

## The Application of the Jurisprudential rule "Warranty by Deception" (al-ḍamān bl-taḡryīr) on Commercial Transactions and the Extent of its Application in Jordanian Civil Law Using "Forging and Replacement of Labels of the Country of Origin on the merchandise as an Example"

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### Abstract

This study aims to examine the impact of deception in transactions related to the alteration and change of labels indicating the country of origin on goods. The researchers have concluded that this act falls within the category of deception and constitutes a sufficient defect on its own to invalidate the contract and to ensure the protection of the consumer. This is because the description used to market the product to the buyer is of significant importance and gravity, to the extent that had the deceived contracting party been aware of it, they would not have entered into the contract.

It became clear that changing the country of origin is a hidden defect not apparent to the buyer. In this context, the concept of deception applies both in Islamic law and in legal terms to this practice, necessitating the seller's obligation to accept the return of the goods if the buyer wishes to do so after the purchase. This defect is considered one of the hidden defects unknown to the buyer and aligns with the legal definition of defect warranty (ḍamān bl-taḡryīr). It also corresponds to the legal definition in the Jordanian Civil Code, which states that a defect in goods is anything that causes a decrease in value below the customary price.

**Keywords:** Deception, al-ḍamān bl-taḡryīr, āltaḡryīr, Replacement of Labels.

## تطبيق القاعدة الفقهية (الضمان بالتغريب) على المعاملات التجارية ومدى تطبيقها في القانون المدني الأردني تزوير واستبدال ملصقات بلد المنشأ على البضائع أمودجا

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### ملخص

تسعى هذه الدراسة إلى التعرف على أثر التغريب في المعاملات المتعلقة بتبديل وتغيير ملصقات بلد المنشأ على البضائع، وتوصل الباحثان إلى أن هذا الفعل هو من صور التغريب، وهو عيب كافٍ وحده لفسخ العقد لضمان المنتج؛ لأن الوصف الذي تم به تسويق المنتج للمشتري هو على درجة من الخطورة، بحيث لو علم بها المتعاقد المغرر به لما أقدم على إبرام العقد، واتضح أن

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تغيير اسم بلد المنشأ من العيوب الخفية غير الواضحة للمشتري، وبهذا ينطبق مفهوم التغيرير شرعا وقانونا على هذه العملية، وتوجب ضمان البائع للبضاعة إذا عاد له المشتري بعد شرائها، وهذا العيب هو من العيوب الخفية المجهولة للمشتري والتي يتطابق تعريفها مع القاعدة الشرعية لضمان العيوب (الضمان بالتغيرير)، ويتطابق مع التعريف القانوني في القانون المدني الأردني الذي يقول بأن العيب في البضائع هو كل ما أوجب نقصان الثمن في عادة التجار. الكلمات الدالة: الضمان بالتغيرير، التغيرير.

## Introduction:

The Islamic approach to all circumstances in life focuses on following the values of honesty and trustworthiness, and Islam explicitly forbids lying, betrayal, and deceit. Furthermore, Qur'anic verses and narrations of the Prophet Muhammad, may God's prayers and peace be upon him<sup>(1)</sup>, the promotion of authentic moral values related to both commercial and non-commercial transactions is essential. The biography of the Prophet and the guidance he provided to his companions serve as an excellent example of this. In fact, he prohibited various unethical selling practices that were prevalent among the Arabs before the advent of Islam due to their association with suspicions of fraud and deceit.

In Islam, there is a strong emphasis in the verses of the Holy Qur'an on the concept of piety (Taqwā). This concept encourages people to deal honestly with each other, and the moral system in the Qur'an is founded on various principles, with one of its central pillars being Taqwā. Taqwā ultimately instills confidence in people when engaging in social, financial, or other transactions and motivates them to perform good deeds while avoiding evil<sup>(2)</sup>. Prophetic guidance has consistently stressed the ethical aspect of human interactions. Furthermore, "Moral absolutes or universals, like Divinity, serve as the compass and guiding lights of Shari'ah. The Qur'an affirms the objective validity of moral and ethical principles as virtues that are intrinsically linked to goodness, beauty, and Divinity itself"<sup>(3)</sup>.

Unfortunately, these methods of fraud and deception in commercial contracts and dealings were quite prevalent during the time of the Prophet. Many individuals engaged in fraudulent, dishonest, and deceitful practices, often disregarding the prohibitions set forth in Islamic law. Although these fraudulent activities took various forms, Muslim jurists and scholars did not provide exhaustive details on each. Nevertheless, at the core of this corruption were practices involving fraud, deceit, and deception of individuals, regardless of the specific variations.

We have structured this research into an introduction, four sections, and a conclusion. The first

section delves into the concept of deception, its conditions and types, and the impact of deception on various types of contracts. In the second section, we explore the instances in which Islam prohibits deception. The third section extends the research to discuss the issue of forgery, the replacement of country-of-origin labels, and their relationship to various forms of deception. The fourth section elucidates the rule of "Warranty by Deception" (al-ḍamān bl-taḡryīr)<sup>(4)</sup> in cases involving the replacement and forgery of country-of-origin labels. Finally, we present our conclusion along with the results and recommendations.

### **The Importance of the Research**

This research holds significance in its exploration of various aspects of deception, including its conditions and applications, the impact of deception on different types of contracts, and the relevance of the jurisprudential rule (al-ḍamān bl-taḡryīr) in cases involving forgery and the replacement of country of origin labels on commercial products. Through this research, we aim to uncover the application of this rule within jurisprudence, gain insights into scholarly opinions on the subject, and apply them to this particular context. Furthermore, the study's importance is underscored by its attempt to extract the perspectives of scholars regarding the issue of deception and apply them to the prohibition of counterfeiting and replacing country of origin labels on commercial products.

