researches.

7.2 Problems of Consumer Protection

The Consumer Protection Act No. 24 of 2006 empowers an aggrieved person or a recognised consumer authority to approach the prescribed authorities under the respective legislation for relief. In reality, though, this act by itself may not bring about the desired social changes due to the following important reasons: firstly, despite there being a separate department within the Ministry of Economy in the UAE that deals exclusively with consumer affairs (the thesis found that there are number of ministries for providing justice to consumers in case of violation of consumer rights), consumers have to go to the Food Authority for redresses under Food Law, to the Health Ministry for the prevention of food adulteration, to the Ministry of Economy for the control of unfair and monopolistic trade practices, and so on. Accordingly, consumers are required to run after various federal ministries and local

departments with different procedures for getting issues redressed.² Secondly, there is an utter lack of awareness, especially among rural masses, and even the enlightened urbanites are indifferent to any form of organised consumerism as their involvement in such associations and organised activities will educate them about their rights and duties.³ It will also enable those consumers to face the rapid pace in production technology and teach them how to act in case of their rights being infringed.⁴ Thirdly, the figure of consumer protection infringement, particularly for traders involved in illicit trading, has grown quickly because these illegal activities are offering the prospect of large economic profit and private financial gain, without excessive risk or the risk of major penalties. Although infringers can be caught and prosecuted with criminal punishment, the penalties actually imposed in the current UAE consumer protection law are so low that they tend to offer no deterrence.⁵

7.3 UAE Government Commitment

Throughout this thesis, it was indicated that UAE law enforcement agencies have been active and committed to protecting consumers' rights. For example, several raids have been conducted and various penalties have been imposed on offenders who engaged in illegal trading or continued infringement of consumers' rights.⁶ The government in the UAE

²- See 3.5 The adequacy of measures taken by administrative authorities to enforce consumer protection regulations in this thesis.

³- See Goldring, J. (1998), *Consumer Protection, Globalization and Democracy*, Cardozo Journal of International and Comparative law, Vol. 6, No. 1, pp 1-85, pp 13-14. See also; 3.7 Why Do the Concerned Authorities have to Raise Public Awareness? In this thesis

⁴- See Al-Shamsi, Z. (2011), *Al-Shamsi: al-Jahel be-Qanon Hemaiyat al-Mustahlik Yohder Hoqooq Mushtareen*, An article published in Emaratallyoum Newspaper, 15/10/2011, Available at: <http://www.emaratalyom.com/local-section/other/2011-10-15-1.430346>, Accessed date 20/01/2012

⁵- Omer Bu-Shuhab (Executive Director of Commercial Compliance and Consumer Protection in Dubai) has indicated that since the implementation of the consumer protection law, the number of infringement cases has increased 108% in the last three years. For more see; Bu-Shuhab, O. (2012), *DED: 5.8 billion dirham loss of the local economy in the absence of control*, an article published by Emaratallyoum Newspaper, available at: <http://www.emaratalyom.com/business/local/2012-02-23-1.462998>, accessed date 03/03/2012.

⁶- Major Salah Bu-Osaibah (Director of the Anti-Economic Crime Department) has announced that Department of Dubai Police seized counterfeit goods worth more than AED 55 million in 2010. For more see; *Counterfeit spare parts Seized*, available at; http://article.wn.com/view/2011/01/30/Counterfeit_spare_parts_seized, accessed date 05/02/2011

promises to take every measure to effectively implement consumer protection law and adopt any development that might lead to improvements in consumer protection.⁷ On a practical level, the UAE government is still committed to tackling counterfeiting activities, strengthening consumer protection, creating awareness on consumer rights and related mechanisms and laws in place and supporting any initiatives that might strike a balance between the interests of parties, consumers and sellers. For example, the Emirate of Dubai is preparing to launch the Dubai World Conference on Consumer Rights and Power Brands Exhibition. The initiative is part of the government's efforts towards creating a sustainable economic environment that adopts best standards and policies in protecting consumers and brands, thereby enhancing transparency and impartiality in the retail sector in the Emirate of Dubai.⁸

