

Resistant the microelectronic agreement in Palestinian act

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Abstract: Electronic contracts are international contracts, cross-border, and do not fall within the borders of a specific country, and are commercial, civil, or mixed according to the nature of each contract and the relationship between the parties to the contract. In the conclusion of the electronic contract, the offer must be clear, indicating all the basic elements so that the midwife is aware of his matter, so the legislator was keen to provide a sufficient degree of protection for electronic transactions, due to the ignorance of each party to who deals with him, the image displayed on the computer screen must reflect the real situation of the goods without ambiguity or shortage, and the electronic acceptance must be clear, explicit, and silence is not considered acceptance in electronic contracting.

Required to give it legal authority, so freedom of proof was taken in commercial matters, noting that the nature of the rules of the law of evidence is complementary, and not peremptory, i.e. the parties may agree otherwise. Since writing needs the signature of its parties to indicate their approval of its content, the signature on electronic documents has several forms, due to its nature, and the fact that it is done through electronic means, including biometric and digital signatures, electronic pen signatures, and others.

The granting of authenticity to an electronic signature is closely related to the degree of security available in it among the concerned parties, so many legislations have sought to impose certain conditions on the electronic signature, to give it authenticity in proof, and there has been a convergence between these laws in their conditions. The researcher believes that there is nothing wrong with adopting electronic signatures under the Palestinian Evidence Law by agreement.

The electronic signature is not accepted in all transactions by law, as some transactions are taken, such as official transactions, and transactions agreed upon by the parties, and there are transactions that are not accepted by electronic signature, depending on their specificity and sensitivity, which requires written documentation, and they have been received exclusively, so they may not be expanded, including the establishment of the endowment, the will, and their amendment, transactions for the disposal of immovable property, agencies, transactions related to personal status, and others.

INTRODUCTION

There is no doubt that the digital revolution, and the information awakening that the world knows today, where information technology has become a form of the nervous system of modern societies, so that contractual processes have known a set of changes that touched their legal system, so the conclusion of contracts that are made through modern means of communication arouses everyone's interest, especially with regard to the possibility of proving these contracts. On the occasion of the tremendous development of modern Internet networks and the growing spread of this phenomenon, this has led to the prevalence of so-called electronic contracts, the latter today poses a set of legal problems, especially the part related to evidence, so that this element occupies a prominent position in all relations and transactions personal, civil and commercial, as it is an essential means of obtaining rights and to oblige others to what is contained therein, In practice, the right has no value when its owner is unable to prove it, as the success of the proof gives the right full effectiveness. With the failure of proof, the right is stripped of its value, in short, "where there is no proof.... Later".

The world has witnessed a great development in modern means of communication as a result of the information revolution in the field of information and communication, which has been credited with the emergence of a new type of contract through electronic means, especially through the Internet, and these contracts are known as electronic contracts. The Internet has become at the present time a fertile

environment for the conclusion of electronic contracts after it has exceeded its traditional nature as a means of transferring and exchanging electronic correspondence to complete electronic transactions, so the Internet has become a means of management in the management of public utilities, and the spread of electronic contracts plays a prominent role in the development of various sectors and individuals, and in being an economic means used by individuals and used by countries in order to build the national economy or encourage investment.

Importance of the study:

The importance of this study lies in the fact that it will try to organize the electronic contract in terms of how to prove it in the event of a In the fact the electronic contract are conducted remotely and without the presence and meeting of the two parties face to face, which necessitates studying the extent of the binding and authenticity of these contracts, especially since the contract is often through the Internet and websites, and this matter and by virtue of the fact that dealing through the Internet is not controlled or monitored and is not available from the parties to see the other party or verify it or its eligibility.

Literature review:

1) Yahya Yousef Falah Hassan, Legal Regulation of Electronic Contracts "A Comparative Study" (Master's Thesis) was discussed in 2007, An-Najah National University, Nablus, Palestine, so that this study dealt with and focused on the provisions of electronic commerce and the effects of the contract and electronic signature

2) Nablus, Palestine, so that this study dealt with and focused on the means used in traditional proof in terms of what it is, its conditions and its authenticity of proof, as well as the electronic means of juvenile and then the electronic signature.

study problems

The problems of the study in this research can be summarized as follows:

1) The extent of compatibility and harmony between the traditional provisions of the law of evidence and the electronic rules of evidence and the extent to which these traditional texts absorb the provisions of the rules of evidence with regard to electronic transactions?

