



E-Commerce Transactions and Return Policy: The Islamic Law Options

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Abstract: Technology had permeated into every aspect of human endeavor; it had brought about ease in distant commercial transactions in that cross border transaction is now done with ease within the corners of the parties' rooms, shops and workplace by virtue of the E-commerce through the advancement in internet facilities. Parties now do business and engage in buying and selling without the need for physical meeting and presence. One major drawback factor of E-commerce is the inability to assess the subject matter of the transaction especially by the buyer and its susceptibility to manipulations, these challenge had overtime led to the promulgation and design of return policies majorly to protect the buyer from being cheated as well as to ensure good customer service by the seller especially those who operates E-Commerce in order to ensure further patronage. The modern return policies are often fashioned in a conventional way, this paper however, adopted the doctrinal methodology to explore the Islamic law options of return policies and their applicability in the modern E-Commerce. The paper found that some conventional return policies are similar and accommodated by the Islamic option of Khiyarat, though, there exist some contradistinctions of the conventional return policy with the Islamic concept of Khiyarat. The paper suggested that operators of conventional return policy should take a clue from the already elaborated concept of Khiyarat to expand the scope of the policy, trader and online Markets operator should also follow suit, the paper equally recommended that traders should ensure conformity of their return policy with the Shariah business and commercial principles as espoused in the concept of Khiyarat in order to ensure the inclusion of their consumers who are inclined to ensuring their commercial activities are Shariah compliant.

Keywords: *Return Policy, E-Commerce, Market Place, Khiyarat, Transaction, Distant Contract*

Received: April 2023

Accepted: June 2023

Published: June 2023

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1. Introduction

Like every other sphere of human life, the commercial and socio-economic sphere had experienced a sharp shift from the traditional and orthodox modus operandi to a more sophisticated operation informed by the advancement in technology and modern inventions. The venue of Commercial Transactions had advanced from the traditional arrangement of physical market setting to an abstract or a non-physical market place on the internet. In modern days, distant sale of goods and commodities takes place on the internet or through other means of telecommunication such as telephone which had ensure transaction convenience and reduced cost.

However, distance or online transactions as well poses a higher degree of risk in that parties -especially the customer- transacts without having the opportunity to first assess the quality and other features of the subject matter, likewise the buyer do not have physical contact with such goods to ascertain whether it suits his needs and purpose (Foscht et al, 2013,Shanmugapriya et al., 2022). Internet trading is prone to manipulation, misrepresentation, presence of defect that may not be revealed by graphics in the subject matter, and photo shopping of rather inferior or old goods to look qualitative or new.

The foregoing presents the need to protect the customer from being forced to execute a contract where the subject is affected by an undisclosed latent or patent defect, or to execute a contract where the subject matter is misrepresented or does not suit his needs and purpose.

In the quest to ensure customer relations, various business ventures especially those operating internet trading have overtime developed dynamic return policies that will ensure effective customer care services and at the same time will not put the business into jeopardy, thus, it is common to see the return policies of internet trading outlets prescribed to each goods offered to or contracted upon on the internet medium.

The return policy of each goods is determined by various factors such as nature of the goods, purpose for which it is used, its quality and so on. Researchers had over time propounded different models and pattern of refund policies in order to maximize Consumer's satisfaction as well as protect the manufacturer, retailer or seller -as the case may be- from avoidable loss and harm to business. Ultimately, the objective of return policy is to ensure consumers' satisfaction and loyalty to the seller or trader as the case may be (Kawa, 2019). It had also been observed that return policy can bring about the low cost of production and increased competitiveness (Jimoh et al. 2022, Dobroselskyi et al., 2021).

Islamic law in its dynamic nature had before the design and development of the conventional return policy promulgated its own unique return policies known as Khiyarat. Like every other aspect of Islamic law, the concept of khiyarat is rooted in the general sources of law. This work shall discuss the concept of return policy in E-commerce transactions as well as examine the examples available under Islamic law of finance vis-à-vis their suitability to the modern commercial demands.

2. Online Market Place

Generally, a market is a venue where exchange of commodities and consideration takes place; it is a platform that offers products and services to consumers (Lin Tian et al, 2018). It is however important to note that price comparison and best deal sites are not marketplaces by definition (Kawa&Walesiak, 2019). From time immemorial, there exists physical markets that provide the commercial needs of people, however, in the era of technological advancement, the concept of marketplace had taken a drastic shift from the orthodox and traditional definition to a more sophisticated online venue.

