

Lebanese American University

Electronic transactions in Lebanon

Legal challenges and opportunities

By

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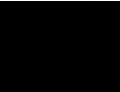


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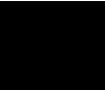
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Dedication

To my dearest family;

“Our name is our craft; With our family lies our devotion”. Among you I have received nothing but protection, education, manners, devotion, and unconditional love. To the loved souls, departed and existing, that nurtured mine and believed in me, a renewed promise in commitment and a vow of love pledged indefinitely.

Acknowledgment

Praised is the profession of lighting candles in the depth of darkness; not only that I had a lot of teachers in my life, academic and vocational, but I also had the privilege of receiving their impact in my mind as well as in my character, their dedication and hard work, their innovation and care have influenced me profoundly and motivated me to pursue a similar path in my upcoming career.

For your unique teaching style, resourcefulness, kind advocacy, and valuable time and efforts I dedicate this work and what follows it. Me. William Melki.

For all your trouble in nurturing this pioneering program and for all the help provided to all students equally, I dedicate the fruit of my studies, Dr. Khodr Fakih.

Electronic transactions in Lebanon

Legal challenges and opportunities

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Abstract

If the middle of the eighteenth century gave birth to the industrial revolution, the end of the twentieth has brought the telecommunication revolution upon us, and humanity witnessed the outburst of media and telecommunication spread to dominate all aspects of our lives. The ever-growing ripple effect of the introduction of the internet, smart phones, and social media still resonate nowadays and participate into the modernisation of our daily lives. This advancement has influenced the entire world and intervened in every aspect of the economy imposing its methods on the already established approaches and models. The offspring of both business and technology is the online business that is currently booming and evolving, interfering with our way of shopping, marketing, and consuming, this business needs a solid foundation to flourish and produce revenues and benefits for the economy and society. Apart from the fact that this type of business needs

a technologically advanced infrastructure, it also needs a solid foundation in the Legal and Judicial systems.

Lebanon has always been a pioneering country in the region when it comes to Legal advancement and it has always produced the best of Legal literature, and its judicial system is one of the last unbiased honorable systems in the region. Following its habit of excellence and despite their relative tardiness in keeping up with the international demarche, the Lebanese Legal environment can and should be ready to receive an update to accommodate to this new situation. During the realization of this thesis, the Lebanese Parliament crowned twenty years of efforts by finally passing the “Electronic transactions and personal data law” number 81 for the year 2018.

The purpose of this study is to illuminate the dark corners of this field, highlighting the problems that might emerge in the daily use of this new business model, studying the new legislation and suggesting amendments and solutions where needed to insure its steady use and to capitalize on its benefits while eliminating its disadvantages. This study is based on the observations of a total of fifty-six Lebanese online stores or stores belonging to companies that do business in Lebanon prior to passing law number 81\2018.

The main challenge highlighted in the second chapter of this study is the problem of the law that will be applicable on the parties and the contract especially with the absence of attribution rules in Lebanese Law; The third chapter examines the clear identification and capacity of the parties to contract under the applicable law; while the fourth chapter studies the sensitive topic of Internet crimes and consumer protection.

The conclusion of this study is to cite the primitive state of the cyber space regulation in Lebanon and then highlight the benefits of investing in such field and the disadvantages of refraining from it in order to suggest the best solutions to this modern-day problem, while balancing regulation and freedom to contract to the best extent.

Keywords: Online business, Online stores, Online regulation, Commercial law, Electronic transactions and personal data law.

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List of abbreviations

Abbreviation	Fully written form
CL	Lebanese Civil Law
CPL	Lebanese Civil Procedures Law
LCL	Lebanese Land Commerce Law
BDL	Bank of Lebanon
Law 81	Lebanese Electronic Transactions and Personal Data law
CPA	Lebanese Consumer Protection Act
CrL	Lebanese Criminal law
IPL	Lebanese Intellectual Property Protection law

Chapter One

Introduction

Shopping have always been the backbone of the Capitalist economy, as consumerism can only be satisfied by the act of selling products to consumers. This tendency has been driven by service and products manufacturers and sellers in different ways.

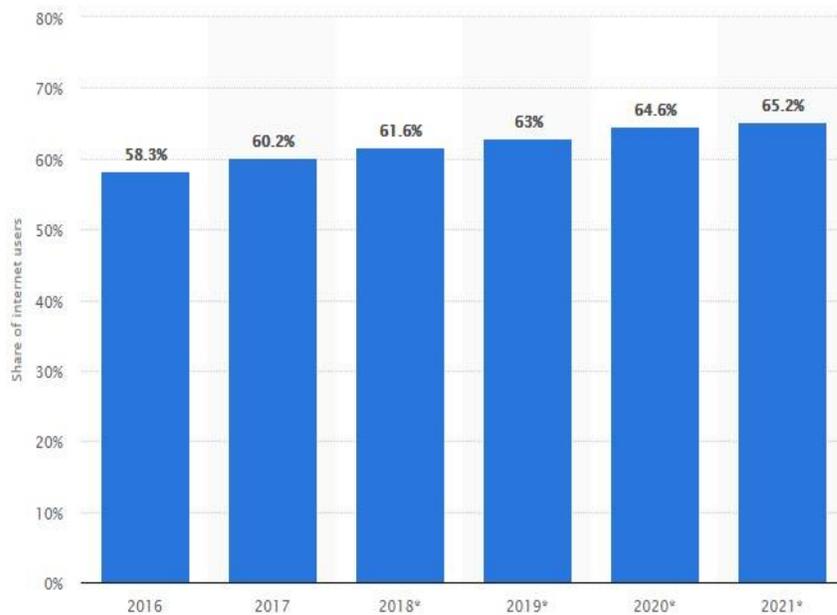
1.1 Historic Overview

The start was of course in the most primitive approach, which is trade, people traded their products or services between themselves they conducted all their transactions in a single place called, the bazaar; until 130 B.C., the bazaar started moving starting from China to Europe while crossing the Levant and Minor Asia, this approach is known as The Silk Road. Trade maintained its classic trait until 1796 when Harding Howell & Co opened the world's first department shop in London, shortly after but on the other side of the Atlantic, General stores came to existence in mid-late 19th century in the mid west, nevertheless, the vast area of the country and the underdevelopment of transportation gave birth to catalogue shopping, The concept kept evolving until 1909 when Harry Gordon Selfridge have established the largest and most prestigious department store in London, and the world back then¹. Shortly afterward shopping malls governed shopping for more than 60 years of our modern-day times. Nowadays, with the increase of internet access and the modernization of this mode of communications, Online shopping emerged. From its early start in 1979 as teleshopping to the appearance of SWERG as online payment company to the launching of the first WWW browser and server till the release of Netscape and the SSL Secure Sockets Layer encrypting method, and finally to the launch of giants like Dell and Cisco, Amazon and E-bay into the e-market in 1995, the year that truly marked the start of e-commerce.

¹ fully equipped with restaurants, roof gardens, reception offices operated by well trained attendants.

1.2 Recent status

In short, and by developing online shopping, humanity combined all types of shopping that it witnessed during history, cutting the material elements of those methods to a tenth of what it used to be. From that date on, a lot have changed in a single direction, which is the expansion of this newly found market, and the perfect indicator of this rising boom is its size, according to a market study² published in April 2017 by "Statista"³, a leading provider of market and consumer data. The presence of the online stores and



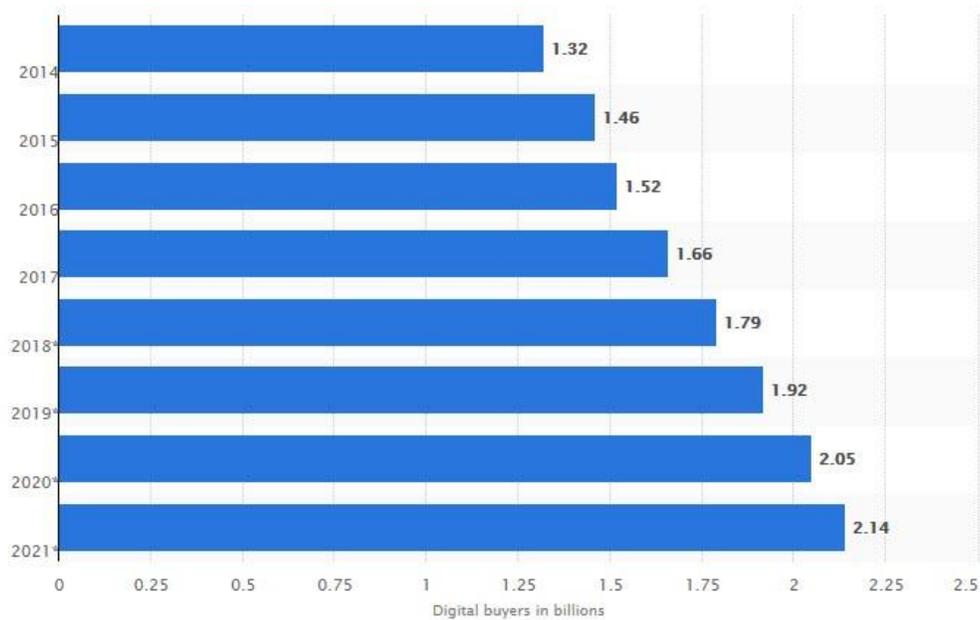
(Figure #1) Digital buyer penetration worldwide from 2016 to 2021.

digital shopping became significantly noticeable as the percentage of people who uses the internet to shop online for their daily needs and supplies augment steadily and is making 61.6% from the whole market a number that needs to be reckoned in order to analyze the reasons of such boom and adapt the mentality and the infrastructure to accommodate it (figure #1).