2) The rigidity of legal texts and their survival as they are made the provisions and rules of evidence of electronic transactions deduced from traditional texts, which led to some shortcomings regarding some issues. As a result, electronic documents are not given a clear authority that keeps pace with technological developments and elevates them to what they should actually be.

Scope of the study:

This research did not deal with the full effects that can arise from electronic contracts, nor the reasons for the expiry of electronic contracts, as the above topics follow the nature of each contract separately, but the scope of the research was limited to the qualitative determinant by exposure to traditional means of proof in terms of what they are, conditions and authenticity of proof, and as a result the search in the appropriateness of dropping these factors on electronic documents.

Study Questions:

1) What is the authenticity of the electronic document according to the terms of the customary document?

Objectives of the study:

1) Identify the nature of electronic contracts

2) Explanation of how the Palestinian Evidence Law deals with electronic writing, methods of proving it and the exceptions contained therein

Study Methodology:

In this research, the comparative analytical approach will be followed, which is based on the analysis and linking of causes to results, and comparison between legal systems, as this comparison helps to know the advantages of the laws in question and know their disadvantages.

Study Plan:

While the second one came to indicate the conditions that must be met by electronic writing in order to be authentic. The third one was to clarify the exceptions contained in the need to prove in writing.

The concept of writing

Writing comes at the top of the means of proving legal actions, due to the ease of preservation and therefore the possibility of referring to it in the event of a dispute between the parties to the contractual relationship, and this means that writing is a means of preparing evidence to prove the agreement and satisfaction of the parties, and therefore the agreement to write may be in non-material means, but according to the supports that lead to the same purpose of traditional writing. So that if the concept of writing is referred to, we will know that it does not exceed symbols that express thought, and saying, and it is not a condition to understand this expression that it is assigned to a specific medium, whether on wood, paper, stone, or on leather plates. As long as this medium is able to transmit writing symbols, it is reliable. The legislator did not address the definition of writing, but the work was stabilized and the definition of official documents as ((documents recorded by the official employee in the records in accordance with the conditions prescribed by law)).

This was confirmed by the Jordanian Court of Cassation in its decision to define the official editor by saying: "The official editor is the document edited by a public official competent to edit it by virtue of his job, or falsely attributed to a competent public official, and gives the form of official documents issued by him (Decision No. (49/1962) issued in (1962) on page No. (622/5), and customary documents are defined as papers issued by individuals and that a public official does not enter into editing (Jami, Hassan Abdul Basit, 2000, p. 16). In this direction, electronic writing will be talked about as long as the concept of writing must be determined within the framework of its function,. Accordingly, the UNCITRAL Model Law is defined in Article 2 that the term data message means "information generated, sent, received or stored by electronic, optical or similar means, including but not limited to electronic data interchange or e-mail, telegraph or teletcopy. UNCITRAL Model Law on Electronic Signatures (2001).

Article (1) of the Palestinian Electronic Trade and Exchange Law defines an information message as "information that is generated, sent, received, or stored by electronic or similar means, including electronic data interchange, e-mail, telegraph, telex, or telecopying (Palestinian Electronic Trade and Commerce Law,

So that the process of transferring data electronically via a computer is summarized in entering the material to be sent from the sending device, whether by writing or by photographing it. When the device is given a command to send, it converts the sent material into digital data transmitted through telephone lines to the addressee computer to store it in its files, so that the sent material can be retrieved when needed, using one of the forms of electronic outputs such as papers and disks in addition to writing printed on the device screen.

In order for electronic writing to perform its legal function in proof, some conditions must be met that extinguish the necessary authenticity.