The European Union Parliament (Directive, 2011) defined online Marketplace as a service using software, including a website, part of a website, or an application operated by or on behalf of a trader which allows consumers to conclude distance contracts with other traders or consumers. In modern time, traders now conduct commercial transaction on the internet and other telecommunication media even without physically meeting one and other, virtually all species of products and services traded in physical marketplace are available on the online marketplaces, trading via this abstract online venue is regarded as E-Commerce.

Many online platforms had overtime provided avenue and technologically designed Applications where E-Commerce can take place, they have made an online market place available to producers, manufacturers and retailers some of this online marketplaces includes Amazon, Allegro (Lin Tian et al, 2018), Jumia, Konga, Wish, AliExpress and so on. Most of these online markets charges fee for product and services sold on behalf of their client.

Some frequently visited sites also provide online market platform for their visitors, they take advantage of the traffic on the sites to offer products and services for sale and as well create a place where businesses can advertise and offer their products and services for sale, most of these sites charges fee on sales made through them (Arkadiusz Kawa, Magdalena Walesiak, 2019).

One notable challenge common to all online marketplaces is the inability of consumers and buyer to physically assess and examine the product and services offered for sale in order to determine its fitness for purpose (Leela Nageswaran et al, 2019), thus, there is often the problem of consumer satisfaction. Having in mind that consumer satisfaction often ensures repurchase and patronage (Yacan wang et al, 2019), businesses had continuously made efforts in the search for solution to this problem, businesses and marketplaces had developed and designed return policies to ensure customer satisfaction and assure customers of value for their money

3. Concept Of Conventional Return Policy In Commercial Transaction

The terms and conditions of a Return policy are usually express but may be implied. It allows the buyer of an item or goods to return it to the seller for being unsatisfied with the goods, its description or specification or for any other reason(s). According to Narayan & Holly (2016), return policies are offered by retailers to help reduce customers risk and act as an incentive for product purchase, post purchase, if the customer changes their mind, then the product goes back, the cost for which is often borne by the retailer. The concept had simply been put as policies that allow consumers to easily return products for a refund (Schmidt&Winter, 1985). In other words, Return policy is the commercial arrangement which the manufacturer or retailer -as the case may be- makes with a customer to return goods for stipulated reasons guided by terms and conditions. The reasons may be express or determined by the commercial norms and customs.

Various commercial indices are considered in determining the level of leniency and restriction a business will adopt in the formulation of its return policy (Abozaid,2022), this is done considering factors such as the nature of the subject matter, whether or not there is physical sign of use of the commodity, whether or not the accessories of the commodity are intact and in good shape, ability to provide purchase receipt, whether the store provides exchanges or cash refund, the time of return and so on.(Jain, 2018)

According to Leela Nageswaran et al, a business may operate online return policy as well as physical store return policy; the business may allow return via mail in online return especially where such goods or product was as well purchased online. Some business ventures charges return fee for returns made through the mail and makes free return to store. It is however worthy of note that there is no hard and fast rule to return policies, a venture may design its policies at will taking into consideration factors such as business environment, target consumers and strength of the venture, thus, a old and financially strong venture may design a free return policy on product sold or traded both online and in physical store.

4. Return Policy In The European Union Member States

The European Union in recognition of the enormous impact of return policy on business and consumers' satisfaction had promulgated a Directive on consumers' rights to regulate contracts concluded between consumers and traders within its member states, returns on distant and off premises sales and contracts took a significant space in the Directive.

The Directive mandate a trader in a distant or off-premises contract to –among others- provide information regarding the main characteristics of the goods or services and conditions, time limit and procedure through which a consumer can exercise the right of withdrawal/return where same exists. Article 9 of the Directive further in clear expressions stipulates 14 days for the exercise of the right of withdrawal/return without necessarily furnishing any reason for the exercise of the right. However, a member state may by national law extend the time limit to 30 days.

However, article 9 of the Directive opened a door for a number of contracts and services that may not enjoy the withdrawal/return right as contained in Article 16. These contracts includes; the supply of goods and services for which the price is dependent on fluctuation in the financial market which cannot be controlled by the trader and which may occur within the withdrawal period, goods made to the consumer's specifications or clearly personalized, goods which are liable to deteriorate or expire rapidly, the goods which are sealed and not suitable for return due to health protection or hygiene reasons and were unsealed after delivery and sealed audio or sealed video recordings or sealed computer software which were unsealed after delivery.