² E-commerce worldwide: This study provides statistics and facts on the world-wide online shopping market. It presents figures and projections about e-commerce market size in addition to insights on online transactions and individual spending, more importantly mobile transactions and electronic payments.

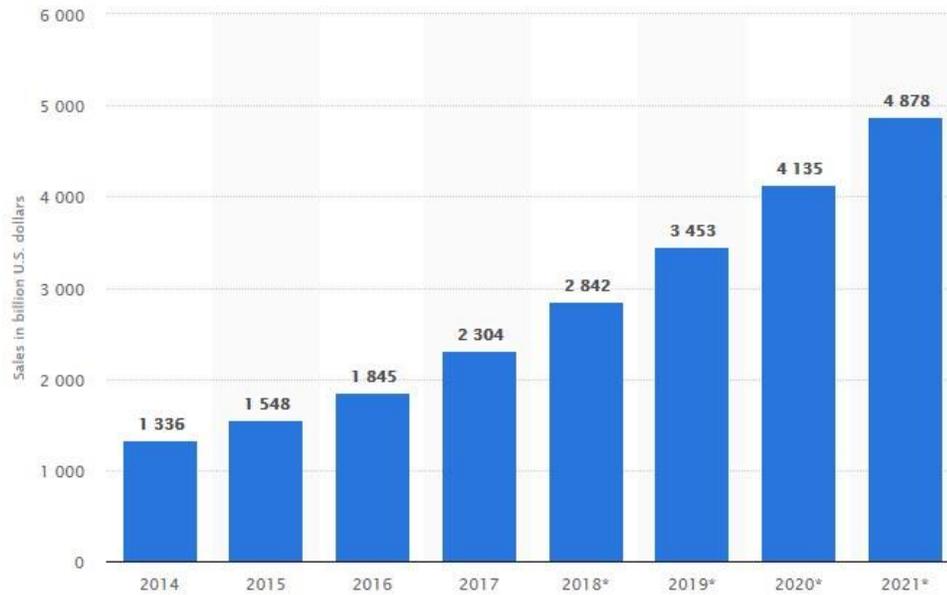
³ Statista: a company that provides the market with studies and insights about economy and trade in particular. Link to the company website: <https://www.statista.com/>.

The number of Internet shoppers is steadily growing and their geographical presence is well dispersed all across the globe leaving few spots on the map unreached. Based on my personal observation I can say that the the Internet, and by extension, internet shopping penetrated the daily lives of humanity and affected their lifestyle and choices; In comparison with the indispensable invention that started it all, electricity, the internet and online shopping had a deeper, more rapid, and more pervasive spread, The online shoppers are projected to reach the staggering number of 1.92 billion buyer through the currenst year (2019). (figure #2),



(Figure #2) E-commerce penetration by number of buyers

The result of this increase is reflected on the size of the market itself and the volume of revenues it is going to generate as we can observe the same climbing curve being reflected on the value of this industry in (figure 3).



(Figure #3) Global retail E-commerce by trillion of dollars.

From a legal perspective: what is this business about?

Electronic commerce (e-commerce) is an online tool that enables a firm or individual to conduct business over an electronic network, typically the internet. The vital instrument of this business is the online transaction which is a variation of the more legally accurate term "online contract". An online contract is not different from its classical civil counterpart, as defined in the Lebanese CL in its 165th article, "*An agreement is all interchange between a will and another to produce legal effects, and if it aims to establish mandatory relationships it is called contract*". The element of "online" manifests simply in the medium that allows the parties to exchange their offer and acceptance to fully or partially conclude the contract, usually the contract involves another online element (s) like payment. An online contract can be any type of contract from sale to service provision to rent to lease to brokerage etc.

1.3 Weighing the Value of Online Stores.

The benefits reaped by the introduction of such advanced form of contracts are numerous and are only emulated by its disadvantages, for that we could state their principal benefits and disadvantages as follows:

Table #1	
The benefits and disadvantages of introducing E-commerce to the Lebanese market.	
Benefits	Disadvantages
1- Cutting the internal costs in many businesses.	1- Introduce new types of costs and need for specialized knowledge.
2- Decrease the overhead costs.	2- Decrease the recruitment and contribute in increasing the unemployment.
3- The possibility to reach, contact, and serve the clients in the comfort of their own home or anywhere else.	3- The nuisance of not being able to avoid the advertisement and the risk of personal info exposure.
4- Cutting the role and the costs of brokers and middle men.	4- Taking out the said class from the economic circle.
5- Enabling small businesses to compete with other online or normal businesses and possibly eliminating the monopoly over certain goods or territories.	5- Enabling new businesses with small capital and expenses to disturb certain established businesses dominance, monopoly, or simply status quo which can lead to catastrophic outcomes related to bad management.
6- The connection system, especially the Internet, allows customers to rapidly access the information of goods, delivery, warranty, exchange, and any other information which contribute in a fast and well-informed offer and acceptance.	6- The said info could be sometimes misleading and sometimes can be exposed to loss of data for technical reasons.
7- The sites keep a log of all transactions, costumers, and goods which makes it easy to get back to	7- There is no rule that enforces keeping and sharing these said logs, like the merchant books.

them in case of disputes and for tax purposes also.	
8- It enables the costumer to examine the possibilities he has when choosing a single product.	8- Not all providers have online stores and a trend of boycotting that option is slowly taking on, needless to say that ignorance a mismanagement can lead to the same results.
9- The costs saved on overhead, rent, utilities, and much more, decrease the final price of the product and give it a competitive edge.	9- This edge might be on the expense of other traits that require some additional cost such as, packaging, precise marketing, delivery, etc. And this mechanism of cutting corners could generate some serious problems such as fraud, damaged goods, false advertisement, return and refund conflicts.

The foregoing raises questions regarding the framework around e-commerce, and what are the best ways available to safeguard its benefits while avoiding and mitigating potential vulnerabilities and abuses. Needless to say, that this trade and any trade needs to be freed from extra restrains, as all free trade seekers have advertised ever since the publishing of the idea by Dr. David Ricardo. A free and liberal framework will enable it to reach its contemplated size and begin to engender a margin of profits to uplift the economy and create a market for investors and help to drive the economic wheel forward by generating fair competition and lower the price of some goods and help creating more profits and profit potentiality via its close correlation with certain sectors such as banking and lending, transportation, handcraftsmanship, Information and technology, and many more; This freedom is required also to harmonize any country with the developed countries which benefits said country and fulfill one of the conditions required by the developed towards the signature of the highly sought after FTA (Free Trade Agreement).

Nevertheless, this freedom needs to be monitored and controlled to eliminate most of the problems that could happen along the process of the transactions and to ensure the smoothness of dealing online in Lebanon which reflects on the encouragement of

investing and buying from Lebanese producers and online stores. The efforts in this field started as early as the year 1998 and saw the light in a formal attempt in the year 2000, contrary to the convenience, raging political, economical and security circumstances have manifested in the country and the area in general, the fact that delayed the serious steps that needed taking. Finally, the Lebanese Parliament have taken a bold move towards opening the Lebanese market towards e-commerce by issuing law 81 that will set new parameters to the freedom given and the censorship needed.

1.4 A new law

On 10/10/2018, the Lebanese Parliament issued law 81 that will regulate the entire online business as of its enforcement date set by article 136 which is three months from its date of publication in the official gazette which will be January 18th, 2019. This study was concluded before the passing of said law, and it had as a purpose suggesting a bundle of new laws and amendments to existing laws that will regulate the market in an up to date manner, nevertheless, the issuance of this law changed the game and gave solutions to most of the problems that we have been discussing in an early similar manner to what we were suggesting, the fact that forced my hand into turning this as a study of the new law, the solutions and advantages it presents, and its possible downfalls. This new law is divided into eight parts.

The law starts with a section named preliminary provisions, that provided new definitions to the legal environment on one hand such as the “Certification service provider” and “Network service provider”, and redefined familiar legal concepts on the other hand from the likings of “Signature” and “Bank Card”.

The first part deals with the writing and proof using electronic means, as article 4 of Chapter one of law 81 resolved the problem from which the ancient CL have been suffering, the problem of equality between the traditional and the electronic writing and signature in its weigh of proof. Chapters two, three, and four continue to regulate all matters regarding the electronic bonds, writings, and their service providers.

The second part regulates the e-commerce and electronic contracts, as the first chapter sets an important principle which is the freedom to engage in e-commerce within the provisions of laws as stated in article 30 of law 81. The following two chapters deal with the electronic contracts and the electronic financial services in that order.

The third part regulates transfer to the public using electronic means, as defined in article 65 of law 81, any signs, writings, pictures, voices, and messages of any nature as long as it is not considered a private message; This part continues to define the providers of this technical service.

The fourth part deals with websites names and domains, especially the (.lb) domains and the creation of “the national committee for managing Lebanese domain names” (article 79), which will be granted significant freedom to set the parameters and conditions to the contemplated protection. It also commissioned the Minister of State for administrative development to see that the public entities have registered their websites and manage this process (article 80).

The fifth part deals with the personal data and its protection, a paramount need in the world of internet where everything has transformed into data and where the client became the commodity that generates profit for the service provider⁴. This part defines, in five chapters, the concept of personal data, the legal purposes of collecting data, the conditions and permits for the people collecting data, and finally and most importantly the right to access and correct one’s personal data.