The writing should be readable:

The idea of writing has evolved due to scientific progress, and the emergence of new contracting methods, and writing is no longer linked to the traditional paper, but legal thought calls for electronic writing extracted from computers. And the Internet, as long as there is a possibility of verifying its content, to prove civil transactions between contractors (Momani, Bashar Talal, 2004, p. 12) There is no difference between the customary editor and the electronic editor in the need to meet this condition, and if the electronic editor is consulted, it is done through electronic media in machine language consisting of combinations and

permutations between zero and one, and therefore the human being is unable to understand this complex logarithmic language, which prompted the creation of special programs carried on the computer, to translate the machine language into human language, and convert machine codes into letters readable to humans, and the reading condition has been achieved accordingly (Abu Al-Haija, Muhammad Ibrahim, 2005) The written document prepared for proof must be legible by entering the letters, symbols and numbers known to the person to be protested against these documents.

With regard to talking about electronic editors and the mechanism by which these editors are issued, it turns out that the computer system processes the data entering it in a way to deliver it to understand the reader, so that this process takes place through electronic media in the language of the machine consisting of combinations and permutations between zero and one, and therefore the human being is unable to understand this language, which prompted the creation of special programs carried on the computer, to translate the machine language into human language, and convert machine codes into letters It is legible to humans, and therefore has value and authority in proof whenever it is possible to decipher this encryption (Obeidat, 2005, p. 79). The reading requirement is fulfilled accordingly and it is easy for him to understand it, and the language that appears on the screen of the device is understandable and readable to the contractor.

The Continuity of the writing:

In order to be authentic, the written editor is required to be characterized by its continuity, so that it is recorded on a medium that allows the stability of writing on it and refer to it when needed whenever necessary to review the terms of the contract or to present it to the judiciary when a dispute occurs between its parties. The property of continuity of writing may not be available in electronic bonds used in contracting via the Internet, due to the physical and chemical composition of magnetic chips, and recording discs that are characterized by a high degree of sensitivity that leads to their damage, if the strength of the electric current changes, or the degree of storage of these media changes, which loses the ability to retain and continue such electronically written information.

This has been overcome by the presence of advanced devices with the ability to save information, and its continuity to a large degree, and this leads to the fulfillment of this requirement in electronic documents (Momani, Bashar Talal, 2004, p. 103). However, this condition faced some criticism, including with regard to the features of electronic media from having a high sensitivity with which it can change its programming or damage those media if the intensity of the electric current differs or there is a severe difference in the storage temperature, and despite what this criticism from the point of view, there are advanced electronic media in which the element of stability and continuity is achieved in relation to what is below them, Where this information can be kept and referred to even after a long period that may exceed the ability of ordinary papers that may be affected by time factors such as burning, moisture or insects, so the features of this editor change (Al-Jamal, 2006, p. 200). Thus, the condition of continuity has been fulfilled by the electronic editor, like the customary document.

Stability and non-adjustability of the writing:

In order to be authenticated on the written editor, it must be unmodifiable, and to achieve this condition, in the case of editable editors, this addition must be visible on those documents, so that this amendment is only done by destroying the editor or by leaving a clear impact on it that is easy to detect by debate or by referring to those with experience in that. Thus, the element of trust can be achieved on what is recorded in these documents (Hijazi, 2009, p. 335). Where the writing is required in order to become evidence in the proof to be free from any defect that affects its validity, and the presence of any filler or erasure in the content of the editor, this undermines its strength in proof. Since we are dealing with electronic editors, this technology must be able to detect any modification or change in its content, and to accurately determine the modified data.

The process of storing writing on discs or tapes ensures their preservation and longevity, and electronic documents are saved in their final form without the possibility of any modifications, and they are kept in boxes under the supervision of trusted bodies from the State. Confidence in electronic editors is enhanced if we add to the above that modern science has created information codification programs, the entered information is not amendable in any way, and this is called a system and the bottom line is that electronic writing can replace traditional writing as long as . (Acrobat) shall be included in writing within the meaning

of the law, by being legible and clear indicating the content of the legal act. The traditional paper editor, which the law considered an argument, does not mind launching it on both the written and electronic editor (Abu Haiba, Dr. Najwa, 2002, p. 29).