5. Return Policy In Islamic Law And Its Applicability In Modern E-Commerce

The Islamic Law being an all encompassing legal entity had fashioned out its own unique return policy, the policy is a sophisticated and well designed one embedded in the concept of Khiyarat as it is available under the Transactional Fiqh as discussed in Literatures. The Scholars had since the time of orthodox Fiqh down to the contemporary time given a lengthy and exhausting discussion of the modus operandi of the different types of Khiyar, their extent and effect. This part of the research shall discuss certain types of Khiyar that has direct and immediate application to the modern E-Commerce as well as showcase how they are so applicable.

5.1 Khiyar Shart

This is the right available to any or both of the contracting parties to repudiate a contract for a reason stipulated as a term in the contract, it is so termed because it is made a condition in the contract. Majority of the scholars are of the opinion that this type of Khiyar must be stipulated as a condition in the contract before it can avail parties. Al-Qadduriy (1997), a Hanafi jurist stated as follows;

'Khiyar Shart is allowed in contract of sale, the seller and the buyer may stipulate three or less days option to revoke, it is not allowed to stipulate more than three days according to Abu Haneefah, however, Abu Yusuand Muhammad are of the view that it is allowed once the days are known'.

Baashaa (1891) also expressed the hanafi's view thus;

'It is allowed to make a condition in contract to give a right either to repudiate or execute the contract within three days not more except in Waqf and agency... Khiyar shart is allowed in contracts capable of being repudiated from the Laazim contracts such as contract of sale, hire...'

The position of Hanafi School can thus be summarized to be that the parties must expressly stipulate the availability of Khiyar Shart in the contract before it can avail them and the days so stipulated must generally not exceed three days. While the Hanbalis too are of similar position with the Hanafis, in that availability of Khiyar Shart must be expressly stated by parties to the contract before it will avail any of them, they however differ on the number of days and they allowed the stipulation of days longer than three days in as much as the days are definitely and expressly stated and consented to by the parties. Ibn quddamah (2000) also expressed this view as follows;

'Khiyar shart is that the parties stipulate in a contract known days, it is valid even if such days are long, it is not allowed that the days are not stipulated from what is apparent in the school' (Hanbali)

The Maliki School however, took a different view; they hold that the commercial customs and norms prevalent in the environment where the transaction takes place may stipulate and determine such right and not necessarily be expressly stipulated by the parties. (Al-Maalikiy, 2009) In other words, if the right to Khiyar Shart is not expressly stated in a contract, same may be implied from the prevalent commercial customs. Put simply, unlike other schools that hold that the Khiyar Shart must constitute an express term in the contract before it can avail, the Maliki holds that such term can be implied.

The buyer is not to deal with the subject matter of a contract of sale in a manner inconsistent with ownership right of the buyer before the lapse of the stipulated days, else, the seller loses the right to repudiate and the contract becomes binding (Ibn Qudamah, 1997).

Though, the scholars are of diverse opinion as to the length of time that may be stipulated within which a contracting party can exercise the right of repudiation or modification, it is however to be noted, that they are unanimous that three days or less is permissible, they however, dissent as to that which exceeds three days, according to Aj-Jassos, (2010), Abu Haneefah (R.A.) is of the opinion that such cannot exceed three days while his two prominent disciples allow what exceeds three days so far the days are specified, Imam Malik permitted a longer day if the peculiarity of the subject matter of the contract necessitates same. Abu Haneefah (R.A.) based his position on the Hadith of the Prophet (PBUH) that prohibits gharar contracts, he thus posited that where the availability of the Khiyar Shart exceeds three days, it puts the other party in doubt, the other party is uncertain of what becomes of the contract, whether he will eventually take the consideration or the subject matter will be returned?. He as well pinned his opinion on the hadith which expressly provides Khiyar for a party within three days; he argued that what is in excess of three days will further increase the gharar.

However, the view of Abu Haneefah (R.A.) may be the most convenient view where there is no express stipulation of the days for the exercise of this right especially where the right was implied into the contract, the view that same may exceed three days may be conveniently applied where the right was expressly made as a term in the contract and the parties are unanimous as to specific number of days, this in the writer's view better put to practice and juxtaposed the various views on the subject rather than the application of a view and the neglect of some other. This view is fortified in the fact that

it does not run afoul of any textual authority as the hadith that states that Khiyar should not exceed three days is better taken as advisory and most applicable to instances where the right is implied.