The sixth and seventh parts are criminal parts that amend the (CrI) and (CPA) to cope with the concept of internet crimes or crimes that are committed using electronic means. They also suggest new types of crimes that are the information crimes and computer crimes; All those terms will be examined in depth later in this study.

The last part has concluding provisions that indirectly highlighted all parties of interest in this new law among the public entities.

This law is a daring and sophisticated attempt and represents a new concept in the Lebanese regulatory scene, as it encompasses different types of laws from civil, civil procedural, commercial, criminal, to criminal procedural, contrary to the usual laws that has a dominant type.

⁴ Such is the case of all free service providers, like Facebook, Whatsapp, Viber, Telegram, and many more.

1.5 Study outline.

This study will focus on the primal most problematic aspects that needs addressing in vu of classic legislation and in the light of the new law 81 as follows:

First Issue: The Applicable law.

Second Issue: The identification and capacity of the parties.

Third Issue: Internet Crimes and Costumer protection.

Chapter Two

The Applicable Law.

2.1 Overview.

As told in the introduction, commerce in general started from the trade of goods between people and evolved to reach our modern-day electronic commerce; throughout this long evolution there have always been attempts to regulate it in a legal framework that best serves the interests of every participant in its transactions. Keeping everybody at arm's length is a burdensome effort that every legislator has suffered from with the slight tendency of favoring his nationals on the expense of the strangers⁵, accordingly and with the major intellectual evolution, the world have come to a point where it agreed on unifying the rules governing international trade in order to simplify the transactions, clearly interpret the contracts, and limit the number of claims and litigations; The latter is the subject of this chapter.

When concluding any contract or deal online we will be, as determined, facing an international contract; An international contract, as described in the introduction, which is similar to any other contract, except that it includes a foreign element. The determination of foreign elements from a legal point of view could be drawn from the conventions on International trade and the model rules of the UNCITRAL, stating that the sale is considered international when;

- 1- The object of the sale is to be transferred from a state to another.
- 2- The offer and acceptance are exchanged over the borders of two countries.
- 3- The delivery of the goods subject of the sale is in a different country than that of the exchange of offer and acceptance.

⁵ Historically, Roman citizens enjoyed vast prerogatives over the foreigners that visited or traded with the Romans, whether in the time of the Republic or that of the Empire, in addition to the fact that the Roman law and basic human rights, such as the right to a fair trial, applied only to them.

The Economic view point of an international sale is straight forward and simpler than the legal one, it simply states that the transfer of capitals through the borders of sovereign states is considered an international sale.

If for example a Lebanese retailer, that possesses an online store constructed on a Lebanese internet host, sold an item produced in Lebanon to a Lebanese customer and used a Lebanese courier to deliver the item sold to an address in Lebanon while the payment was made in Local currency without the use of a foreign electronic payment, then we will be facing a local contract that poses no problem whatsoever. Nevertheless, if any of the aforementioned elements has changed in favor of a foreign service provider or element, then we will be facing a contract with an international element. According to this distinction we can easily state that local sale contracts are simply what we call telemarketing⁶. The said contract needs to be governed by a law that will help in interpreting it and applying its terms and solve disputes, if any arises. We will be examining the different theories about the choice of this law or set of rules.

2.2 Freedom of choice theory.

One of the main concerns examined when concluding an international contract is the applicable law to the contract; Two theories emerge in this field; The first is the Objective Theory which states that determining the law applicable to any agreement is not in the hands of the parties, but instead the law that is the most close to the agreement⁷ itself should be applicable regardless of the parties' will. The second theory is the Personal theory which allows the parties to agree upon the rules that will govern the agreement. This theory is recognized by the Lebanese legislator who acknowledged the rules agreed upon by the parties themselves and drawing its imperative force from the known legal rule

⁶ Telemarketing can be deemed international as well if the telemarketer is using international messaging services like WhatsApp, Telegram, and Viber, etc.; The data that is being sent and received is being transferred to servers that are used by the messaging application, which have its own terms and conditions, and are located at a foreign country with foreign laws.

It is worth noting that a new development to data storage and processors has been introduced by Microsoft who submerged a 38000-pound tube containing servers that will cost the company less in terms of land rent and cooling expenditure in a test to measure this technique's functionality and feasibility; Till this moment the servers are submerged in the local water of the state of California and therefore is ruled by the U.S. federal laws and local regulations, but the next stages of this innovative initiative, if proven efficient, can be transported to a location in the international waters thus will be governed by the international treaties and the laws of high seas.

⁷ Usually the choice is between the national law of the parties if they have the same nationality, or the law of the information gathering, or the law of the contract signature, or the law of the execution place.

of “Pacta sunt servanda”, asserted by CL. Personally, I agree with the Personal theory as it meets the needs of commerce and is cemented through the commercial use as it became a commercial custom, to the extent that it influenced the international law; Rome convention of 1980, which dealt with the applicable law on international contractual obligations, has confirmed the personal theory and allowed the parties to choose the law applicable to the contract between them in its third article. This convention has transformed to (Rome I) regulation and is enforced throughout Europe⁸; OAS Mexico convention of 1994 dealing with the same topic have taken the same position towards the freedom of the parties in its seventh and eighth articles.

The problematic arises when the parties fail to choose the applicable law, then we will be facing two cases, implicit deduction of the applicable law or judicial determination of said law. Following the determination of the applicable law a lot of procedural and objective rules follows such as proof, burden of proof, and accepted dispute resolution methods, and competent authority.

2.3 Rules to be applied.

The rules that governs this issue are numerous and we can start by tracing them throughout the timeline of this particular issue.

As stated before, the Lebanese Civil Law (CL) have recognized the legal rule of “Pacta Sunt Servanda” in chapter two, part one, article 166, the article that allows the parties to a certain contract to choose the law that will be applicable to their contract, in addition to the article of interpretation with good faith and according to costumes and habits stated in chapter two, part three, article 22. The same principle is affirmed in the International law by article 3 of the Convention of Rome 1980⁹, replaced entirely by the (Rome I) regulation of 2008 which carried the same provisions to be implemented in Europe; In addition to article 7 of the Mexico convention, The Pan-American convention concerning the applicable law on international contracts of 1994 governing the Americas

⁸ Except for Denmark.

⁹ Convention on the law applicable to contractual obligations, still applicable in the Kingdom of Denmark.

region¹⁰; Finally and when it comes to trusts, the Hague convention of 1985 acknowledged this principle in article 6.

Also some Civil laws have resolved the issue of non-determination of an applicable law by including attribution rules in their Civil laws, such as the Egyptian law in its 19th article, the Qatari law in its 27th article, and the Libyan law in its 19th article, international law also recognized attribution rules in Rome convention 1980 articles 4 to 6, OAS Mexico convention of 1994 articles 9 to 11, and the Hague convention of 1985 gave a mechanism in its 7th article to determine the applicable law on trusts.

2.4 Explicit designation of the applicable law:

Usually contracts include a clause called “Governing law clause” that determines the law that the parties agreed to subject their contract to. The parties can refer to this law to interpret and govern the entire contract or agreement, also they can choose several laws and assign it to different parts of the contract. The choice of a governing law should not be an element of dispute¹¹, it needs to be the best fit for the contract or agreement that is going to be subjected to it, and it needs to be precise and clear citing the exact jurisdiction wanted¹². A classic and basic formulation of the governing law can be as follows:

“This Agreement shall be governed by and construed under the laws of _____, all rights and remedies being governed by said laws.” (Lawinsider.com, 2018)

If, and When the parties have agreed upon an applicable law to rule the contract and a competent jurisdiction to resolve all disputes arising from the contract, the issue will not be present at all, if at any time the parties had different opinions about a certain issue under the contract they would know the exact mechanism to follow¹³, and in front of which authority they need to file their complaint¹⁴, and for the said authority which set of rules

¹⁰ The Organization of American States that includes 35 sovereign states of the region of South and North America and the Caribbean.

¹¹ For every party the will, to be governed by a law he/she are familiar with, is imperative, this fact condemns the drafter to explain and choose a set of rules or laws that best suits the agreement at hand, regardless of whether it is one of the parties’ or a stranger law.

¹² This case emerges when the law of a country or a territory with several different laws and jurisdictions is picked, such as United States of America, Canada, and China.

¹³ Negotiation, mediation, experts’ opinions, arbitration, tribunal.

¹⁴ Tribunal, arbitration tribunal, professional center of choice.

will be applicable to which part of the contract¹⁵. The fact that was observed over the fifty-six studied stores is that few of them bother to determine such terms, only four of them bothered to state the laws applicable and the competent jurisdiction, six of them stating only the governing law, and twenty-two without any reference while the remaining twenty-four haven't included any terms and conditions or policies on their websites whatsoever, with an honorable mention of a store that included a clause stating: "*These Terms and Conditions and any separate agreements whereby we provide you Services shall be governed by and construed in accordance with the laws of*" and then added his address up to the apartment number. It is observed that most of the stores that have actually included some policies and terms on their website are more inclined to data, information, and intellectual property protection, they are answering the question "Are we collecting your data? And if yes we are doing it in a lawful manner". Ignoring the fact that the spirit of the laws directs them to take the best care of their customers not to cover their own trail¹⁶, also aiming at a universal approach to any law possible, which is a weak and careless approach. Even with this prospect in mind the new law 81 is very keen on setting this matter straight by regulating, in twenty articles from 85 to 105, personal data collection and granting the data owner the right to his own data and ask for amending and deleting it.¹⁷

In these cases, the rules that govern the matter in the Lebanese Law are simple because the Lebanese legislator acknowledged the principle of the parties' freedom in choosing the law that will be governing their contracts and agreements, enforcing the aforementioned principle "Pacta Sunt Servanda" in CL, chapter two, part one, article 166: "*The law of contracts is subject to the principle of freedom of contract, the individuals can arrange their legal relations as they wish provided that they observe the requirements of public order, public morals and legal provisions that have a mandatory status.*" In

¹⁵ 1- Apart from the obligatory rules of the general order where a different authority might declare itself competent to see the conflict through.