7.3.1 Consumer Protection Legislation and Court Action

As stated in the introduction, the UAE legislature needs to examine and amend some of the relevant and applicable laws as the current consumer protection laws in the UAE have failed to introduce several issues that would remedy the current situation and achieve an adequate level of confidence and protection for consumers.⁹ Thus, immediate action is needed for sound and solid principles to be in place if consumer protection law is to achieve its various purposes. The legislature should do so through a combination of various government bodies,

⁷- Recently the UAE's Minister of Economy Sultan Al-Mansoori said that a new draft law for consumer protection is expected to be enforced next year to stop infringements that directly affect economic growth threatens public safety. For More See; Arabian Business, *UAE eyes new consumer protection law in 2012*, published by Arabian Business, 29 November 2011, available at; <http://www.arabianbusiness.com/uae-eyes-new-consumer-protection-law-in-2012-432615.html>, Accessed date 10/06/2012.

⁸- See *DED to launch Dubai World Conference on Consumer Rights and Power Brands exhibition*, published by AMEinfo.com, available at; <http://www.ameinfo.com/ded-launch-dubai-world-conference-consumer-312178>, Accessed date 20/09/2012

⁹- See 2.4 The Regime of consumer protection in the UAE in this thesis

including the judicial authority, in order to put into effect the amended suggestions of consumer protection law.¹⁰

Currently, consumer protection law is plagued by serious threats to consumers' ability to detect risk, enforce their rights, and seek redress. These threats were more obvious by technological advances and consumers involvement in e-commerce. UAE legislature should accommodate other vital remedies such as ombudsman, arbitration and mediation to support the courts role in settling disputes. The ADR can provide quick, cheap and easy ways to settle consumers' disputes in order to achieve an adequate enforcement level and proper consumer protection.¹¹ Moreover, there has been an obvious need for more stringent criminal penalties for consumer protection infringement.¹² Also, the results of this thesis indicate that there is a need for more stringent civil remedies that would deter others and actively help consumers seeking redress to recover damages.¹³

On the other hand, the judicial authority, which plays a main role in enforcing consumer protection laws, has to improve its ability to provide adequate protection for consumers' rights; court judgment on consumer protection cases must have a significant impact on consumers' confidence in the UAE markets. Therefore, to achieve such confidence, the court has to succeed in implementing consumer protection law adequately.¹⁴ The UAE government has taken major steps by establishing consumer protection court but such steps are not enough. The judicial branch has to develop its procedural mechanisms in order to adapt to developing changes in the consumer protection field.¹⁵

To put it concisely, courts must continue their efforts to stem the growing number of cases related to infringement of consumers' rights through the implementation of education

¹⁰ - See 2.7 General analyses for the available legal framework in this thesis

¹¹ - See 6.6 Mediation, Arbitration and Ombudsman in this thesis

¹² - See 6.3.6 Criminal Sanctions in this thesis

¹³ - See 6.5.1 Precautionary measures in this thesis

¹⁴ - See 6.5 Developing the role of judicial authority in this thesis

¹⁵ - 2.6 Judiciary role in consumer protection in this thesis

programs and must adopt other concerned authorities' initiatives that may lead to the introduction of a comprehensive consumer protection law and a sufficient level of enforcement of this law. Furthermore, Judges in specialised courts should also impose deterrent sentences on consumer law infringements cases allowable under the law, and prosecutors should seek alternative charges in order to maximise sentences. These are some of the effective inhibitors to consumer protection law infringements.¹⁶

7.3.2 UAE Administrative Agencies

The UAE consumer protection law has placed the Department of Consumer Protection within the Ministry of Economy in charge of enforcing consumer protection law; however, in the UAE, as a result of the political system,¹⁷ there are several administrative agencies authorised in each of the Emirates to enforce consumer protection law. One of the main findings of this thesis was that consumer protection has been implemented by individual Emirates in their own respective jurisdictions within their internal regulations and procedures. Consequently, the protection would be available to a satisfactory degree in the Emirates of Abu Dhabi, Dubai and Sharjah because of its economic situation, whereas it is difficult to engage in such satisfactory protection in the remaining Emirates, and there usually is a delay in pursuing such matters due to their financial weakness and shortage of staff.¹⁸ Another finding of the study was the assurance of the important role played by Customs Authorities as they are the first line of defence against any importation or exportation of counterfeit goods. Thus, customs can play a significant role in promoting consumers' confidence in UAE markets by monitoring shipments, including large-scale, courier and personal baggage to keep as much of these counterfeit goods as possible out of the UAE. Therefore, the UAE legislature should