The stipulation of three days for the exercise of the right is reasonable where the right is implied as it forestall suspense and uncertainty in the contract, however, there is actually no existence of suspense and uncertainty where the days are known to the parties and they are at contractual ad litem on the term even if the days exceed three days. Thus, the stipulation of fifteen days for official items/goods and seven days of delivery for other item by Jumia within which the right to return and claim for refund may be exercised. (Jumia website) may be exercised is in consonance to the preferred view of the Hanafi School.

It is expedient on the parties to state specifically the party with the right of Khiyar shart, it may However be suggested that, the maliki school will subject the test to the customary practice of the environment where the contract takes place. A party with the right to repudiate under this type of Khiyar, according to the Maliki School may exercise same even in the absence of the other party; however, he is to make a witness regarding that(Aj-Jassos, 2010).Abu Haneefah (R.A.)and his great disciple, Muhammad are of contrary opinion, they are of the view that such right cannot be exercised except in the presence of the other party(Al-Maalikiy, 2009).

The right of a party to revoke a contract under Khiyar shart may lapse i.e. may no longer be available to the party entitled to it with the occurrence of some factors such as; execution and repudiation of the contract, passage of the stipulated time within which the right is to be exercised without electing any of the available options i.e. repudiation or execution, subject matter of the contract becoming defective or destroyed in the possession of the buyer, increment in the quantity or quality of the subject matter and death of the party with the right, this is according to some schools like Hanafis, the malikis and shafis are of the opinion that such right can be inherited by the heirs of the party (Al-Maalikiy, 2009).

The scholars are unanimous that Khiyar shart makes a contract unenforceable on a party with such right, until after he must have chosen to enforce the contract or at the lapse of the time frame expressly or impliedly stipulated in the contract for the exercise of the right. However, scholars dissent as to whether or not a contract with Khiyar shart will acquire the requisite legal effect before the lapse of such right. Some schools such as the hanafi are of the opinion that the contract will not have legal effect during the pendency of the Khiyar shart, while others give legal effect to the contract. However, regardless of the argument as to the existence of legal effect in the contract where the right to Khiyar Shart exists, the contract cannot be enforced against the party who enjoys the right.

The researcher observed that various E-commerce outlets often stipulates the number of days within which a goods or commodity bought through their channel can be returned by the buyer. For instance, AliExpress in consonance with the European Union Legal requirement, stipulated a 14days free right of return for its 2023 men's Genuine Leather+Microfiber Leather Shoe (Aliexpress Website), i.e. the buyer may elect to return and claim refund within fourteen days of the delivery of the goods, this return policy is accommodated under the Islamic option of Khiyar Shart being one expressly stipulated by the E-commerce Market outlet.

This author observed that the withdrawal right obtainable under the European Union directive on consumers right basically falls under this specie of Khiyar in that it does not

require the consumer to tender any reason for the return in as much the right is exercised within the stipulated time limit of 14days or 30days as the case maybe. It is convenient to state that the right is provided for implied by virtue of the Directive in every contract transacted in the European Union member states.

A succinct and critical appraisal of the European Union Directive as it concerns non-existence of the right to withdrawal from contract and return of some specified goods will reveal its incompatibility with the shariah guiding principles and guidelines of business and contractual relation. The categories of goods that are denied the right of withdrawal are not immune from defects, incompatibility, and other factors that may occasion the need to return them.

Notwithstanding the foregoing, the non-existence of the right of withdrawal of goods on health and hygiene reasons is in conformity with the established Islamic jurisprudential principle of protecting the public interest as well as a number of fundamental jurisprudential principles of giving prevalence to public right over individual right and the accommodation of a lesser harm over a greater harm. This is so because, the denial of the right of withdrawal on this ground regarding a goods that may as well be defective or be in contravention of the description ascribed to it on the market place, however, the overall interest and health of the public who may be negatively affected by a contaminated goods should take prevalence, thus, the denial of the right on the aforesaid ground is justified under the Islamic business law.

5.2 Khiyar Ar-Ru'Yah

This is the right given to a buyer who bought a product he did not see before the conclusion of contract to elect to either continue with the contract or repudiate same after seeing or accessing the subject matter. Imam shafi in his latest view is of the opinion that a contract made in absentia is invalid, thus there is no room for the discussion of the Khiyar Ar-Ru'yah according to him, he holds this opinion on the premise of the prohibition of contracting on uncertain subject matter which he argued is present in this kind of contract, ibn Quddamah (1997), a hanbali jurist is as well of this view, he argued and faulted the Ahaadith relied on by the opponents and declared same as weak.