2- According to a French theory called "Dépeçage du contrat" different parts of the contract can be ruled by different set of rules.

¹⁶ A clear example of this mindset is the Facebook-Cambridge Analytica data scandal 2018, the incident that ended with the mere apology of Facebook CEO in the media and in front of the Congress.

¹⁷ Unless it is collected and used for literary and artistic expression, journalistic purposes only (article 105 of law 81)

addition to the provisions of chapter two, part three, article 22 of CL “*Contracts established legally obligate the parties. It must be understood, interpreted and implemented in accordance with good faith, fairness, and customs.*” Adding to the free will of the parties some new standards which are the basic unwritten rules of good faith, fairness, and customs, the principles that are as old as “Lex Mercatoria” itself¹⁸.

2.5 Implicit determination of the applicable law:

The rules establishing the freedom of choice and the good faith are general and broad, but what if the parties have slipped the referral to a certain rule? Or simply agreed to determine it when the conflict arise, and when it did they couldn’t agree about it? Are there any rules to guide us through the choice of an applicable law? The answer to that is simple but entails a conflict in its own, the judge or arbitrator or even the mediator will be forced to determine the applicable laws themselves when the conflict is passed to them by the parties, failing to perform this function explicitly will subject them to the responsibility of denying justice to the parties.

First it is worth mentioning that the contract form would be considered valid according to any law from between the parties’ national laws, a matter that is agreed upon in many multilateral treaties. Some legislators have even reserved an additional provision which is the law of the country where the contract is convened¹⁹.

Additionally, the rules, that will guide the mentioned authorities in determining the law governing the subject of the contract, are often called attribution rules and they form a part of the civil law in most of the countries, setting a hierarchy of laws that might govern any contract where the choice of the parties is absent; But in the case of Lebanon, the legislator did not acknowledge this type of rules, even when addressing the topic of e-

¹⁸ Lex Mercatoria refers to a body of oral, customary mercantile law which developed in medieval Europe and was administered quite uniformly across Europe by merchant judges, adjudicating disputes between merchants. (uslegal.com, 2018)

¹⁹ The form of a contract was historically governed by the law of the place where it is signed, but the laws and doctrine have shifted this position to consider the form of the contract valid according to any of the parties’ national law to facilitate the transition to looking into the subject of the contract. The form of the contract is a minor thing when studying an online contract because the form here is a technical matter more than a legal one.

commerce in the new law 81, and thus when facing a case of non-determination of the applicable law we can resort to the international law for guidelines.

The convention of Rome 1980 and the Rome I regulation 2008 have indicated a set of attribution rules to be enforced in the absence of the parties' choice. Article 4 dictates the applicable law to contracts according to its type, as follows:

Table 2	
Applicable law set by Rome I regulation of 2008	
Type of contract.	Applicable law
Sale of goods.	Habitual residence of the seller.
Provision of services.	Habitual residence of the service provider.
A right in rem or a tenancy of immovable property.	the country where the property is located.
a tenancy of immovable property concluded for temporary private use for a period of no more than six consecutive months, where the tenant is a natural person and has his habitual residence in the same country.	Habitual residence of the landlord.
Franchise contract.	Habitual residence of the franchisee.
Distribution contract.	Habitual residence of the distributor.
Auction of goods.	The location of the auction, if it can be determined.
The contracts concluded within multilateral financial investment entities ²⁰ facilitating, buying, or selling financial instruments.	The law governing the entity.
Contracts not covered by the previous rules.	The location where the characteristic performance of the contract takes effect.

²⁰ Governed by regulation 2004/39/EC.

	(the habitual residence of the characteristic performance).
Contract covered by more than one law of the previous rules.	The habitual residence of the characteristic performance.
Contract closely related to a country other than the ones stated in the previous rules.	The law of the said country.
Contract not covered by any of the previous rules.	The law of the country with which it is most closely connected.

It is imperative to add that Rome I regulation included special rules for nominate contracts such as the contract of carriage, insurance contract, consumer contracts, and individual employment contracts. The same mentality can be observed in the Americas as the OAS Mexico convention of 1994 has subduced to the free will of the parties²¹, and subsequently, in the absence of the choice, it added some rules of attribution establishing the rule of the closest ties between the contract and the law of the state, as mentioned in the articles 9 to 11; A principle that was also examined in the Hague convention of 1985 that governs trusts, in its 7th article which established an hierarchy of laws most close to a trust, as follows:

“In ascertaining the law with which a trust is most closely connected reference shall be made in particular to -

- a) the place of administration of the trust designated by the settlor;*
- b) the situs of the assets of the trust;*
- c) the place of residence or business of the trustee;*
- d) the objects of the trust and the places where they are to be fulfilled.”*

It is worth mentioning that many countries have included attribution rules in their Civil legislation to help minimize the conflict of laws when examining any contract; A notable and model example is the hierarchy established by the Egyptian Civil law article 19, the Qatari Civil law article 27, and the Libyan Civil law article 19, all agreed on the following hierarchy

²¹ Please refer to 2.2.

- 1- The free will.
- 2- The common habitual residence of the parties, if they share the same residence.
- 3- The country where the contract was signed.
- 4- The country where the real property is located when the contract is about a real property.

2.6 Proposed course of action.

Lebanon is among the countries that relies on the basic legal principle of “Pacta Sunt Servanda” both on state and individual level, similar to France and Germany, leaving the matter in the hands of local tribunals to establish jurisprudence principles. The absence of a defined and clear legislation contradicts with the will to facilitate and standardize online trade and will be the reason of a multitude of conflicts, therefore the recommendation will be to;

- a. Amend Civil law to insert attribution rules to bridge the gap of parties’ failure to set the applicable law even in regular contracts; Dictating at least that, in case the parties fails to determine the applicable law, the Lebanese law will be applicable to any conflict that have a Lebanese element within;
- b. Dedicate articles of the new law 81 that forces the online stores to set clear and announced articles in their sale terms and conditions that will choose an applicable law, and competent jurisdiction for dispute resolution that the client will click approve upon before the conclusion of the sale;
- c. An ambitious suggestion can also be added, which is the establishment of an online dispute resolution center that has the competence to resolve the said conflicts and automatically referred to when the Lebanese law is competent, this center can be an arbitration center or even a tribunal court in its classic definition, but the important aspect of the establishment of said center is that it applies the Lebanese regulations and laws eliminating the conflict of laws problem.

By applying these suggestions, a strong bridge between freedom of trade and regulation will have been built to support the topic of applicable law on online contracts keeping the free will as a general rule while installing a safety net in case of failure to determine the applicable law.

Chapter Three

Identification and capacity.

3.1 Capacity to contract.

As previously discussed, most of the transactions made on an online store are sale contracts that falls under the civil law rules, even that the services offered online can belong to other types of contracts such as lending, renting, brokerage, and so forth falls under the Civil law as well, for the purpose of easing the study we will focus on the contract that takes the lead among the other online contract which is the sale of goods contracts.

Any contract usually is convened when the parties to this contract exchange the "offer" and "acceptance"²², not necessarily in that order. Consequently, in order to convene a valid contract both parties need to identify themselves properly and be in their full legal capacity to conduct legally bound acts that result in the parties committing to a change in their rights and obligations status.

From a legal point of view, the personalities are usually divided into natural and legal; For the natural personality is inherent to the natural being capable of having rights and obligations, while the legal personality is granted to a person or a group of persons to enable them of having rights and obligations.

Said personalities could manifest defects that will affect their ability to perform productive legal behaviors; The said defects for a normal person are “Being underage, insanity, mental disorder, dissipation, negligence”, those defects cannot be imagined when studying a legal person but per contra both types of persons can have their capacity, partially or totally, limited by court order resulting from a bankruptcy proceedings or any other litigation where the plaintiff is afraid that any of the defendant legal actions might result in weakening his position and\or ability to pay his dues.

²² Also include other mechanisms such as, counter offer or call for tenders or any other form.

3.2 Status online.

While contracting online, the real identity of the parties can be hard to accurately determine considering that the tier that knows both of them is a third tier regarding the sale contract and even from their perspective the identity of the parties is merely series of numbers comprising usernames domains and IP addresses that can easily be faked and does not designate clearly the party. Adding to that, the fact that the customer is always anonymous to the seller or service provider and if for any reason he or she chooses to fake their identity or impersonate someone else, then the other party will have no other way to know about it, and that case could vary between a simple prank played by someone to deliver an unpaid for object to a random address, to someone purchasing supplies for terrorist activities where deniability will not be of help to the seller.