It should be noted that the character of permanence and non-adjustability depends mainly on the support on which the information and data are installed, where the electronic supports are divided into two parts, permanent supports and non-permanent supports. The non-permanent supports are those that accept change in their content, modification and rewriting without leaving any trace on them that can be observed, while the permanent supports are those that do not accept multiple use, so that it is for one time without the possibility of changing their content, and that any attempt to manipulate them results in the execution of this pillar or losing its validity to retrieve the writing. One of the proposed solutions to avoid the possibility of amendment to these documents, especially if we are dealing with the documents installed on non-permanent supports, the parties may resort to the introduction of a neutral intermediary between them whose task is to verify the exchange of messages and ensure their integrity and save the data circulating through them for a certain period, including resorting to one of the certification service providers.

The possibility of retrieving saved electronic documents:

The requirement of referencing electronically edited data can be included in the condition of stability, continuity and nonmodifiability, so that what is the benefit of preserving and fixing. This is confirmed by Article (1/10/a) of the UNCITRAL Model Law, which states: "When the information is required to be in writing, the data message meets that condition if the information contained therein is accessible in a manner that allows it to be used for subsequent reference (UNCITRAL Model Law on Electronic Commerce, 1996).

Article 9/a of the Jordanian Electronic Transactions Law stipulates that "if the parties agree to conduct a transaction by means of Electronic The legislation on this transaction requires the submission, transmission or delivery of information related to it to third parties by written means, for this purpose it may be considered conducted by electronic means in accordance with the requirements of such legislation if the addressee is able to print, store and refer to such information at a later time by the means available to him" (Jordanian Temporary Electronic Transactions Law No. 85 of 2001). Because of the current ability of electronic editors to retain stored data for long periods that allow them to be referred to at any time, the retrieval requirement.

Signature:

Signature is a word derived from the triple verb signed, and signed the contract, or the instrument with its name written at the bottom of it, signing it, or acknowledging it. Signature is a language that means: "What the president comments on a book or a request for his opinion on it, and the signing of the contract or instrument that the writer writes his name in the tail of his signature or acknowledgment of it, and the signature has forms, either by signing by handwriting, or by writing the person's name as Cam La, or by fingerprint, or by seal. a data message that may be used to identify the signatory in relation to the data message and to indicate the signatory's consent to the information contained in the data message".

which has a single character, allowing the identification of the signatory's personality and his approval of the information contained in the electronic editor."

(A single character, which allows identifying the person of the signatory, and distinguishes him from others (Al-Sanad, Dr. Abdul Rahman bin Abdullah, 2004, p. 146). When studying the signature, we find that it is linked to the written evidence, so in order to give the legal argument for the signature, the letter or document to be authenticated by signature must meet the conditions of written evidence, in addition to the conditions of the signature itself necessary to perform its function in determining the personality of the signatory and his acknowledgment of the content of the document, and its attribution to the signatory.

Evidence exceptions in writing

The Palestinian Evidence Law has dealt with modern means of proof within the scope of exceptions, that is, there is no need for complete written evidence to give these modern means legal authority, so the law took freedom of evidence in commercial materials, and the rules of the Evidence Law are complementary, not preemptory, and as a result, it may be agreed that the parties violate them, the rules of evidence are not of public order, and therefore the parties have the right to waive deaf or explicit them and establish evidence by means other than writing regardless of the limit set out. In the Palestinian Evidence Law. Therefore, it is necessary to discuss the legal authority of modern means of communication in commercial matters, and then present the legal opinion with regard to civil matters in addition to raising some things with regard to the exceptions contained in the need to prove in writing under electronic means in the following sections.

The authoritativeness of electronics in commercial conduct

we find that it stipulates the following: "In non-commercial matters, if the value of the obligation exceeds two hundred Jordanian dinars or its equivalent in the currency of legal circulation or is of unspecified value, the testimony of witnesses may not prove its existence or expiry, unless there is an express or implicit agreement.

As a result of giving commercial documents the principle of freedom of proof, it follows that evidence and authenticity of the validity of all contracts concluded through modern electronic means The principle of freedom of proof in commercial matters is in the face of the merchant, while the non-merchant is confronted with proof using civil rules of evidence, and it follows that non-traders have no fear of the risks of using modern means of communication to prove the actions that occur through them, as well as traders have to bear the risks of using modern means of communication because they are traders and conclude their actions through electronic contracts (Abdul Hamid, Raed, 2005, p. 40).