Some other scholars like Abu Haneefah, Malik, and Ahmad permit such contract as such they allow the consequential right to the buyer. The scholars with the later view based the permissibility on the fact that Uthman and Talhah bought lands from Kufah and Madeenah respectively, and it was said to Umar that he had been duped, but he replied that it does not matter, same thing was also said to Talhah who replied that he has the right to Khiyar Ru'yah, Jubayr was thereafter made to adjudicate in the matter concerning Talhah and he gave the Khiyar to Talhah. Ibn Quddamah (1997) captures the diverse opinions thus;

'there are two narrations of a contract in absentia, the most apparent is that contract which subject matter is absent and neither described nor seen before the contract is not valid, this is the view of Ash-Sha'biy, An-Nakha'iy, Hasan, Al-Awza'iy,, Malik, Ishaq, and one of the opinion of Ash-Shafi'iy, and in another narration, it is valid, this is the view of Abu Haneefah, and the second opinion of Imam Shafi'iy, as to the availability of Khiyar Ar-Ru'yah to a buyer, there exists two opinions and the most correct is the availability, this is the view of Abu Haneefah'.

According to An-nasafiy (2011), Hanafi School permitted the contract and avails the buyer with the Khiyar Ar-Ru'yah. They however opined that such right cannot be

inherited. A blind person under this allowance can contract even if he is unable to sight the subject matter so far the subject matter is adequately described to him.

It is however to be noted (An-Nasafiy, 2011) that the malikis permitted a contract in absentia on the condition that the subject matter is adequately described and the peculiar features are detailed, or if not, the Khiyar Ar-Ru'yah is expressly provided for, if not the contract will be invalid. The Hanbalis however permit same on the condition that the subject matter is one capable of specific description and that it is adequately described so as to make it easily identifiable. It is therefore not compulsory that the Khiyar is expressly provided for in the contract.

The hanbalis view seems more preferable because of the verdict of Jubayr earlier mentioned above where the khiyar availed Talhah despite the fact that it was not expressly stipulated as a term in the contract, the verdict was not objected to by any of the companions despite the fact that they were aware of it. The silence or lack of known objection may be regarded as a tacit consensus, the view as well mitigates the hardship that may be occasioned by compelling the presence of the subject matter before the parties in all transactions especially in this modern period where advancement in communication technology had made transaction between persons who are far away from one another so much easier, it will therefore be unconceivable to expect the subject matter of their transaction to be made physically present at the time of transacting. The view as well pinned down the subject matter to a certain and ascertainable description, thus, it rules out the presence of Gharar and cheat.

The question as to the time the right to elect either to continue with the contract or repudiate same is a matter of divergence among the scholars, some opined that the right lapses immediately after the sighting of the subject matter and the buyer most immediately thereafter exercise the right, if not, the contract becomes binding on him/her, the proponents of this view argued that the right is attached to the sighting which had occurred as such it must be exercised immediately. On the other hand, other scholars are of the opinion that the determining factor is the meeting place where the subject matter was sighted, they argued that the right occurs by reason of the contract, if the right is exercised at the meeting place, it avails, if not, the contract becomes binding. (An-Nasafiy)

The later view seems more correct, because, there exists hardship in the former opinion as the buyer may not be able to access the features of the subject matter before exercise the right within a short period of time which may occasion avoidable errors in the decision making, such circumstance is generally frowned at by the Shariah. What will then determine the extinction of meeting place will be as discussed in the matter concerning Khiyar Al-Majlis. And according to the maliki's view which this writer prefers will be subjected to the prevailing customary business practice of the people in the community. The parties may however define the length of the Majlis Aqd by stipulating a number of days, in which case, the right to Khiyar Ru'yah must be exercised within such days after sighting and assessing the subject matter.

Jumia stipulates seven to fifteen days for the exercise of the right to return and claim refund in the event that a good bought from the platform is eventually found to be incorrect in any of its description such as size, expiration or that the colour or model type is found to be wrong. (Jumia website), this stipulation is in line with the preferred position that parties can consensually agree on the time frame within which the Khiyar Ru'yah may be exercised.