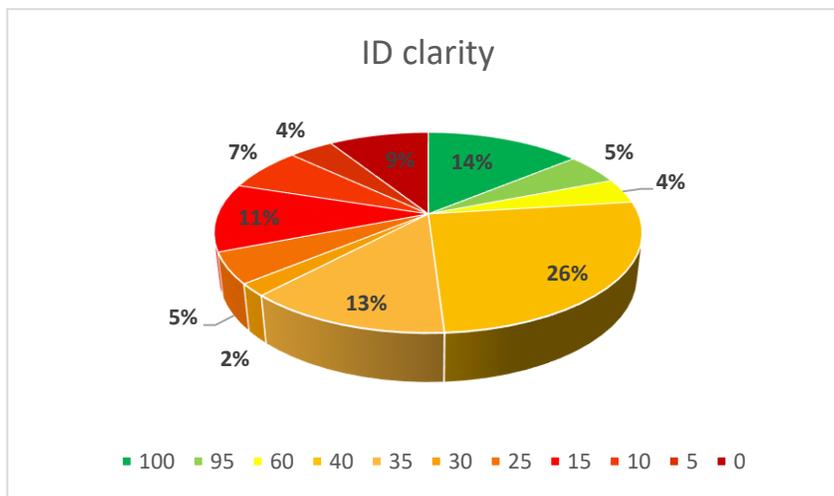
This issue is spotted while studying some of the most popular online stores²³ in the region, the lack of identification between both parties is sometimes suspicious. The owners of the online store usually identify themselves under the link "about us" by simply citing a historical brief about their establishment and activities throughout the years and possibly they will detail their mission and vision, if the "About us" is missing you can find the required information in one of the following section; "Terms and conditions", "Privacy policy", or "Return policy", while the last resort to find some info about the store is the "contact us" segment; Though the most important information is missing in all of the studied examples, that info is the actual legal identity of the person or entity and its address for the purposes of suing or consulting the company about a sale or defected goods.

If we consider a score out of 100 to evaluate the clarity of identification level of each store²⁴ (Figure 4), we find that a good percentage of the stores gets the full mark (14%) and some of them scored 95 for missing to cite an e-mail to get the services of a third party live chat center (5%); If we consider them the safest we get (19%) of the stores

²³ The same fifty-six stores mentioned in 2.4.

²⁴ Where citing the company name gets 60%, having an actual physical store gets 25%, listing a phone number gets 10%, citing an e-mail gets 5%. Arranged in orderly fashion where the most illiquid, hard to replace, and easy to follow information gets the highest marks.

are identified in an accepted manner while the remaining (81%) are missing some crucial information to protect the consumer.



(Figure #4) Identity clarity of studied online stores

On the other hand, the customer itself represents several challenges on the level of identification and capacity. When examining the case of an online store selling over a website or a social media platform, there will always be the problem of defected will as those mediums are very popular and benefits from a global widespread; While telemarketing or sale using messaging apps can provide a solution to verifying the identity of the buyer, the process comes later than it is contemplated.

3.3 Lebanese legal stand.

The Lebanese laws are well equipped to deal with such problems after the occurrence of the dispute, as all Latino-Germanic legal systems, it defines the matters of identification and capacity while contracting with surgical accuracy leaving the minute details for a well-developed veteran Jurisprudence as the Lebanese civil law have defined clearly in its Section 1 - Book 2 - Part 4 - Chapter 2 - Sub-Chapter 2 -Paragraph 4 - Articles 215 – 218, (CL), the cause of contracting and cited the incapacity of the normal person as a cause to render any contract void; While the LCL has been explaining in details all types of legal personalities and their capacity and how to incorporate them and invest in them in its Book 2, Part 2 - 7, articles 46 – 253, right after forcing all types of merchants to be registered at the Commercial registry as stated in LCL Book 1 - Part 3 - Chapter 3.

Returning to the CL and its determination of the cause to the contract we can observe the defects that occurs and render the contract null, abolition, or inexecutable in its Section 1 - Book 2 - Part 4 - Chapter 2 - Sub-Chapter 2 -Paragraph 4 - Articles 202 – 214; In the same time the LCL has identified the incidents that affects the capacity of legal persons in its Book 5 - Part 2 - Chapter 1 - Articles 501 – 511 which constitutes basically from bankruptcy and hypothecation. It is imperative, after listing all these rules that profoundly discusses the person and its capacity, to cite an additional rule that starts the required solution to the discussed problem which is the simple question “how are we going to identify the parties and verify their capacity in an online contract?”; This rule is BDL’s circulation number 7548 dated 30/3/2000, forcing anyone who is going to provide banking and financial operations online to be registered at the BDL. Basically, after this multitude of rules that are more than enough the real problem surges which is how are we going to get a practical way to enforce them in a manner that best serves the online business domain? The new law 81 have provided for such matter, its article number 31 have fixed the problem for identifying the seller or the provider of service citing obligatory information that the e-merchant must provide for his\her customers.

3.4 Going practical.

Starting with the fact that all types of merchants, normal or legal, are forced to be registered at the Commercial registry as imposed by LCL Book 1 - Part 3 - Chapter 3.

Article 24 *“Each merchant shall request the clerk of the court whose principal store is located in its territory to register his name in the trade registry...”*

Article 26 *“Companies that have a major store in Lebanon, from any nationality, must be registered in the trade registry...”*

Article 29 *“Every foreign trading company that has a branch or agency in Lebanon must be registered in the trade registry...”*

Additionally, the third article of the previously mentioned BDL circular dictates, in its second and third segment, that all establishments that intends to exercise electronic financial operations are bound to inform the bank about their intentions and ask for a permit, with an exception in the first segment that excludes established banks and

establishments registered at (BDL) from the need to have a permit. The rigorous application of this article to all sorts of online business will lead to grant the BDL the ability to have all the information and factors in the online business and will also enable it, the BDL, to conduct strategic studies²⁵ and be on high alert when any defect has affected the person dealing online²⁶, leaving the final step to be introduced which is the transparency and the controlled communication of the data with the interested clients or consumers so they would be at ease whenever buying from an online store as to the personality of their good or service provider.

In the year 2018, Parliament have moved as cited before to force the owners of an e-commerce outlet to identify themselves properly by introducing the article 31 of the new law 81 that will be enforced soon. The article states as follows:

Article 31: *“All who exercises the electronic trade should provide, for the persons with whom he\she deals, an easy, direct, and permanent access to the following info:*

- 1- His\her name, family name, place of residence, if said person is a normal person.*
- 2- Its name, legal representative’s name, registered office, commercial title, if said person is a legal person.*
- 3- Detailed address for the person’s residence and its used e-mail, website, phone number, and any other communication method.*
- 4- The person’s number and place of registration in the commercial registry and the competent tax department.*
- 5- The person’s professional status with mentioning any professional rules that applies to it, if it is a member of any regulated profession or syndicate.”*

The correct application of the cited classic rules of the Lebanese Laws is barely practical to determine the eligibility and capacity of the parties when conducting online transactions, but the new law 81 has solved the problem for identifying the merchant allowing the costumer to verify the legal entity of the company with whom he\she is willing to conduct business, if he\she wishes to, especially in large deals or uneven

²⁵ Possibly provide it to, or sell it, to interested investors as a marketing strategy.

²⁶ Bankruptcy, Hypothecation, court order, or even a litigation.

transactions²⁷. Nevertheless, several issues were not addressed which are the defects of will and the clear identification of the customer.

3.5 The will of a normal person.

One of the elements of validity of contracts, is the will of the parties to enter into contract and renders the contract itself valid between them; As their free non-defected will constitutes the good cause to the contract, following their will to arrange certain legal consequences in their duties and rights will render their status at the time before contracting fairly different from the time after contracting.

Many defects, whether permanent or precarious, might affect the will of the parties and thus accordingly affect the contract. Those defects are, error, fraud, constraint, and prejudice. The first two are more relevant to our topic, for the error could happen when a party have tricked the other or have failed to disclose his lack of capacity, whether when a minor have used his parent's credit card to purchase something online without their, prior or later, consent, or when a restrained client purchases an item online without disclosing his true status, or when a company in the midst of liquidation sells some of its goods without permission. While the second, fraud, is related to tricking a party into coming into contract, and this case is more common among the seller of goods or services when they misrepresent their products in order to facilitate their sale.

When a minor contracts online the contract itself will be as if it didn't happen according to Section 1 - Book 2 - Part 4 - Chapter 2 - Sub-Chapter 2 -Paragraph 4 - Articles 215 – 216 of CL, but this nullity is ruled in favor of the minor so the seller or service provider will not be able to claim the nullity of the contract, only the minor and his guardian will have this right. This is the reason behind disclaimers put in most of the websites that contains adult goods or even language that is not suitable for underaged persons. In contrast, the circumstances might force the judge to grant a discerning minor, under article 217 CL, the ability to exercise trade or industry and then all his contracts will be valid as if they were concluded by an adult. Finally, article 218 CL has banned all the

²⁷ Concerning the weight and capability of the parties.

persons declared incompetent from claiming that their acts are null under article 216 CL to detain them from contracting unsuspected parties with ill faith.

3.6 Legal person's interests.

On the other hand, when talking about a legal person, it is easier to determine it and be acquainted with its status and possessions by simply looking at its commercial registry which belongs in Lebanon to the Ministry of Economics, any change or threats to creditors of a legal person should be registered at the commercial registry especially the ones mentioned in LCL Book 5 - Part 2 - Chapter 1 - Articles 501 - 511. The same law has cited all types possible of Lebanese legal entities and gave detailed provisions to their formation and structure in Book 2, Part 2 - 7, articles 46 – 253. All that desired information is now a mandatory addition to any e-store subject to article 31 of the new law 81; Such information proves to be crucial in the case where a dispute arises with the company no matter what the subject may be, whether it is failure to deliver, defected merchandise, or return of unaccepted goods. Fraud, in its civil prospect, is more common and it can happen prior to the conclusion of the contract or latter, but it needs to have two elements, one is material which is the use of fraudulent behavior, the other one is moral which is consisted of the intention of misleading the other party in order to conclude the contract. Fraud can be committed by the seller, by changing the specs of the goods sold, or simply manipulate the photograph by using advanced capturing methods and lightning to make the product more desirable, these behaviors could possibly lead to penal prosecution under false advertisement.