### **Research Problem**

The forgery of the country of origin is a significant hidden defect that may not be immediately evident to buyers. Therefore, the researchers aim to investigate the concept of deception (taḡryīr) as it applies in both Islamic and Civil law to this practice by addressing the following questions:

1. What types of deception (taḡryīr) does Islam forbid, why is it prohibited, and what are its specific criteria, conditions, and applications?
2. How is counterfeiting and replacing labels indicating the country of origin on various products related to the concept of deception (al-taḡryīr)?
3. To what extent does the jurisprudential Warranty by Deception rule (al-ḍamān bl-taḡryīr) apply to the seller who engages in the act of deception by forging and replacing the labels indicating the country of origin on different commercial goods?
4. How does the Warranty by Deception rule (al-ḍamān bl-taḡryīr) relate to the alteration of product labels as applied in Jordanian Civil Law?

### Research Objectives

The research aims to achieve the following objectives:

1. Provide a clear understanding of the concept of deception, including its specifications, conditions, and prohibitions.
2. Explain the impact of al-tağryīr in sales contracts and other types of contracts.
3. Elaborate on the relationship between forgery and the replacement of country-of-origin labels on goods within the context of deception.
4. Examine the applicability of the jurisprudential Warranty by Deception rule (al-ḍamān bl-tağryīr) in cases involving the forgery and replacement of country-of-origin labels on commercial products.

### Research Methodology

The researchers utilized the inductive approach to extract the opinions formed by jurists and used to prohibit deception in contracts. They employed a deductive method when presenting, analyzing, and discussing some of the evidence, with the aim of deducing and extrapolating the potential application of the jurisprudential Warranty by Deception rule (al-ḍamān bl-tağryīr) to this issue.

### Research Plan:

This research is structured into an introduction, four sections, and a conclusion, as outlined below:

**Introduction:** The introduction encompasses the research's significance, the research problem, the research methodology, and the research plan.

**Section 1:** This section elucidates the concept of deception, its conditions, and the impact of deception on various types of contracts.

**Section 2:** It discusses the applications to which Islam prohibits deception.

**Section 3:** This section delves into the issue of counterfeiting and replacing labels, exploring their relationship with various forms of deception.

**Section 4:** The final section clarifies the ruling (ḥukm) and the jurisprudential rule (al-ḍamān bl-tağryīr) in cases of replacing and forging country of origin labels, along with its applicability to guaranteeing hidden defects (ḍaman al' uīuwb alkhafīh).

The conclusion encapsulates the results and recommendations related to the research question.

**Section 1: Clarifying the Concept of Deception, Its Conditions, and the Effects of Deception on Different Contracts.**

**Linguistically**, the term "deceit" carries the connotation of peril, danger, jeopardy, hazard, or risk<sup>(5)</sup>. Arabic dictionaries define deceiving someone as the act of misleading through deception and ensnaring them with falsehood. For instance, examples of its usage include "I am the one who deceived you from Him," as Satan uttered in the vanity of falsehood. Another instance can be found in the following verse: "O mankind, indeed the promise of Allah is truth, so let not the worldly life delude you and be not deceived about Allah by the Deceiver [i.e., Satan]" (35:5). In other words, individuals should not be beguiled by the material world. If it contains riches that divert one from their religious path, then those worldly gains should not be prioritized. Indeed, Satan's arrogance deceives people with false promises and wishful thinking<sup>(6)</sup>.

**Secondly, in jurisprudential terms, the concept of "ġarar" has several definitions, which can be summarized under three categories according to Al-Saati<sup>7</sup>**

1. According to the Hanafi and Shafi'i Schools of law, "ġarar" refers to doubtfulness or uncertainty, such as not knowing whether something will take place or not, excluding the completely unknown. Ibn Abidin's definition aligns with this perspective, stating that "ġarar" is the uncertainty over the existence of the subject matter of a transaction.
2. "ġarar" can also signify ignorance, particularly when the subject matter of a sale is unknown. This view is primarily adopted by the Zahiri School. As Ibn Hazm explains, "ġarar in a sale occurs when the purchaser does not know what he has bought, and the seller does not know what he has sold."
3. "ġarar" can encompass both the unknown and the doubtful. According to Al-Sarakhsi, "ġarar obtains when consequences are concealed." This perspective is commonly shared by most jurists.

**Thirdly**, let's delve into the meaning of deception in Islamic jurisprudence. Al-Zarqa, in fact, defined deception as a temptation through speech or false actions, with the intention of persuading one of the contracting parties to enter into the contract. Deception can also involve coercing a party into the contract<sup>(8)</sup>.

We can also consider deception as any employment of fraudulent methods that lead to the purchase of unwanted goods. Deception results in material, moral, or both types of harm. Without misleading and deception, the deceived party would not have entered into the purchase. This encompasses misleading through speech before the contract, through actions, or by violating conditions associated with the contract.

**Fourthly**, let's explore the distinction between "ġarar" and "altaġryr," focusing on their characteristics and effects. "ġarar" involves risk or uncertainty, where both the existence and non-existence of a subject are equal in terms of doubt (šak) or are concealed in their consequences<sup>(9)</sup>. The term "ġarar" is rooted in the Arabic word "ġarra," which means "to deceive." In essence, "ġarar" signifies risk or uncertainty and is related to deception in the context of these two meanings. Examples of "ġarar" can include gambling (maīysir), contracts with unclear terms, or the sale of items with uncertain quality. From a visual perspective, "ġarar" pertains to the subject matter of the contract (maḥal al'aqd) regarding its existence or the mutual ignorance of the contracting parties regarding it<sup>(10)</sup>.

On the other hand, "altaġryr" involves an illusion (iīyham) where one of the parties intentionally signs the contract, fully aware of the hidden defect or whatever is being concealed, while the other contracting party remains ignorant of the deception.