A contract made in absentia of the subject matter is not enforceable against the buyer before the exercise of the right *Khiyar Ar-Ru'yah* or lapse of such right. However, if after sighting and the extinction of the meeting place, the buyer neither repudiates the contract nor opted that the contract be continued, the contract becomes binding.

The right to repudiate or exclude liability may be exercised before sighting and that brings the contract to an end, on the contrary, a buyer cannot elect to continue with the contract before the sighting of the subject matter, this is because, the right is attached/conditioned upon sighting the subject matter which has not occurred, allowing the continuance of the contract before the buyer sights the subject matter will amount to contracting on an unascertainable subject matter and therefore occasion hardship, this is as well applicable to a situation where the parties contracts in absence of the subject matter with a condition that the *Khiyar Ru'yah* will not avail the buyer, such contract is invalid (*An-Nasafiy*).

In modern time, the subject matter of E-Commerce is often not physically present before the parties at the point of contracting, rather, it is always only described on the online market channel or outlet, the buyer relies on the description given to the subject matter. Thus in order to protect the buyer from lured to buying a product that does not suit his/her purpose, the online market channel have often given the right of return to the buyer if he/she finds the product he purchased to be wanting in any of the description given to it on the platform. AliExpress affords its customers a 75 days free return if they find their product to be defective in any of it description (*Aliexpress Website*), this practice is the same with the right available under the concept of *Khiyar Ru'yah*. It is the view of this writer that the *Majlis Aqd* for goods bought from AliExpress will span through 75 days being the days within which the right of return can be exercised, the Maliki view on the determination of *Majlis Aqd* will accommodate this practice as a custom known to AliExpress and its customers.

A test of the exceptions contained in the European Union directive on consumer's right with the principles of *Khiyar Ar-Ru'yah* portends that denial of the right on the ground of fluctuation of price, possibility of deterioration or rapid expiration, and production made pursuant to consumer's specification is not justified under Islamic law, the denial regarding sealed audio, video recording and computer software unsealed after delivery is not also justified, because, goods bought on distance or online market place are not often assessable until after delivery, the consumer's ultimate aim is to derive utility of the goods and fluctuation of price or rapid deterioration is not a good ground to deny the derivation of utility from the goods bought.

The very essence of the principle of *Khiyar Ar-Ru'yah* is to ensure that consumers of goods not assessed prior to conclusion of contract are returnable upon realizing that the goods does not serve the intended purpose or does not meet the description given, goods made or personified according to consumer's specification may as well not be made in conformity with the specification or may possess other errors or defect that may warrant return.

5.3 *Khiyar Al-A'Yb*

This is the right is enjoyed by a Buyer to either accept or repudiate a contract on the discovery of a latent defect in the subject matter of a contract. The buyer may choose to overlook the defect and accept the legal consequence of the contract, or decide to repudiate the contract and free him/herself from the consequential legal responsibility that may emanate from the contract (*Yusuf AbdulFattah, 1996*). The buyer enjoys this right because it is assumed that he intends to take full benefit of the subject matter of the

contract and the said defect may deprive him of same, thus the intent with which he contracted may have been defeated.

The freedom of subject matter from any defect is an implied term of a contract and the principle of Islamic law is that an implied condition has the same effect of an express term, as such the presence of defect in the subject matter is a breach of the term therefore giving rise to the buyer to either accept or repudiate the contract. This type of Khiyar is impliedly available to a party and there may be no need to make it a condition in the contract, however, the followings must be met before this Khiyar can avail a party; (Baashaa, 1891)

i. The defect must affect the value of the subject matter; this is to be determined by a subjective test on the basis of the prevailing custom and tradition of the business community.

ii. The defect must not be a new one i.e. the defect must have been present in the subject matter either before the contract or before delivery, thus if the defect occurs after contract or before delivery and the affected party contracted on same or takes delivery after being aware of the defect, then the right will not avail him. If the defect was present at the point of contract but was mended before delivery, the right will as well not be available to the buyer.

Also, when the defect occurs before delivery but ceases to exist after delivery, the right to repudiate will as well not be available. It is important to note, that the Shafi'i school are of the opinion that the defect that occurs after delivery is to be examined to determine the availability of the right to repudiate, they opined that if the defect is directly connected to a reason that was present before delivery, such right will avail the buyer, if not, it will not be available.

iii. The defect should neither had been known to the buyer nor the seller had exonerated himself from liability from defect, the buyer must not be in the knowledge of the defect either before the contract or before taking delivery, if he is aware of the defect at any of these instances, then, the right ceases to avail him. The right to repudiate may as well not be available where the seller had excluded liability from defect and such was made a condition to the contract, however, such exclusion may not avail the seller of any other defect that may occur after the contract but before delivery, any clause that seeks to exclude the seller's liability of defect before and after the contract will void the contract.