The seller also needs to be at ease that all its customers upon dealing and interacting with their websites are in their full capacity in order to minimize after-sale claims and disputes. Here, comes a simple and single sided solution in order to avoid the provisions of articles 202-218 CL and kind of limit the claims and litigations and it consists of adding a check box list that will be a prerequisite to continue the purchase, this check box could read as follows;

“I certify that:

- I am over 18 years old.
- I have entered this agreement with my sound, unrestricted, and free will.
- I have been acquainted with the terms and conditions of both the agreement and the sought after good or service.”

3.7 Connecting the dots.

The Lebanese law have all what it takes to regulate the capacity and the identity of the parties but what is missing in a glaring manner is the mechanism to harmonise all the new and settled rules to ensure their prompt and precise application in order to have a quick determination by a party, a mediator, an arbitrator, or even by a judge; For that matter I suggest the following technical mechanisms

- a. The BDL circulation number 7458 dictates a permit imposed on entities providing financial services when going online, that permit needs to be either added to law 81 or to the executive decrees mentioned in article 134 from said law, in order to widen the need for a permit to cover all e-stores and outlets; Several entities merit the oversight of the online trade which are the ministries of Economy, Justice, Industry, Communication, and Finance as cited in article 134 . Two among those authorities merits the oversight the most, ministry of Economy for identification and studies purposes, and ministry of Finance for taxation purposes. Thus, the suggested permit needs to be drafted by either one of those authority, though the Ministry of Finance seems the most eligible, provided that a mechanism of prompt information sharing between all the mentioned authorities is to be implemented, or even establish an online registry under the stewardship of said authorities; This solution will grant customers direct access to the info required by law and any changes that might occur and possibly grants its users some business services such as ads and studies, an important service to be delivered along side the contemplated information sharing between public authorities.
- b. If the legislator is going to take the regulations further to a more strict level, it can establish an electronic consumers registry, following the suite of the previous

suggestion, that contain consumers' info and data while linking it, if agreed, with their accounts to facilitate their purchases and comfort the sellers and limit post-sale conflicts, while providing the latter, in a similar manner, with paid advertisements and services.

- c. Adding articles that contain model clauses and statements to be added to the stores' interactive interfaces in the form of a checklist that the costumers needs to check to assert their full capacity, and possibly to link that with bio parameters that are making an integral part of modern-days high tech smartphones.

The balance in this section tipped massively towards the "regulation" side because this particular section of the law is a dangerous field that is rigged to produce conflicts, claims, and litigations; Accordingly, it needs to be rigorously stabilized with lots and lots of legislations and rules.

Chapter Four

Internet Crimes and consumer protection

4.1 Historic Overview of consumers rights movement.

Consumption is the third ring in the economic operation, for after production and distribution comes consumption, an operation extremely important for the economy and society as a whole, because it is the ultimate profit generating target of the entire economy. This ring or cycle of the economy have always suffered from attempts at its profitability and balance; the attempts dates as early as the beginning of the last century, many voices have been raised throughout the world, especially in the United States, calling for a protection and adapting, union and legislative²⁸, solutions to fix the disequilibrium in the relation between the consumer and the seller, as the latter have been dictating his unnegotiable terms on the previous rendering him in a weak position and always in distress against his needs especially after the conclusion of sale and receiving payment, and have been using loopholes in the legal system to deprive the costumer from the rightful, most valuable, information about the product or the seller, also have been controlling the offer and demand for their best interests keeping some vital essential goods away from markets to increase their gains, and many other malicious similar behavior.

Most of the legislators in the world have intervned subsequently to protect the consumer in order to keep the balance in the society and restore the lost faith between the various parties of the economic system and pushing it through. This situation is being

²⁸ Multiple unions have been formed and an entire movement have emerged under the name of consumer movement to fight this phenomenon that have been crippling consumers in the United States, wave by wave, this movement have fought for the consumer's rights and it started with the dawn of the twentieth century (1900-1915) and resulted in the passing of the Pure Food and Drug Act, the Wholesome Meat Act, and the Federal Trade Commission Act; It's second wave (1920-1930) fought against unclear misleading advertisement and won their battle with the enactment of Federal Food, Drug, and Cosmetic Act, Wheeler-Lea Act only to hit the hard wall of the great recession and be ended by the second world war, similar to the first wave that has come to an end by the first world war; The third and most recent wave was in the sixties of the past century (1960-1970) with names like Esther Peterson, Michael Pertschuk, Sidney M. Wolfe, and the American attorney from Lebanese descent, Ralph Nader, who contended for better safety standards, and better awareness of advertisement social impact and ended up in the presidency of Ronald Regan with the enactment of the National Traffic and Motor Vehicle Safety Act, the Truth in Lending Act, the Consumer Product Safety Act, the Magnuson–Moss Warranty Act.

repeated now, with the ongoing boom of the internet, the need for a thorough intervention from the legislator is much pressing for the following reasons.

- a. The acceleration of internet evolution and its involvement in our daily life routine is far more rapid for the usual consumer to apprehend and comprehend fully, leaving him vulnerable for any attempt especially if it was tempting or sophisticated.
- b. Every person in this field is concerned whether a consumer or a seller, a person or an entity, depending on the case, each and every person could end up as the victim of a scam, theft, counterfeit, or any other fraudulent behavior, whether the victim is the seller or the client.
- c. The values of the transactions that could be at stake and in danger are getting larger and larger as the widespread of the internet is glazing up like fire. We can observe this effect on the large platforms as the movement of online contract is developing from the sale of certain merchandizes that are limited in volume or size²⁹ to the wholesale of any product and also the sale of large equipment and artwork³⁰. Soon, I predict that the sale of entire production line, fleet of cars, or even a country's supply of grains will be concluded online.
- d. The knowledge of the historical information cited above tempts the sellers to repeat these behaviors again and benefit from the legislative gaps as we are going to explore later in this study.

4.2 Neglecting the concept of Internet crimes

Up to this moment, there is no universal definition for the term “internet crime”, a fact that comes really chocking to whomever hears it for the first time in a world that is rapidly plunging head first into technology, computers, and internet and is relying on them to solve most of its daily problems and drive the entire evolution of humanity. Luckily, the traits of an internet crime are not that hard to discover; For it is called a soft crime, most internet crimes happens without violence, remotely from behind a monitor, the crushing majority of internet crimes remains undiscovered because evidence and clues are

²⁹ Conveniently for insurance, packaging, customs, and shipping purposes.

³⁰ Alibaba.com is the leading online store to demonstrate this idea.

easily and quickly destroyed, and most of the victims lack the knowledge to report it and protect themselves, or simply avoid reporting to keep certain image or reputation among their internet clients. Nowadays those crimes are becoming more and more violent as they are merging and forming an indispensable element of classic violent crimes such as, murder, rape, embezzlement, beguilement of minors, and many more; As the perpetrators of such crimes are using their mobile phones, computers, or social media accounts with what it presents with ease of communication to invite their unsuspecting victim somewhere to commit their violent crimes. The severity and quantity of these crimes is increasing day by day³¹.

Two main directions emerged to face this vagueness in the notion of Internet crime;

- a. Countries that have updated their laws and regulations to define and fight internet crimes such as the United States, Brazil, Syria, Jordan, Tunisia, and Dubai-UAE.
- b. Countries that are still dealing with this type of crimes from the narrow prospective of its traditional laws such as the United Kingdom, France, and Lebanon, leaving that topic for further study or even for Jurisprudence to fill this gap.

The scene in the Lebanese legal system is divided around 17/10/2018 the date of passing the new law 81 in the Parliament; For before this date the legislation was severely incapacitated and timidly recognize the principle of internet crimes; Nevertheless, the said law introduced a leap in this field by updating existing laws like (CrL), (CPA), and (IPL) and introducing several new crimes that falls into different categories.

4.3 Tools to be used.

The materials needed to build a comprehensive understanding of the concept of internet crimes starts with the recommendations of the United Nations tenth conference on the prevention of crime and treatment of offenders in Vienna 2000 that insists that the

³¹ It is reported by Lt. Elias Dagher that the number of crimes committed on the internet in the year 2017, have reached 3200 after it was only 60 in the year 2006, when the anti-informatic crimes bureau was established. This report could not possibly include the unreported crimes that we have previously discussed.

state members need to follow the policies issued from the committee of crime prevention as well as local legislations in the domain of computer crimes.

As stated before, the most advanced law in this field in Lebanon was the (CPA) number 659 of the year 2005 and its amendments, the latest of them dates 2014; This law is well developed and establishes a lot of principles that was not present before³². Next, we can also cite the (IPL) number 75 for the year 1999 and its amendments. Last, is the BDL circulation number 144 for the year 2017 that contains the guide to counter financial cybercrimes. Those three are the most advanced among the Lebanese laws. But in the wake of introducing the new law 81, the scene has changed drastically as article 128 Law 81 amended article 51 (CPA) introducing the protection of electronic transactions and personal data to the “distance or door-to-door trading practices” when exchanging the offer and acceptance and the conditions of their validity; Additionally, the article 129 law 81 amended article 55 (CPA) and defined the cooling off period in a new manner consisting with the demands of e-commerce; Finally the article (130) law 81 that amended article 59 (CPA) referred the sales and lease professionals to the provisions of false advertisement and public safety in the new law.