¹⁶ - See 6.5 Developing the role of judicial authority in this thesis

¹⁷ - See 2.2.2 The political system in this thesis

¹⁸ - See 3.5 The adequacy of measures taken by administrative authorities to enforce consumer protection regulations in this thesis

add some provisions to consumer protection law on border measures related to the suspension and release of suspected goods.¹⁹

In addition, the study showed that the police department added further strength to consumer protection law. The police can use additional powers of arresting infringing parties, according to the applicable laws, which could be a deterrent against infringers. Thus, it was suggested that the police, who are one of the main arms of enforcement in the UAE, should be aware of the devastating economic implications of the consumer protection law infringement. Activities infringing consumer protection law offer criminals the prospect of large economic profits and at the same time might impact consumers' health.²⁰

Furthermore, civil communities groups represented by the UAE Consumers Association have also played a role in assisting the concerned administrative authorities to tackle consumer protection law infringements; however, this thesis indicated that these private groups have not been playing an active role in tackling counterfeit goods and rogues traders due to insufficient legal power and lack of cooperation with concerned authorities²¹. Therefore, it was recommended that those civil community groups should participate more fully in improving the current law, representing consumers, using existing tools of enforcement measures and collect and share information with concerned authorities related to consumer protection law infringement.²²

In short, the unification of administrative measures and remedies in all Emirates is one of the most important steps towards minimizing the number of consumer protection infringements, promoting the satisfactory protection for all consumers in the UAE and achieving cooperation

¹⁹ - See 3.4.1 The Role of Customs in this thesis

²⁰ - See 3.4.2 The Role of Police Departments in this thesis

²¹ - See 3.8.3 Why is Consumer Protection Association weak in the UAE? In this thesis

²² - See 6.8 Consumer Education to reduce the number of infringements' in this thesis

and coordination between all governmental and non-governmental administrative bodies concerned with the application of consumer protection law.²³

7.3.3 Joint efforts is the main element

An effort from one side to protect consumers is a waste of time and efforts. In a way, it will improve the security in the area, but it will not settle the issue completely. Accordingly, to reach the best level of security, confidence and fairness in consumer transactions, efforts should be unified to stop any attempts to breach consumer rights within commercial scale. In general there are different parties must work together within a level of consistency to achieve the best result. These joints efforts must be shared by all parties beginning with consumers by increasing his knowledge and traders by obeying the existed regulations and the government by passing new laws and regulations to protect consumers adequately.

Therefore, the effectiveness of consumer protection regime in a country will not depend merely on the applicable law, but even more, on competent authorities, civil communities and consumers themselves. Those four elements must work simultaneously for proper implementation and enforcement of consumer protection regulations. When these four elements are committed to achieving a high level of protection for consumers, even a weak consumer protection law might not stand in their way for providing effective protection for consumers. Oppositely, where one of these elements is not adequately prepared or less motivated to act positively against consumer protection law infringements, even the most

²³ - See Cunningham, R. and Sarayrah, Y. (1993), *Wasta: The hidden force in Middle Eastern society*. Westport, CT: Praeger; Rabah, G. (2011), *Hemaiyat Al-mustahlik Al-jadeed 'al-Mabada', al-Wasa'el, wa al-Mulahagah*, 2nd edition, Lebanon; Beirut, Maktabat zain alhuqoqiyah. pp 187- 192; Fatak, A. (2007), *Ta'theer al-Munafasah Ala al-iltezam Bidhaman Salamat al-Muntooj*, Egypt; Alexandria, dar alfiker aljame'i. p 541; Al-Hamad, M. (2010), *The Second Arab Forum for the protection of Consumers from fraud and counterfeiting*, a Forum held in Riyadh; Saudi Arabia in 10 October, 2010. <http://www.customs-apf.gov.sa/content.aspx?id=38>, Accessed date 15/12/2010; Ibrahim, A. (2007), *Hemaiyat Al-Mustahlik 'Dirasah Muqarenah'*, First edition, Manshorat al-Halabi. pp 579-582