Moreover, considering the impact of these two concepts, if a contract is found to be deceptive, known as "ġarar," it renders the contract corrupt (fasid) or void (baṭil). Conversely, when it comes to deception referred to as "altaġryr," the contract remains valid but is subject to potential annulment (muhaddad bilfaṣḥ)<sup>(11)</sup>.

**Finally**, let's explore the jurisprudential foundation for deception, specifically "taġryr." In Islam, deceit and misleading are strictly forbidden as they contradict Islamic morals and principles, leading to actual or anticipated material or moral harm. Allah has affirmed in the Holy Qur'an that this worldly life is transitory, emphasizing the importance of honesty and adhering to Islamic values, which promote virtues like honesty, integrity, and non-deception. "Every soul will taste death, and you will only receive your full reward on the Day of Judgment. Whoever is spared from the Fire and admitted into Paradise will indeed triumph, while the life of this world is no more than the delusion of enjoyment" (3:185).

Moreover, the noble verses clearly and explicitly forbid the sale of anything deceptive (bayī' alġarar), whether the hidden defect is in its outward appearance or something concealed within<sup>(12)</sup>. In this context, the Prophet emphasized, "Whoever possesses (the following) four characteristics is a hypocrite, and whoever possesses one of the following four characteristics possesses a characteristic of hypocrisy until he renounces it. These are: (1) Whenever he speaks, he utters falsehood; (2) whenever he makes a promise, he breaks it; (3) whenever he enters into a covenant, he proves treacherous; (4) and whenever he disputes, he behaves insolently with evil and insulting conduct."<sup>(13)</sup>

The ḥadīth explicitly conveys the prohibition of treachery and deceit, emphasizing the obligation to uphold covenants. The condemnation of treacherous behavior is evident in the ḥadīth,

and it serves as evidence of the severity of such actions. When someone establishes a condition and subsequently violates it, contradicts it, or discovers evidence to the contrary, they have engaged in betrayal and deceit. The ḥadīṭ serves as a warning to Muslims, urging them not to adopt these traits, as they may lead to the reality of hypocrisy.

One of the fundamental jurisprudential rules in Islam is the principle of "No harm, no harm by reaction" (la ḍarar wla ḍaraar)<sup>(14)</sup>. The principle of "no harm" (la ḍarar) is derived from the idea that causing harm to others, whether physically or financially, is impermissible. Harming others is considered unjust, and injustice is strictly prohibited in Islam, even when it involves otherwise permissible actions.

Similarly, there is "no harm by reaction" (wla ḍaraar), which means it is not permissible to retaliate with harm when one has suffered harm. Instead, the injured party should seek legal recourse and the removal of the injustice and its effects. Islamic law dictates that it is not acceptable to respond to wrongdoing with more wrongdoing, as the ends do not justify the means (alḡaaīyāh la tubarrir alwasīlyh); rather, the means should align with the intended goal.

This rule holds significant importance and forms the basis of an honorable ḥadīṭ upon which many chapters of Islamic jurisprudence depend, spawning various jurisprudential laws. For instance, the principle "The damage will be removed" (alḍarar yuzal) dictates that harm must be rectified and its consequences mitigated once it has occurred. There is also another vital jurisprudential rule stating, "Harm should be prevented as much as possible" (Alḍarar yudfa' qadar Al-Imkan), signifying that efforts should be made to prevent harm before it materializes, as prevention is preferable and less challenging than addressing or rectifying the harm<sup>(15)</sup>.

Furthermore, the harm (ḍarar) must be genuine, not imagined. It should also be considered significant, extraordinary, and intolerable. Harm that is minor or easily manageable is generally forgiven. Additionally, it is essential that the harm is unjust and contrary to a legitimate interest. For instance, deception in the context of marriage is prohibited as it falls under this broad legal principle<sup>(16)</sup>.

## **Section 2: Clarifying the Applications in which Islam Forbade Deception (*āltaḡryr*) and Verification**

### **Methods**

#### **Clarifying the Applications in which Islam Forbade Deception**

**First**, let us examine the concept of deceit with one of its forms being marriage with the intent of divorce. If a man marries a woman with the hidden intention of divorcing her after a certain undisclosed period, and the wife or her guardian is unaware of this intention, it constitutes a

marriage that contradicts the principles of Sharia in marriage. In this case, the husband has deceived his wife and her guardians, making him a sinner according to Sharia. If his intended action is carried out, Sharia's prescribed rules on deceit apply. Consequently, harm is legally, rationally, and actually minimized or prevented as much as possible (Al-ḍarar yuzal qadar Al-Imkan).

The majority of jurists, including the Hanafis, Shafi'is, Hanbalis, along with a narration attributed to Imam Malik and the alẓaahirīh, are of the view that divorce does not occur through psychological thoughts that are not known to anyone, or if a man intends to divorce his wife but does not utter it<sup>(17)</sup>. However, their evidence is contradicted by the Prophet's statement which affirms that intentions alone do not have the same weight as actions. The Prophet said, "God Almighty said: 'He who intends to do a good deed but does not do it, then Allah records it for him as a full good deed. But if he carries out his intention, then Allah writes it down for him as ten to seven hundred folds, and even more. However, if he intends to do an evil act and does not do it, then Allah records it as a full good deed. But if he intends it and does it, Allah writes it down as one bad deed'"<sup>(18)</sup>.