The new law 81 presented to the (CrL) some serious added value, as its articles 106 to 120 have amended the articles of the (CrL) and introduced new concepts of information and Computer crimes. Additionally, it included the BDL circulation 144 for the year 2017 and transformed it into articles of criminal nature

4.4 Analyzing the scattered rules.

The International community is trying to face the mentioned problems as stated in the final recommendations of the United Nations tenth conference about the prevention of crime and treatment of offenders in Vienna 2000 as follows:

“... 17- We decide to formulate action-oriented policy recommendations on the prevention and control of computer-related crime and invite the Commission on Crime Prevention and Criminal Justice to undertake work in this regard, taking into account ongoing work in other forums. We also commit ourselves to strengthening our capacity to prevent,

³² Among them is the principle of an internet-based crime in the tenth chapter, article 51.

investigate and prosecute high-technology and computer-related crime....”
A high promise that ended up after eighteen years and three similar conferences³³, with no steps towards a global definition and mechanism to prevent and fight internet crimes.

Locally, and as we started by the consumer protection act of 2005, the rights of consumers in Lebanon are guaranteed by force of law. Though the application of said law is a bit weak, and it probably needs a larger force for censorship directed towards service providers; The consumer protection law has introduced plenty of new principles that were unfamiliar to the Lebanese market and the legal environment especially outside Beirut, starting with its definition to the concept of an Internet crime in its fifty-first article:

“The provisions of this Chapter treat of distance or door-to-door trading practices performed by the supplier, in particular the practices that take place at the residence of the consumer, by telephone, through the Internet or by any other adopted means...”

This fluidity in defining the concept of an Internet crime was the motive for introducing an addition to this article in article 128 law 81:

“... In contracts concluded online, we need to take into consideration the provisions of articles 33, 34, 35, 38 of the Electronic Transactions and personal data law.”

All these articles came to force the e-merchants to disclose the terms and conditions of all and every transaction made, the means of verifying the offer, the safeguard of electronic evidence, the language of the contract (article 33 law 81); It also binds the merchant to the offer and its terms as long as it is accessible using the electronic medium, the fact that will have a significant impact on retracting offers as the court will be able to verify the exact dates and times of all transactions preventing the merchant from changing the deal as he pleases under the threat of compensating the customer (articles 34, 35 law 81); It also considered the conclusion of the online contract final when the merchant sends a confirmation of the offer again to the customer, considering that e-mail is sent and received between parties and it is also considered to be sent from the business office of both parties (article 38 law 81).

³³ Bangkok -Thailand 2005, Salvador - Brazil 2010, and Doha - Qatar 2015 are all UN conferences that failed even to mention the Internet crimes.

Another principle introduced by the CPA and amended by law 81 is the concept of the cooling off period, article 55 CPA states:

“Contrary to any other text, the consumer who enters into a contract in pursuance to the provisions of this Law may go back on the purchase or rent decision, within ten days after the goods had been supplied or the services rendered.

However, the consumer shall not be entitled to the rights mentioned in the previous paragraph in the following cases:

- Where he had benefited from the service or used the goods before the ten days period had elapsed.*
- Where the contract includes custom made goods or goods manufactured according to conditions required by the consumer.*
- Where the contract includes video tapes, discs, compact discs, or computer programs which had been unwrapped by the consumer.*
- Where the contract includes newspapers, magazines and publications, especially books.*
- Where the product becomes faulty due to being misused by the consumer.”*

Article 129 amended it by adding the choice of agreeing on a longer cooling off period, and omitting the books from the exception of publication and added two new exceptions to the cooling of period:

“... 6- If the contract included harboring, transport, catering, entertainment services to be provided on a certain date or on a repetitive basis

7- If the subject of the contract is the purchase of a program’s service via internet unless the download and running have not occurred.”

Some principles in the CPA didn’t need any amendment such as Chapter three: Customer information, articles 4 to10.

For example, article ten:

“When used, reconditioned, or faulty goods that do not cause any damage to consumer health and safety, are displayed, the supplier must conspicuously indicate the state of such goods on the goods and at his business location. The supplier must also indicate the state of the goods in the contract of sale or in the invoice.”

This strong chain of laws is gathered from different sources, but as we all know it can be considered as strong as its weakest link which is the IPL number 75 for the year 1999, a pioneering law with ambitious intentions that fell a victim and was incapacitated by the lack of correct and thorough application, as stated by his Honor Judge Fawzi Khamis in his opinion, as the chairman of the association for developing cyber legal information in Lebanon, as he states only four cases, where even the final verdict was flawed, indicating that the legislation is still weak and in need of revision.

Prior to the passing of law 81, towards the end of the year 2017, another effort by the BDL has been introduced, to the liking of its effort mentioned earlier³⁴, in the form of circulation number 144 containing a guide to be enforced by banks while dealing with their clients in order to limit cyber financial crimes. This guide, named the guide for prevention of criminal act committed by e-mail, is limited to the kind of crimes cited in its title, and it gives directions to fraudulent behaviors that the perpetrators of such crimes might use directing those guidelines to the banks in its first part, while the second is dedicated towards the persons and non-financial institutions and entities. Just like the other circulation previously mentioned, this guide is a well studied but limited effort that if left at its current state will sure not be enough to stop crimes via E-mail, for that purpose the Lebanese Parliament have introduced new provisions and made the approach more conclusive.

The new law 81 has introduced four different types of crimes in its penal section, from article 106 to 120, and an additional penal procedural sector that deals with handling electronic proof from article 121 to 127.

The first type of crimes is the “Crimes of Information”; Articles 106 through 109 incriminated the collection of personal data without license or in an unlawful manner (106) according to chapters 2 and 3³⁵ of the same law. Additionally, it incriminated the refusal or denial or incomplete answer to any request for access and correction of the personal data (107) according to chapter 4³⁶ of said law. It also considered the recurrence

³⁴ Paragraph 3.4.

³⁵ Second chapter: articles 87 to 93; Third Chapter: articles 94 to 98.

³⁶ Fourth Chapter: articles 99 to 105.

of such crimes an aggravating circumstance (108), and the plaintiff should be the party who got harmed only (109).

The second type of crimes is the “Computer Crimes”; Crimes that are soft crimes committed by the use of computer and targets others’ data, software, or payment methods; Enumerated in the articles 110 to 116. The crimes vary from illegal access to an information software (110), attacking a software with intentions of wrecking it (111), attacking digital data (112), obstructing, disrupting, or crippling the access to a service or a program or any data source (113), Providing hardware or software for the previous crimes (114), Equalizing between the attempt and the act itself (115), to finally, forgery and imitation of an electronic payment method.

The third type of crimes is the “Crimes of e-commerce” which consists of only one article (117) that incriminates the unsolicited advertising also known as spam.

The fourth and last type of crimes is the “Amendments to CrL” which included several crimes that has nothing in common but the fact of belonging to existing articles of the (CrL). Article 118 amended article 209 CrL adding the electronic means to the ways of publishing, and article 119 followed suite by adding electronic means to forgery defined in article 453 CrL, Major advance was achieved in article 120 that restored the crimes against minors in pornographic materials, enumerating lots of crimes that varies from solicitating sexual activities with a minor, to using a minor or exposing him\her to pornographic materials, even to intentionally keeping pornographic materials where the subject looks like a minor.

4.5 The contemplated result

The Lebanese attempt at the electronic crimes is fairly decent and follows the suite of well-developed rules and laws from the liking of “Dubai Electronic Procedures and Trade Law” and the “Penal Code of the State of Texas” that is known to be among the most advanced and rigorous laws in the United States of America. Following the scientific principle that says “If something works that does not means that it could not be improved” I only urge the Lebanese Legislative and Executive authorities to keep a close eye on the materials provided to them by the Judicial Authority through Jurisprudence and

precedents to enhance and introduce a more sophisticated amendments to said crimes especially that the perpetrators are moving at the speed of evolution itself, so it is therefore important to keep up with them and even get ahead of them. I can cite some examples from the aforementioned laws that are missing in the new Lebanese legislation:

From “Dubai Electronic Procedures and Trade Law” I emphasize the gravity of the Internet crimes as the Emiratis have found it and the severity of the punishment especially that they set it up as fixed costly fines unlike the wide range in the new Lebanese law 81, as an example of a missing crime and severe punishment I cite article 30 of said law:

“ Without prejudice to any more severe penalty provided by in any other law, any person who intentionally submits false data about his\her identity or delegation to the authentication services provider for the purpose of requesting issuance, cancellation, or suspension of a certificate, shall be punished by imprisonment for a period not exceeding six months, and a fine not exceeding AED 100,000 or one of these penalties.”

The State of Texas has dealt with its outdated legislation by updating the outdated criminal legislation to add Chapters 33 and 33A that dealt with computer crimes and Information crimes by introducing a number of definitions to clear the aspects of all those crimes, and then continue to cite each crime and its classification resulting in thirteen section, more than thirty subsections, and more than eighty type of crimes. The Lebanese legislation can follow the Texan example and amend law 81 in the future to include more details and hierarchy as an example to that I can cite:

Dealing with a soft crime, Sec. 33.02: *“BREACH OF COMPUTER SECURITY.*

(a) A person commits an offense if the person knowingly accesses a computer, computer network, or computer system without the effective consent of the owner.