excellent and up to date consumer protection law might not achieve desirable results.²⁴ Therefore a joint effort is needed and fragmentation of the consumer movement is harmful for consumers and is weakening consumer protection, competition and the development of quality standards within the UAE local markets.

7.4 Conclusion

Building on the existing study, the adequacy of the protection provided by newly enacted consumer protection law has been studied through this thesis, and the findings presented have contributed to the establishment and systematisation of knowledge in this field. This was achieved by studying such regimes in various different countries with particular attention to the UAE consumer protection regime.

This thesis sought to illustrate the impact of consumer protection law infringement on the country's economy in general and consumers in particular. This study also tried to indicate the fundamental problem facing the proper implementation of consumer protection and the current situation of the consumer protection regime in the UAE. Moreover, this thesis tries to provide an overview of the enforcement measures currently being applied by administrative bodies. Furthermore, this thesis has sought to explore the remedies available to consumers in if their rights are infringed, including civil, criminal and administrative remedies. To achieve this aim, the researcher has utilized various methods of examination.

In summary, this thesis has provided a picture of the consumer protection regime in the UAE as well as the UAE government's efforts to provide consumers with adequate protection. Nevertheless, there is still serious need for integration between administrative bodies and improvement of their enforcement methods. This thesis encourages, first of all, a thorough re-examination of the effectiveness of the current legal and administrative regime on consumer

²⁴ - See Ramsay, I. (2007), *Consumer law and policy 'text and Materials on regulating consumer markets'*, 2nd edition, Hart Publishing. p 5.

protection in the UAE. Secondly, it suggests a sharpening of the advocacy skills of civil society organizations to increase the public's awareness of their importance in influencing government policy. And finally, it calls for the creation of an independent oversight body to investigate and prosecute infringers of consumer protection law.

7.5 Contribution of the study

This study is one of first to consider the consumer protection regime in the UAE from a legal and administrative perspective. This study investigated the legal structure in the UAE to examine the efficiency of the current laws and regulations related to the implementation of consumer protection. An examination was made of several regulations related to consumer protection in general as well as recently enacted federal regulations on consumer protection in the UAE in particular. Moreover, this study also addressed the difficulty of unilateral action by concerned authorities to maintain consumer rights; therefore, it is important to achieve a level of consistency between administrative bodies at the federal and local levels in order to ensure an adequate level of protection for consumers. Furthermore, the UAE has not covered various other aspects of consumer protection, such as unfair terms, unfair trading practices, misleading advertisements and jurisdictions. Accordingly, this study contributes by offering a new proposed model that can be adopted by the UAE legislature. The proposed model firstly must not contradict with the Shari'a law, which is the first source of legislation in the UAE. Secondly, the proposed model is a more comprehensive version of consumer protection law that can provide an adequate level of protection for consumers, easy access to redress, and other important steps that should be taken in order to facilitate the implementation of a sound consumer protection scheme in the UAE and achieve the desired results.

7.6 Future Research

It is hoped that this thesis will provide the impetus for more intensive studies on consumer protection due to the importance of the topic and its tremendous impact on UAE society and national economy. When studying in the field of consumer protection law, it is obvious that both private and public law contribute to this core aspect of consumer protection. This includes most branches of the legal system (e.g., criminal law, competition law, intellectual property). This fact leads to the conclusion that more research should be devoted to other subjects related to consumer protection law, such as fields that do not yet exist and need to be studied (e.g., e-commerce, consumer credit). Another potentially interesting study would be to examine competition law, which currently does not exist in the UAE, as consumer interests can also be protected by promoting competition in the markets, which would directly and indirectly serve consumers, consistent with economic efficiency.

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