**Secondly**, let's consider the deception through verbal utterance and its different forms (alṭaḡryīr bialqawl). If deception is attached to the marriage contract as a condition, for example, when a woman marries a man under the pretense that he is an Arab or a citizen, and later it is discovered that he is not, or if he claims to be wealthy but it turns out he cannot provide for his wife and household, that would be considered deceit. Additionally, if he falsely claims to be the son of a specific person, but it is discovered that he is actually illegitimate, that also constitutes deceit. However, it is important to note that the wife has a choice in such situations. She can either opt for a divorce or choose to stay with her husband. If she decides for divorce and the consummation of the marriage (alduḡwul) did not take place, she is not entitled to a dowry, and there is no waiting period for her. On the other hand, if the consummation of the marriage did take place, she is obliged to return her dowry, just as any bride would have to do<sup>(19)</sup>.

The evidence for that is the following verse: "O you who have believed, fulfill [all] contracts" (5:01). This verse emphasizes the importance of fulfilling contracts in general, without specifying the type of contract.

**Thirdly**, let us continue by examining deceit in action and concealment and its various forms. For instance, if one spouse discovers that their partner has concealed a contagious or repulsive illness, such as leprosy, AIDS, or insanity. Furthermore, what if they find out that their spouse has



undergone plastic surgery to hide their true age? In cases where the husband is being deceitful, once again, the wife has the choice to stay or leave. However, to establish this choice (*ṭabūt bi-alḥayaar*), it must be proven whether the issue existed at the time of the marital contract or arose afterward. If the wife decides to leave, it will impact matters such as the dowry and alimony. Similarly, if it is the wife who has deceived her husband, it must also be proven that the deception occurred before the contract was signed, just as in the case of the husband<sup>(20)</sup>.

### Methods of Proving the Deception:

The first method to prove deceit is through confession (*Al-Iqriar*). Arabic language dictionaries define *Al-Iqriar* as "affirmation" or "acknowledgement"<sup>(21)</sup>. In the terminology of jurists, it refers to affirming or acknowledging the truth before the Judicial Council to negate any accusation or suspicion from the outset. However, it is important to note that this is not pure information but rather one-sided information or *iḥbaar*. Additionally, there must be an establishment (*Al-Inṣaa'*) from one side<sup>(22)</sup> where the defendant, in front of the Judicial Council, confesses to deceiving the plaintiff and provides details about the incident of deception, including the method, time, place, and manner. The defendant must also acknowledge that they were of full capacity and had the intention to deceive the plaintiff in a valid marriage, meaning that all elements and conditions necessary for a valid marriage were fulfilled to achieve the intended goal.

Another way to establish deception is through testimony (*al-ṣahāda*). According to the dictionaries of the Arabic language, *al-ṣahāda* has several meanings, such as seeing something and inspecting it, attending a council, providing definitive information, and swearing to God, among others<sup>(23)</sup>.

In the terminology of jurists, the Judicial Journal (*mağallāt al-aḥkām al-‘adliya*) defines testimony in Article 1684 as follows:

“Informing with the wording of the testimony means that one says, 'I testify to prove the right of one who is under the responsibility of the other in the presence of the judge.' In the confrontation of the two litigants, the informant is called a witness, and for the owner of the right, he is a witness known as *maṣhuwd lahu*. For the informant, he is a witness known as *maṣhuwd ‘alayh*, and for the right, he is a witness known as *maṣhuwd bih*”<sup>(24)</sup>.

Many jurists believe that the methods of proof are not limited to specific things but include everything that establishes the truth. According to this principle, litigants should present the means that prove what is right and convince the court of it. Moreover, the judge has the right to accept the evidence and, after weighing the evidence presented in the case, determine whether it is indeed

correct or not. The researchers strongly agree with this opinion since, in general, people's morals have been corrupted in this era.

Ibn Farḥūn al-Maliki said: "Evidence is a name for everything that clarifies the truth and reveals it. The Prophet called the witnesses the proof (al-bayānah) for the occurrence of the statement by speaking and creating an absence of problems with their testimony<sup>(25)</sup>. Furthermore, al-Šayrāzī al-Šāfi'ī said: "The statement (the proof) is applicable through the concept of speaking, doing, affirming, indicating, writing, and analogy<sup>(26)</sup>."

### **Section 3: Discussing the Issue of Counterfeiting and Replacing Labels and Their Relationship to Types of Deception**

**First, let us begin by clarifying the issue.**

Many merchants import various goods from different countries, and the Standards and Metrology Department<sup>(27)</sup> mandates that all importers affix a sticker displaying the country of origin, the product's name, its technical specifications, and the year of manufacture on each imported item. Additionally, the Standards and Metrology Department requires a commercial certificate of origin, indicating the manufacturing country.

After importing their goods, some merchants, particularly those from countries known for lower-quality products, engage in deception by altering the labels on their goods. Often, they change the country of origin to make the device or goods appear European when they are, in reality, manufactured in China. This deception is hidden and not visible to the buyer.

For instance, a consumer visits a merchant in search of a pump, and the merchant claims to have just the pump the consumer needs – an Italian pump. It is a bit more expensive, but everyone knows that Italians produce high-quality pumps. However, the pump is actually from China, with its label changed to indicate "Italy" as the country of origin. Consumers are generally willing to pay extra for a product originating from Europe rather than China.

If the buyer opts for the purported Italian goods, they end up paying a higher price based on the belief that these are European-origin items of superior quality and durability. Consequently, deception (āltağryr) occurs. By claiming that the pump is Italian, the merchant deceives the buyer and persuades them to purchase a lower-quality Chinese pump, which is likely to have a shorter lifespan than a genuine Italian pump. Moreover, the customer is charged a significantly higher price compared to the original Chinese goods. This transaction falls within the realm of "outrageous unfairness" (ğubawn faaḥiṣ), not to mention the fraud and deceit suffered by the buyer, along with missing out on the benefits of a longer-lasting pump.

Now, let us delve into the ruling on deception (*ḥukm āltağryīr*) and its impact on the contract. Jurists have had varying opinions regarding the ruling on deception, often divided into two main views.