In order to uphold the freedom of proof in business, these acts must acquire the status of commercial activities carried out by the merchant for a commercial interest, and if the work carried out by the merchant is for other than the interests of his trade, he does not benefit from the freedom of proof, even if he is a trader. Palestinian Evidence Law No. 4 of 2001, Article 23). In order to uphold the freedom of proof in business, these acts must acquire the status of commercial activities carried out by the merchant for a commercial interest, and if the work carried out by the merchant is for other than the interests of his trade, he does not benefit from the freedom of proof, even if he is a trader.

Palestinian Evidence Law No. 4 of 2001, Article 23). The disposition may also be mixed, that is, one of the parties to the act is a merchant who contracts for the purposes of his trade and the other party is not a merchant who contracts for his personal or family purposes, such as banking operations between the customer and the bank in this case, the proof is free against the merchant, so that the party other than the merchant can prove his claim by any method of proof, regardless of the value of the disposition. He may use electronic documents in evidence (Ibrahim, 2010, p. 177). Thus, the buyer via the Internet enjoys freedom of proof against the merchant, and on the contrary, if the proof will be made by the merchant against an individual other than the traders, the proof must be made in accordance with the requirements of the rules of evidence in the civil rules (Suleiman, previous reference, p. 202).

The authoritativeness of electronics in civil conduct

They are transactions concluded between parties that are not traders, or between traders or traders and non-dealers, but related to non-commercial transactions. Thus, the Palestinian legislator allowed proving non-commercial legal actions whose value is less than the amount of two hundred dinars by all means, which is stipulated in Article (68) of the Palestinian Evidence Law and referred to earlier. As a result, it is possible to prove civil legal actions by all means of proof, including evidence and presumptions, which extends to include electronic means if they do not exceed the limit stipulated by law.

It is noted that the freedom of proof in this case by all means of proof, including electronic documents, is guaranteed to both parties, the merchant and the consumer, without regard to the nature of the commercial or civil transaction, as this exception has a general and comprehensive scope (Suleiman, previous reference, p. 207). The researcher believes that the goal of the legislator is to alleviate the parties to the contract in

such obligations of low material value, the requirement of writing to prove them leads to prolonging the dispute and occupying the judiciary with unimportant matters other than unnecessary expenses.

The requirement to write for legal actions of limited value would overwhelm citizens and undermine confidence in transactions. In the concept of violation, we see that proof of civil legal actions whose value exceeds two hundred Jordanian dinars is in writing, unless the parties agree otherwise, such as agreeing on the principle of freedom of evidence for these actions as well, regardless of the value of the act. Referring to the above, we see that the legislator adopted the principle of freedom of evidence for commercial matters, whatever their value, and civil actions whose value does not exceed two hundred dinars, and as a result, the actions whose value exceeds the amount mentioned are subject to the principle of the obligation to prove in writing, however, the legislator has returned to the principle of freedom of evidence and allowed evidence of what was permissible to prove in writing legally, In exceptional cases.

Case of Loss of the Written Document for Foreign Reason

Article (71/3) of the Palestinian Evidence Law stipulates that: It is permissible to prove by the testimony of witnesses what should have been proven in the following cases This case assumes that a person has previously obtained complete written evidence in accordance with the decision in the Evidence Law, and then lost this evidence because of his irrelevant to it, such as force majeure or the state of necessity or the act of others, and here as long as the person did not fall short of what is imposed on him, there is no doubt that the protection of the legislator extends to him. Thus, it is clear that the establishment of this exception and the use of witness testimony instead of written evidence requires the fulfillment of several conditions, including:

When talking about electronic documents, we see that jurisprudence was divided into several directions, including what went to the inability to prove legal actions by printed copies of electronic means, and their evidence in this was based on the fact that the first condition was not achieved as the computer's memory is not a complete written evidence for not completing the necessary conditions for the full written document. This is because resorting to the image requires the availability of the two conditions, and therefore cannot resort to this exception to overcome the lack of conditions of the written editor full editor printed from the electronic media, because if there is a printed copy must exist the original, and we do not have in this case the original (Suleiman, previous reference, p. 217).