A contract which subject matter is defective and such defect is not known to the buyer may be legally complete and valid but not executable against such buyer, it is however binding and executable against the seller (AbdulFattah, 1996). The right to repudiate under this category of Khiyar may be vitiated by the destruction of the subject matter while in possession of the buyer, decrease in the value of the subject matter, increase in the value of the subject matter, waiver by the buyer and the inconsistent dealing with the defective subject matter by the buyer.

Jumia often stipulates a 15days free return policy for official store items and 7 days for other eligible items that may be found to be defective either by reason of its packaging being damaged before delivery, item received with missing parts or accessories, and items that stopped working well after usage. Although, this research did not probe the validity of this distinction regarding the numbers of days to exercise the right to return goods from official store and other goods under Islamic law, however, the researcher find the return policy on defective items to be similar to the concept of Khiyar Al-A'yb as obtainable in Islamic law.

5.4 Khiyar At-Tadlees

This is a right available to a party who contracted on a subject matter represented as what it is not in reality, this occurs where a seller for instance, did not tap milk from a cow or put a used car in a good shape so that the prospective buyer will buy same at a price higher than it worth, while believing that such a cow is a big cow or one with ability to produce more milk than it can actually produce or that the car is in a good condition other than that it actually is. A party who contracted on this circumstance –on getting to know of the reality of the subject matter- has the right to either accept the contract or repudiate same. At-Tadlees is a form of cheat and same is forbidden in Islam, in fact ibn Quddamah (2000) reported that some scholars are of the opinion that a contract where same occurs is an invalid contract. This opinion is based on the Hadith of the Prophet(PBUH); as well as the hadith of “whoever cheat us is not part of us”. It is however important to note, that Abu Haneefah (R.A.)do not give the right to repudiate in this circumstance, he argued that such is not a defect that could warrant the right, he further argued that it could happen that a party may buy an animal not represented as such and may still not be able to tap enough milk, this view is however a weak one, because there exist a clear text of sunnah which prohibits such cheating, therefore, it is more reasonable and more in tandem with the principles of Islamic law regarding contracts to avail the buyer the right to elect to either accept the subject matter or repudiate the contract in order to protect him.

The practice of Jumia allowing the return of all categories of items that seems to be fake or unauthentic or one with an incorrect model is in the view of this researcher in conformity with the view that allows the exercise of the return right under Islamic law if the goods is not found to exactly what it is presented to be by being fake or of a different model.

6. Conclusion

The challenges facing the free operation of E-commerce had being addressed by the design of customer friendly return policies by business entities especially those transacting business on the internet, these policies are often conventional, it is observed that though many of these policies may not contradict the options available under Islamic law, they are fashioned in the conventional manner.

The European Union had-with the view to protecting the consumer from unfair business practices- promulgated a Directive on consumers’ right which extensively provided for the right of withdrawal of goods and services within the stipulated time limit; it was observed that right as contained under the Directive can only likened to Khiyar Shart as obtainable under the Islamic option, though, the right of withdrawal under the European Union Directive has some shortfalls as compared to the Islamic Law options.

6.1 Recommendations

In view of the aforementioned discussions, the followings are hereby recommended;

- i. Business owners and sellers should pay attention to concept of Khiyarat while designing their return principles so as to further strengthen the trust of their customers who are more inclined to ensuring the observance of Islamic ethos and ethics in every of their commercial dealings.

ii. The European Union and other international bodies should take a clue from the principle of *Khiyarat* to expound the right to withdrawal to accommodate other circumstances that may give rise to the need for return as already captured under Islamic law options. The return policies operated by most online market place such as AliExpress and Jumia are as well in need of elaboration and expansion to ensure more effectiveness in customer satisfaction, a clue and guideline should be taken from the already elaborated Islamic option of *Khiyarat* to achieve this need.

Author Contributions: Conceptualization, writing—review and editing, Mohd Jamiu Ayinla-Edun

Funding: Not Applicable

Institutional Review Board Statement: Not applicable.

Informed Consent Statement: Not applicable.

Conflicts of Interest: “The authors declare no conflict of interest.”

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