The first opinion contends that deception alone has no impact on the contract unless it is accompanied by unfairness or *ğubuwn*<sup>(28)</sup>. According to this view, the contract remains valid even in the presence of deception.

The second opinion argues that if deception leads to misleading the contracting party (*taḍlīyl al‘aaqid*) and convinces them that a certain product or service quality is a valid reason to accept the contract, the deceived party has the right to void the contract. However, this is only applicable if the previous description is not evident to the naked eye upon close inspection. When the missed description can be easily observed through product examination, the right to annulment (*fash al‘aqd*) is denied<sup>(29)</sup>. This view is supported by the (*ḥadīṭ altaşriyāh*), where the Prophet said:

“He who buys a goat having its udder tied up has two courses left for him. He may retain it, and if he desires may return it along with a sa' of dates. The researchers concur with the second opinion, which holds that deceit is a significant defect justifying the termination of a contract when the omitted description (*alwaşf alfaa'it*) is of such seriousness that had the contracting party known about it, they would not have proceeded with the contract or the purchase of the item.

Additionally, Article 145 of the Jordanian Civil Code states:

"If one of the two contracting parties was deceived by the other, and it was realized that the contract was concluded with gross unfairness (*ğubuwn faaḥiş*), then the one who was deceived has the right to have the contract rescinded"<sup>(30)</sup>.

Consequently, the researcher believes that altering the country of origin constitutes a form of gross unfairness (*ğubuwn faaḥiş*), which necessitates the rescission of the contract, rendering the agreement null and void.

#### **Section 4: Clarifying the Ruling (*ḥukm*) for *al-damān bl-tağryīr*, in the Event of Replacement and Forgery of Country of Origin Labels and Its Applicability to Guaranteeing Hidden Defects (*damān al‘uyūwb alhafyāh*)**

Jordanian Civil Law No. 43 of 1976 provides the buyer with the right to either demand that the seller guarantee hidden defects or to terminate the contract, following the conditions and rules set forth in Civil Code Articles 512 to 521. This provision exists because, if a hidden defect is later discovered, it may also become apparent that the product is unsuitable for the intended purpose due to the defect. Consequently, this constitutes a breach of the seller's obligation to fulfill the contract, granting the buyer the right to request contract rescission, as they would not have agreed to the

contract had they been aware of the defect at the time of purchase<sup>(31)</sup>. This concept aligns with what Alzuḥaily referred to as (ḥayar al'ayīb), which he described as occurring "when one of the contracting parties has the right to annul the contract or accept it if a defect is found, with the owner not being aware of it at the time of the contract." This notion also encompasses the concept of "cheating," defined as "improving the goods through deceptive means to present them as safe, despite having defects"<sup>(32)</sup>.

First, let's explore the concept of a "defect" (al'uyūwb) in Islamic jurisprudence, as defined by various scholars. Alkamaal ibn alhumaam stated that "anything that results in a decrease in the price (nuqsaan alṭaman) according to the customary practices of merchants (fī 'aadāt altuḡḡar) is considered a defect or 'ayīb"<sup>(33)</sup>. However, Alkaasaanī provided a broader definition, stating that "anything leading to a price reduction according to the customary practices of merchants, whether it's a significant or minor reduction, qualifies as a defect. This is what is known as an option defect or ḥājaru al'ayīb"<sup>(34)</sup>. Furthermore, Ibn Rušd defined a defect as "anything that is inherently flawed or violates legal standards and has an impact on the selling price (ṭamanu almabyī' )"<sup>(35)</sup>.

In Islamic jurisprudence, there's a difference of opinion regarding the notification period for returning defective goods (ālbida' āh ālma'iyībah). The Hanafī school of thought does not specify a particular period for notification and considers prolonged silence as acceptance of the defect. The Maliki school, on the other hand, allows a notification period of only two days. In contrast, the Shafī'i school holds that it is obligatory to inform the buyer immediately, with legitimate delays being the exception<sup>(36)</sup>.

Now, let's delve into the meaning of the guarantee for hidden defects (ḍamān al'uyūwb alḥafyīah) under Jordanian law. A defect is essentially a flaw, weakness, or deficiency hidden within the sold item, to the extent that it renders the item unsuitable for the buyer's intended purpose. Examples of hidden defects in sales could include purchasing a building with structural weaknesses due to substandard materials in its columns, buying a home refrigerator that doesn't cool sufficiently to make ice, or acquiring a racehorse that turns out to be slow and unfit for races. The Jordanian legislator has defined such hidden defects as "the pest that diminishes its value or benefit according to its nature." The law also defines "hidden" as something "not discoverable by ordinary observation, only discernible by experts, or not apparent except through experience"<sup>(37)</sup>.

The reason for obligating the seller to guarantee hidden defects and shortcomings in quality is rooted in the seller's obligation to transfer a useful and beneficial ownership to the buyer in line with good faith in dealing, under the penalty of compensation (ḍamān al'uyūwb alḥafyīah). In the presence of such defects, the seller is held accountable as these issues could affect the sold item by

either reducing its value or impairing its utility, making it undesirable to the buyer. The absence of certain characteristics that the seller had promised the buyer results in the sold item being considered as defective.

Lastly, let's discuss the conditions under which hidden defects (al'uyūwb alḥafyāh) necessitate warranty according to Jordanian civil law. Article 194 of Jordanian Civil Code No. 43 of 1976 stipulates that:

*“In order for the option to be proven, the defect must be old and affect the value of the contract, and that the purchaser was ignorant of it, and that the seller did not stipulate innocence from it.”<sup>(38)</sup>*

According to the text of the previous article, the mere existence of a defect does not automatically require the seller to guarantee it. The Jordanian legislator has set certain conditions for such defects. These conditions include the defect being old, effective, hidden, and unknown to the buyer.