While the other view was that the case of loss of written evidence due to the unrelated will of the parties to it should lead us to accept what results from modern communication extracts in proof. For example, microfilm "film thumbnails", which is the copying of data from computer memory on magnetic strips kept by the concerned party instead of traditional paper supports, and these thumbnails are characterized by the possibility of viewing the images recorded on them by sight, by printing them magnified on paper supports. (Qandil, previous reference, p. 29 + Dr. Al-Jamal, previous reference, p. 270) For example, as if a person loses an account statement from his bank, here the problem is not raised in the cases of the customary deed, as the matter is very simple because the bank keeps computers and floppy or hard disks.

With the origin of these statements, and therefore the customer only has to go to the bank and request an alternative statement for the previous one in exchange for paying a commission, and this applies to all electronic computer outputs, and therefore it can be said simply that the rule of freedom of proof in the event of the loss of the electronic bond cannot be applied to the possibility of issuing an alternative bond to the missing bond (Saddah, 2009, p. 109).

Results and Recommendations

RESULTS:

How to prove the electronic contract was identified, and the extent of the authenticity of electronic documents in proof, as well as we talked about the electronic signature in terms of its definition and the extent of its authenticity in proof, and in this research the researcher reached the following results: Electronic documents have the same authority as ordinary documents in proof because they meet the conditions of traditional documents to rely on them in proof, and these conditions are: that the written evidence be legible and continuous, and that it is stable and unmodifiable.

The permanence and non-modifiability of electronic editors depends mainly on the pillar on which the information and data are installed, so that the supports are not equal to the same degree of strength in their ability to save information without change, or at least without revealing the location of the change if it occurs. The testimony of witnesses in the event that it is not possible to obtain written evidence for material or moral reasons does not make it complementary to the written evidence, but rather replaces it when it is lost or impossible to obtain it as if there were an impediment to obtaining it. When concluding an electronic contract, the contracting parties exchange messages and information and agree on the contract in an encrypted form, by each party encrypting the message before sending it to the second party through the authentication body, which in turn decrypts it according to the instructions of the sending party.

The task of encryption is to keep the transaction confidential for fear of hackers and fraudsters. As there are private bodies called publicity or certification bodies, whose task is to grant a signature certificate to the person, as they are a third party witness to the commercial transaction, and give the other party the necessary information about the dealing, and verify its authenticity for fear of being a fraudster, or a pirate. The granting of authenticity to an electronic signature is closely related to the degree of security enjoyed by this signature, and for this reason many legislations seek to find the necessary means to grant the electronic signature the element of security, and to grant licenses to publicity authorities, to give the necessary key pair to encrypt the message, the electronic signature, and to preserve the confidentiality of the electronic message, and this is the role of publicity authorities in granting encryption keys.

Recommendations:

1. The need to develop various national legislations to provide the contracting party with the necessary means of protection in various electronic operations, by clearly stating the legal system for consumer protection, without ambiguity, or ambiguity, which achieves a balance between the interest of the contracting parties, especially when considering the presence of a strong party in the contractual relationship. Electronic documents must also be given the authority of evidence before courts and government agencies, and given the authenticity of paper documents in proof.

2. The need to take care and caution when contracting electronically, with regard to methods of proof due to the risks that may be caused to the contracting party.

3. Guarantees must also be put in place that guarantee freedom of proof in electronic contracting, in line with the developments of the current era, and find the necessary means to achieve confidence and security between contractors by finding the necessary guarantees for the implementation of electronic contracts.

4. The Palestinian legislator grants licenses to certain certification and authentication bodies to enable them to authenticate and verify the authenticity of electronic signatures, which provides confidence, security and guarantee for the Palestinian merchant and consumer dealing in e-commerce.

5. Work on finding specialized courts in the field of e-commerce, and holding training courses for judges in this field in Palestine, to graduate judges specialized in this type of cases in light of the fact that e-commerce has become a social necessity, to keep pace with global development and the era of technology

6. Creating unified international legislation on electronic commerce, comparable to unified international legislation on international trade, and the need for the state to harmonize in its legislation these laws and international agreements to facilitate electronic commerce between countries.

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