(b) An offense under Subsection (a) is a Class B misdemeanor, except that the offense is a state jail felony if:

(1) the defendant has been previously convicted two or more times of an offense under this chapter; or

(2) the computer, computer network, or computer system is owned by the government or a critical infrastructure facility.”

An example of a violent unethical crime, that exists in a different way in law 81, Sec. 33.021: “*ONLINE SOLICITATION OF A MINOR...*

...(b) A person who is 17 years of age or older commits an offense if, with the intent to commit an offense listed in Article 62.001(5)(A), (B), or (K), Code of Criminal Procedure, the person, over the Internet, by electronic mail or text message or other electronic message service or system, or through a commercial online service, intentionally:

(1) communicates in a sexually explicit manner with a minor; or

(2) distributes sexually explicit material to a minor.”

Also, an example of a sensitive informatic crimes from the likings of Sec. 33A.04. “*THEFT OF TELECOMMUNICATIONS SERVICE.*

(a) A person commits an offense if the person knowingly obtains or attempts to obtain telecommunications service to avoid or cause another person to avoid a lawful charge for that service by using:

(1) a telecommunications access device without the authority or consent of the subscriber or lawful holder of the device or pursuant to an agreement for an exchange of value with the subscriber or lawful holder of the device to allow another person to use the device;

(2) a counterfeit telecommunications access device;

(3) a telecommunications device or counterfeit telecommunications device; or

(4) a fraudulent or deceptive scheme, pretense, method, or conspiracy, or other device or means, including a false, altered, or stolen identification.”

Adding to this suggestion, the fact that the role of Jurisprudence is not to be overlooked, as the courts will continue enforcing the same rules they have studied and within which they have always worked, in addition to the need to be allowed time to build up local experience in order to issue the best corresponding correlative sentences in order to sculpt a clear shape and image of these dreaded crimes using their elements and nature, to the true description of an Informatic offender, to the different types of crimes, and finally the perfect productive ways of fighting such crimes.

This section gives no freedom whatsoever to Internet users as the suggested law will be a part or a complementary law to the Lebanese Penal Law, and it is ruled out that such laws form an integral part of the general policy rules which means that people can not exclude their articles or agree contrary to its provisions.

Chapter Five

Conclusion

After this thorough study of the online business environment from a legal point of view, it is safe to say that it is underdeveloped which highlights the need to the newly passed law 81 that will constitute a major reform leading to maximize its benefit on local economy and reaping the contemplated growth while keeping dangers and disadvantages to the minimum.

As a summary of the aforementioned study, it is clear that law 81 is a promising start towards more sophistication and prompt follow ups, and from my humble point of view I see that the following steps must be taken on an extended period of time allowing the market to be developed without abandoning it:

- 1- When it comes to law applicable to the conflict, a matter that belongs purely to the CL, attribution law must be added sometimes to its provisions to ensure that the Lebanese law will always be there to protect Lebanese subjects. Furthermore, law 81 should add to the mandatory provisions of article 33 the applicable law to the contracts and transactions that are ruled under this law. Finally, and for extra benefit, the establishment of an electronic tribunal or arbitration center that automatically gets referral if the parties fail to determine a conflict resolution mechanism.
- 2- Considering identification and capacity we find that law 81 has dealt with this issue in a good manner, but the solutions came one sided as the law dealt with the seller or service provider for that matter, amending law 81 by mimicking the dispositions of BDL circular 7458 and impose an online permit on all components of this market with the possibility of establishing an electronic registry to help customers verify the seller and to enable public entities to exchange info promptly. Additionally, and for the purpose of clearly identifying the customer and its capacity amending law 81 to force the stores to include model clauses that certifies the capacity of the costumer and possibly

take the attempt to the greatest length by establishing an electronic consumers registry.

- 3- In criminal matters, I find that the approach is fairly decent and the decisive factor now will be to allow the market to prosper while monitoring it and keeping an eye for the cases that will be generated and will fall under the law 81 jurisdiction in order to take a more precise and severe approach toward the electronic crimes.

BDL has a major role to play in this ambitious endeavor to uphold the local economy in general and the online section in particular, as the experience shows that this institution is one of the most competent institutions working in the country through the prerogatives given to its governor and the way it functions and interacts with banks, financial institutions, and individuals all together. An example is clear and practically identical to what we are contemplating, it is the startup scene that thrived with the help of the BDL in early 2017 after the issuance of circular 331 for the year 2013 and that is maintained till the days of writing this study. The role of BDL is clearly reflected in law 81 as articles 61, 64, and 133 granted it wide powers to keep the circulars that we previously studied in effect and gave it the capacity to control all electronic and digital currency; A pioneering idea that is only matched in UAE by the use of the electronic Dirhams for official transactions and fee payment.

It is needless to say that speed, accuracy, and pursuance are imminent factors for the success of this endeavor; According to previous observation of the political scene and the restrains that it imposed, and continue to impose on the administrative performance, I can easily state that the major downfalls of law 81 are articles “8, 79, 134” which corner its effectiveness and counter its reason and motives by throwing it under the mercy of bureaucracy, routine, and constant political conflicts; From this point we can understand the importance of this kind of studies as scholars tend to be more free from any influence.

While studying the online stores and the present complicated legislations, I have always had in mind the idea that over-regulating the aspects studied will have a nefarious effect on the rising trend and so will the lack of regulation; Consequentially, we can classify, from a general point of view, the traits of each part of the new law in accordance

to the “freedom vs. Regulation” criteria created at the beginning of the study arly discovered in the following table that speaks for itself;

Table 3		
Assessing law 81 in terms of freedom vs. regulation		
Issue	Freedom	Regulation
Electronic writing and proof	<input checked="" type="checkbox"/>	<input type="checkbox"/>
E-commerce, contracts, and financial instruments	<input type="checkbox"/>	<input checked="" type="checkbox"/>
E-publication and service providers	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Websites names and domains protection	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Personal data collection	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Criminal matters	<input type="checkbox"/>	<input checked="" type="checkbox"/>

In my personal opinion, upcoming decrees and studies should work to achieve the lost balance in the components of this law the fact that requires the combination of the honest and hard efforts of all the concerned parties to this project with a qualified and a cutting-edge support of known competent bodies from developed countries. Working all together in a prompt and qualified manner will surely give the country, its economy, and consequently its citizens an edge and will put it on the map of online trade, the business that is growing beyond proportions and expectations day after day.

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Glossary of terms

For the purpose of this study and to evade repetition and for the purpose of clarity, the following terms will carry the meanings cited next to them on this definition pane, unless stated otherwise.

- Bank of Lebanon: Officially known “Banque du Liban”, is the central bank of Lebanon. It was established on August 1st,1963, and became fully operational on April 1st, 1964. Hereinafter coded (BDL).

- Electronic commerce: (ecommerce) is a type of business model, or segment of a larger business model, that enables a firm or individual to conduct business over an electronic network, typically the internet. Electronic commerce operates in all four of the major market segments: business to business, business to consumer, consumer to consumer and consumer to business.

- Electronic signature: An electronic signature is an electronic indication of a person’s intent to agree to the content of a document or a set of data to which the signature relates. Like its handwritten counterpart in the offline world, an electronic signature is a legal concept capturing the signatory's intent to be bound by the terms of the signed document.

- International contracts: a contract that carries an international element among its elements, such as but not limited to, foreign parties, parties located and addressed in a foreign domain, foreign host, foreign courier, foreign payment method, foreign merchandise, etc.

- International commerce: Any transactions that involve transition of capital and/or merchandise through the known borders of sovereign states.

- Lebanese Electronic Transactions and Personal Data law: Issued by the Lebanese Parliament on 17/10/2018 to enter in execution in 17/01/2019. Hereinafter called Law number 81 and coded (Law 81).

- Lebanese Civil Law: Entitled "The law of obligations and contracts", issued in 9/3/1932, with all its latter amendments. Hereinafter coded (CL).

- Lebanese Civil Procedures Law: keeping its original title, Decree number 90, issued in 16/9/1983, with all its latter amendments. Hereinafter coded (CPL).
- Lebanese Consumer Protection Act: Decree 659 issued in February 4th, 2015 and all its amendment, Hereinafter coded (CPA).
- Lebanese Criminal law: Decree number 340 issued in March 1st, 1943 and all its amendment, Hereinafter coded (CrL).
- Lebanese Intellectual Property Protection law: Decree number 75 issued in April 3rd, 1999 and all its amendment, Hereinafter coded (IPL).
- Lebanese Land Commerce Law: Issued by legislative decree number 304 dated 24/12/1942. Hereinafter coded (LCL).
- Online transaction: A transaction is an agreement between a buyer and a seller to exchange goods, services or financial instruments. The online element here is introduced when the agreement is concluded using an electronic medium such as Internet basically, social media platforms, messaging apps, and even telemarketing.
- “Pacta sunt servanda”: A Latin term which means “Agreements must be kept”. It is the principle in international law which says that international treaties should be upheld by all the signatories. This rule is based upon the principle of good faith. The basis of good faith indicates that a party to the treaty cannot invoke provisions of its domestic law as a justification for a failure to perform. The only limit to pacta sunt servanda is the peremptory norms of general international law known as “jus cogens” which means compelling law.

On an individual level, the “Pacta sunt servanda” refer to the freedom of the parties to choose the terms and clauses that best suites their intentions when contracting, with the exception of non-contradiction with the General provisions in the countries and jurisdictions that uses the civil law system.