It should be noted that the seller's obligation to ensure that the sold item is free from hidden defects (al'uyūwb alḥafyāh) is not limited to the sales contract alone. It extends to every transfer of ownership and transfer of usufruct rights, especially in netting contracts (‘uquwud almu‘aawadāt) where the transfer of the right corresponds to payment. In such cases, the transfer of the usufruct right includes the transfer of possession to enable the person to benefit from the property. Therefore, it is necessary for the property to be free from defects in order for the buyer to benefit from it<sup>(39)</sup>.

As stated in Article 194 of the Jordanian Civil Code, it is important that the defect is unknown to the buyer for the warranty to apply. The article also highlights that it is the buyer's obligation to examine the sold item to ensure its suitability for the intended purpose. However, the seller is responsible for defects that the buyer could not have discovered through the examination. It is not sufficient for the defect to be merely hidden; it must also be unknown to the buyer. In other words, the seller is not obligated to guarantee a defect that the buyer is already aware of, even if it is hidden<sup>(40)</sup>.

Based on the above discussion, we can confirm that if the labels of the country of origin on the goods have been changed, and it was the seller who made this change, then the seller is aware of the hidden defect and intentionally deceiving the buyer. In such a case, the seller must guarantee the value of the defect caused by their actions.

**Now let us examine** some of the rulings of the Court of Cassation in Jordan related to guaranteeing hidden defects.<sup>(41)</sup>

We will begin with Judgment No. 1469 of 2021, where the Court of Cassation, in its legal entity capacity, made the following statement:

“And since the plaintiff based one of her claims in this case on the presence of defects in the sanitary installations, tiles, doors, windows, blinds, paint and central heating installations, and saying that they were not in conformity with the engineering specifications, the violation of the previous specifications of the sale is, in reality, only a matter of defects in the sale, and the buyer can declare her right of optioning out of the contract because of a hidden defect (*ḥayīar al‘ayīb alḥafi*) within the periods stipulated in the previous articles if the conditions of the hidden defect specified by law are met.”

In Judgment No. 7564 of 2019, the Court of Cassation, in its legal capacity, stated the following:

“The reason for the lawsuit, as stated in the lawsuit statement, is the explosion of the tire due to poor workmanship, and that because of this defect, the tire exploded, which led to the vehicle colliding with the mountain and its overturning, and damage to the vehicle and the goods loaded on it, which means that the claim of the plaintiff to demand compensation for these damages, which are described in the lawsuit statement, is a claim for a guarantee damages arising from the guarantee of hidden defects (*ḍamān al‘uyūwb alḥafyīah*) in the frame sold to it by the first defendant<sup>(42)</sup>.

Thus, it was mentioned in the same judgment based on Article (521) of the Civil Code that was applicable to the incident of that case, and this is what the jurisprudence has established in many of its decisions, provided that the basis of the case, whether it is on a claim for compensation, a decrease in the price, or a hidden defect, the matter in all these cases is the same because all of them are based on the buyer's claim to the seller for the warranty resulting from the discovery of a defect in the sale, including a claim for compensation for the accident in question, the cause of which is attributed to a defect in the tire that the plaintiff bought from the first defendant.

**Here is a look at Discrimination of Rights Nos. 2153/2014, 4043/2016 and 570/2007:**

“We find that the mere existence of a defect in the sold item is not sufficient to prove fraud on the part of the seller, otherwise the time period cannot be applied to the defect guarantee claim, because fraud in the legal sense intended by the second paragraph of Article 521 of the Civil Code requires the seller to perform intentional acts that would camouflage the defect from the buyer intends to hide the defect and prevent him from discovering it in a timely manner, because if the seller deliberately conceals the defect by deception (*iḥfaa‘ al‘ayīb*), he will have committed a mistake that takes the buyer's fault in not examining the sold item with the usual care (*Discrimination Rights No. 3064/2018 and 2631/2004*). The discriminatory appeal must be dismissed<sup>(43)</sup>.

**In the previous examples,** it is clear to the researchers that the court has considered that hidden defects (al'uyūwb alḥafyāh) based on the above judicial decisions that have been reviewed and studied, are those that the claimant does not see, and they are the ones that necessitate the warranty because they involve deception (taḡryr) of the buyer. They conceal the defect (iḥfaa' al'ayīb) with the intent of fraud, fraud and deception, and the defect in this case is changing the labels of the country of origin so that the buyer believes that the goods are of a different origin than the real one to raise the price of a product that does not deserve to be raised.

**Finally, we examine** the application of the guarantee of deception (*al-ḍamān bl-taḡryr*) to this issue and its ruling.

It is clear to the researchers from what was previously presented that changing the labels in which the name of the country of origin is being forged and changed is one of the hidden defects that are not clear to the buyer and that appears only to experts. Thus, the concept of deception coincides with the legal viewpoint in civil law and the legal viewpoint in Islamic law. The seller must guarantee the goods if the buyer returns them to him after purchase when he has discovered this deception.

Again, this defect is one of the hidden defects unknown to the buyer - a defect whose definition coincides with the legal definition in Islam and in Civil Law - that confirms, according to the texts discussed in the research, that it is sufficient for the existence of a defect to be guaranteed by the seller. In addition, this defect of changing the country-of-origin labels on products is not known to the buyer and the seller did not stipulate innocence from it, it also coincides with the legal definition in the law among the jurists, who says that the defect in the goods is everything that necessitates a decrease in the price in the custom of merchants.

### **Conclusion:**

The study resulted in some results and recommendations, the most important of which are the following:

### **Results**

1. Changing the country of origin on labels is one of the hidden defects (al'uyūwb alḥafyāh) that are not clear to the buyer and that are only visible to experts. Thus, the concept of deception (āltaḡryr), according to the definition of Islamic jurists and according to the legal definition, applies to this process which requires the seller to guarantee the goods (*al-ḍamān bl-taḡryr*) if they are returned to him by the buyer who, after purchasing whatever was purchased, discovered this deception took place.

2. The concept of changing the labels of the country of origin aligns with the definition of defects in Jordanian Civil Law, as stipulated in Article 194 of Jordanian Civil Law No. 43 of 1976. This definition requires the defect to be proven old, affecting the contract's value, with the buyer being ignorant of it, and no innocence stipulated by the seller.
3. The reason (al'illah) for obligating the seller to guarantee hidden defects and product characteristics, as found in this study, is that the seller is obligated to transfer beneficial ownership to the buyer, according to what is imposed by good faith in dealing. However, under penalty of compensation rule in Islam (*ḍamān al'uyūwb alḥafyīah*), the seller is responsible for returning the defective goods and replacing them with suitable goods as desired by the buyer.
4. Verses from the Qur'an and narrations of the Prophet strongly emphasize honest dealings in all transactions, including commercial ones. Deceiving the buyer is strictly prohibited, as supported by the consensus of jurists.

### **Recommendations:**

The researchers recommend future studies focusing on the applications of Warranty by Deception (al-ḍamān bl-taḡryīr) concerning contemporary commercial practices, which may involve new methods that were not addressed by ancient Muslim jurists due to developments in trade and fraudulent techniques.

Additionally, we recommend examining civil court cases related to Warranty by Deception in accordance with Jordanian civil law. These cases should be identified, analyzed, and their alignment with Islamic jurisprudential principles assessed. Any discrepancies or errors in civil law should be addressed.

Given the close relationship between Islamic jurisprudence and the principles of trials in Jordanian Civil Law, there may be areas that require further development and clarification in jurisprudence. Hence, it is advisable to consider insights from various Islamic schools of jurisprudence to enhance and refine civil court laws and promote common principles, criticism, and overall development.

### **Margin list:**

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- (1) in this research, from now on, **Prophet muḥammad**, may God's prayers and peace be upon him, shall be mentioned as "**The prophet**".



- (2) See: Helli, Abdulrahman, The Concept of Taqwā and the Qur'ānic Ethical System: Structure and Context", **Journal of Islamic Ethics**, edition(5) , 1-2 (2021) : page32, doi: <https://doi.org/10.1163/24685542-12340053>.
- (3) Abou El Fadl, Khaled. "Qur'anic Ethics and Islamic Law", **Journal of Islamic Ethics**, edition(1) , 1-2 (2017) : page22, doi: <https://doi.org/10.1163/24685542-12340002>.
- (4) In this research, we used the (**Brill's Arabic transliteration system**) ,Version 1.0,14 December 2010,By Pim Rietbroek, <https://brill.com/page/BrillFont/brill-typeface>.
- (5) see: Edward, William Lane, **an Arabic -English Lexicon**, Volume II, p.2238, <http://lexicon.quranic-research.net/index.html>.
- (6) see: Ibn Manẓūr, muḥmd bin mukrm (died 711 AH) , **Lisān al-‘Arab**,(baīrwut,dar ṣaadr,1993) volume5, page 11,12.(translated by researchers) .
- (7) see: Al-Saati, abdulrahman, The permissible Gharar (Risk) in classical Islamic Jurisprudence, **Journal of Islamic Econ**, volume (16) issue2,1414A.H.page7.
- (8) see: *Alzrqā*, Muṣṭfā aḥmad, **almadḥal alfiqhī al‘aam** (Damascus, Dar alqalam, 2012), Volume1, page463. (translated by researchers) .
- (9) See: Alsarkhasī, muḥmd bin aḥmad (died 483AH) , **almabsuwṭ**, (Cairo, dar alsa‘adh,1994) , volume 12, page 194. (translated by researchers) .
- (10) see: Alkasanī, ‘ala’u aldīn bin ms‘uwd (died 587AH) , **bada’i‘ alṣna’i‘**, (Cairo, šrikāt almtḥbow‘at al‘lmīh, 1327AH) ,Volume 5,page 63. (Translated by researchers) .
- (11) See: Abu Albasal, Ali Al Ahmad "**Fraudulent misrepresentation in Marriage Contracts**" alṭa‘if University Library, Volume 1, page 2-3,(2013) : <https://ketabonline.com/ar/books/97643/read?part=1&page=2>.
- (12) see: Alqurtūbī, muḥammad bin aḥmad (Died 671 AH) , **alḡami‘ li‘ aḥkam alqurān**, (Cairo, dar alkutb almiṣrīh,1964) ,Volume 4,page 302, (translated by researchers) .
- (13) Albuḥārī, ṣaḥīḥ **albuḥārī**, book 43: Oppressions, Chapter 17: The person who behaves impudently, ḥadīṭ No. (2459) , Vol. 3. <https://sunnah.com/bukhari>.
- (14) ibn maḡah, **Sunan ibn maḡah**, Book 13, Hadith No. (2340) , Vol. 3.
- (15) see : Abu Albasal,Ali Al Ahmad "**Fraudulent misrepresentation in Marriage Contracts**" alṭa‘if University Library,Volume 1,page 7,(2013) : <https://ketabonline.com/ar/books/97643/read?part=1&page=2>.
- (16) see: Alsarkhasī, muḥmd bin aḥmad(died 483AH) , **almabsuwṭ**, (Cairo, dar alsa‘adh,1994) ,volume 2, page 22. (translated by researchers) .
- (17) see: Alkasanī ‘la’u aldīn (died 587AH) **bada’i‘ alṣna’i‘ fi trṭīb alṣara’i‘**, (Cairo, dar alkutub al‘ilmyh,1909), volume 2,page 273.(translated by researchers) .
- (18) Albuḥārī, ṣaḥīḥ **albuḥārī**, Book 81: To make the heart Tender) alriqaaq) ,Chapter 31: Whoever intended to do a good deed or a bad deed, ḥadīṭ No. (6491) , Vol. 8. <https://sunnah.com/bukhari>.
- (19) see: Ibn ‘abdiīn,Muḥammad alamīn, **ḥašīiaāt ibn ‘abdīn**, (Cairo, mktabāt muṣṭafā albbabī,1966) ,volume 5, page 11.(translated by researchers) .
- (20) see: alšarbīnī ‘šams aldīn muḥammad, **muḡniū almuḥṭaḡ ilā m‘rfāt m‘anī alfaṣ alminḥaḡ**,(Cairo, dar alkutub al‘ilmyh,1994) ,volume 3,page 202.(translated by researchers) .

- (21) see: Ibn Manzūr, muḥmd bin mukrm (died 711 AH) , **Lisān al-‘Arab**,(baīrwut,dar ṣaadr,1993) volume5, page 84.(translated by researchers) .
- (22) see :Ibn qudamh,muḥammad ‘abduallah (died 620AH) , **Almuḡnī**, (Cairo, maktabāt alqahirh, 1968), volume 5,page 87.(translated by researchers) .
- (23) see: Ibn Manzūr, muḥmd bin mukrm (died 711 AH) , **Lisān al-‘Arab**,(baīrwut,dar ṣaadr,1993) volume3, page 239.(translated by researchers) .
- (24) see: Afndī, ‘alī ḥīdar (died 1353AH) , **durar alḥukkam fī ṣarḥ maḡliāt alaḥkaam**, (Lebanon, dar alḡiyīl,1991) ,volume 4,page 345-346.(translated by researchers) .
- (25) see: Ibn farḥuwn, ibraahyīm bin ‘alī (died 799AH) , **tabṣirāt alḥukam fī aṣuwl alaḡḡiyāh wa-manahiḡ alaḥkaam**, (Cairo, maktabāt alkuliyat alazhrīh,1986) ,volume 1,page 240.(translated by researchers) .
- (26) see: Alṣyīrazī, ibraahyīm bin ‘alī (died 476AH) , **alluma‘ fī aṣuwul alfiqh**, (Cairo,dar alkutub al‘ilmyh, 2003) , volume 1,page 53.(translated by researchers) .
- (27) <http://www.jsmo.gov.jo/ar/Pages/default.aspx> http://193.188.66.248:8060/ar/Standards.
- (28) see: Abu zuhrāh, muḥammad aḥmad (died 1974) , **almilkyāh wnaḡaryiāt al‘aqd fī alṣaryī‘āh Al-Islaamyāh**, (bīyruwt dar alfīkr al‘arbī,1996) ,page 461.(translated by researchers) .
- (29) see : Al‘aaniy,‘abd alkarīm zīydan (died 2014) , **almadḡal lidirasāt alṣaryī‘h Al-Islaamyāh**, (bīyruwt dar alfīkr al‘arbī,1996) ,page 358-359.(translated by researchers) .
- (30) see:<https://www.wipo.int/edocs/lexdocs/laws/ar/jo/jo019ar.pdf>.(translated by the researchers)
- (31) see: <https://jordan-lawyer.com/2021/09/21/guarantee-for-hidden-defects/>, ḡaman al‘uyūwb alḡafyāh.
- (32) see: <https://shamela.ws/book/968/78#p9>(translated by the researchers) .
- (33) see : Ibn alhumaam, kamal muḥammad (died 861AH) , **fath alqadyūr ‘alā alhidaayīh**, (Lebanon, dar alfekr,1970) , volume 6, page 357. (translated by researchers) .
- (34) see : Alkaasaanī, ‘ala’ aldiyīn ibn mas‘wud (died 587AH) , **badaa’i‘ alṣana’i‘ fī tartyīb alṣara’i‘**, (Cairo, dar alkutub al‘ilmyāh,1970) , volume 5, page 272-273.(translated by researchers) .
- (35) see : Ibn ruṣd, muḥammad ibn aḥmad (died 595AH) , **biidayiāt almuḡtahid wanihayiāt almuḡtaṣid**, (Cairo, dar alḡadyūt,2004) , volume 3,page 191. (translated by researchers) .
- (36) see : Alsory, Kefāḡ AbdulQader, **āltaḡrīr waatruh fī al‘uḡwud**, (Amman, dar alfekr,2007) ,page 168-171. (translated by researchers) .
- (37) see: Alwazzan, walyīd muḥammad, **ibra’ masuūlyiāt alba’i‘ min ḡaman al‘ayīb alḡafi fī ‘aqd albi’**, master thesis, Alsarq al‘awsat university, 2011, page (15) .
- (38) see:<https://www.wipo.int/edocs/lexdocs/laws/ar/jo/jo019ar.pdf>.(translated by the researchers)
- (39) see : Alsanhuwri, ‘abd alrazzaq, **alwaysīḡ fī ṣarḥ alqaanuwn almadanī**, (Cairo, dar alnashr,1952) ,Fourth section,page 713.(translated by researchers) .
- (40) see: Khalīl,sayed Abdullah, ḡaman al‘uyūwb alḡafyāh fī bay’ al‘aqar: dirasah muḡaranah, **Journal of the College of Sharia and Law**, alazhar university, volume (5) issue19,2017,page3185.
- (41) See: <https://jordan-lawyer.com/2021/09/21/guarantee-for-hidden-defects>, page (12) .
- (42) Ibid, page (13) .

(43) see: [https://jordan-lawyer.com/2021/09/21/guarantee-for-hidden-defects/.page\(12\)\\_\\_\\_](https://jordan-lawyer.com/2021/09/21/guarantee-for-hidden-defects/.page(12)___), translated by researchers.

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