



THE LEGAL SYSTEM OF ELECTRONIC CONTRACTS

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Abstract:

The global evolution towards economic and trade globalization has impacted all aspects of life, including the use of electronic technologies in transactions. This is achieved through the electronic transfer and exchange of information, without resorting to the real or material world. This has been exploited as a tool for expressing will, concluding contracts, and conducting various business transactions among individuals located in distant places. It has not been limited to that but has extended to the execution of these operations. This new pattern of contracting and commerce has later been termed as electronic contracts or e-commerce, playing a significant role in driving the global economy.

Keywords: Contract Conclusion, Expression of Will, Electronic Contracts, E-commerce.

INTRODUCTION:

The use of electronic means in general, and the Internet in particular, has transformed the world into a small cosmic village with no defined boundaries, creating virtual time and space. It has allowed transactors to access a digital world for conducting their transactions. As a result of all this, new means and methods for contract formation have emerged, unprecedented in societies before, and they continue to evolve to this day. Among the most effective modern contracting methods is electronic contracting, which, in turn, has paved the way for the birth of electronic commerce. Today, it is possible to conclude contracts through electronic means instead of relying on traditional contracting methods.

To clarify the legal framework of electronic contracts, the concept of the electronic contract was addressed to define its nature, characteristics, and differentiate it briefly from contracts that resemble it. Subsequently, the issue of the formation of the electronic contract was discussed, elucidating its pillars, including consent, subject matter, and consideration.

Given the significance of this topic, the following problem will be addressed to understand its importance:

What are the legal provisions governing electronic contracts?

The answer to the aforementioned problem necessitates adopting multiple approaches. As scientific research is characterized by methodological integration rather than methodological singularity, a combination of descriptive, analytical, and comparative methods has been employed. To integrate the descriptive and analytical methodologies, they have been simultaneously relied upon by examining the information and facts presented in this subject. Various details were analyzed, starting from jurisprudential opinions, through legal texts, and reaching the most suitable and obligatory stance to be followed by legal professionals.

Furthermore, the comparative method was utilized by relying on legal texts regulating electronic transactions and the model laws issued by the United Nations Commission on International Trade Law. All of this was done with the aim of achieving both quantitative and qualitative scientific accumulation, as well as introducing more legal momentum and diversity. Accordingly, the objectives of this study, to be effectively achieved, necessitated the adoption of a dual plan by dividing the topic into two sections: the first section addresses the concept of the electronic contract, while the second section focuses on the evidentiary aspects of the electronic contract.

Part One: The Concept of Electronic Contracts



The concept of electronic contracts has sparked extensive debate in the field of jurisprudence as well as in the realm of law. There have been differing perspectives on defining the content of electronic contracts due to the diverse nature of contracts formed through the Internet. Each researcher approaches the definition of this contract from a different angle. Accordingly, this part will be divided into three points. In the first point, we will clarify the definition of an electronic contract and its legal nature (First Subsection). In the second point, we will highlight the characteristics of electronic contracts and what sets them apart from other contracts (Second Subsection). As for the third point, we will elucidate the formation of electronic contracts (Third Subsection).

First Requirement: Definition of Electronic Contracts and their Legal Nature

The structure and content of an electronic contract do not differ from traditional contracts, which are governed by the provisions of civil law in general, except in terms of the method by which they are concluded, namely the electronic method. Based on this characteristic and some others, we will examine the definition of an electronic contract and then clarify its legal nature.

First, Definition of Electronic Contracts

There is no unified definition for an electronic contract, especially considering the various parties and forums that have provided these definitions on one hand, and the type of technology used in their formation on the other hand. Therefore, we will present the most important definitions found in international conventions, those provided by comparative laws, and also refer to some definitions put forth by jurisprudence¹.

1. The Jurisprudential Definition of an Electronic Contract

The jurisprudential definition of an electronic contract includes several variations. Some have defined it as a contract concluded through the Internet, which allows contracting in a virtual world without the physical presence of the parties, disregarding other electronic means. Others have stipulated the requirement of an audible and visible communication medium for contracting, enabling interaction between the parties. Another perspective focuses on electronic means in general, without limiting it to the Internet².

Among these definitions, we account for the following:

- "An agreement that is entirely or partially³ concluded through electronic means." It is worth noting that this definition is vague because a contract is based on elements, conditions, and establishes legal obligations between the parties.
- Another definition states: "The contract that is concluded through the Internet." It is an ordinary contract but acquires an electronic character based on the method of conclusion or the means through which it is concluded⁴.
- It is also defined as: "An agreement in which the offer and acceptance converge on an open international communication network, using an audible and visible medium, thanks to the interaction between the offeror and the offeree⁵."

2. The Legislative Definition of an Electronic Contract in Comparative Law:

The legislative definition of an electronic contract in comparative law has been explicitly and directly addressed in various legislations. These include the Jordanian Law of Transactions of 2001, the Dubai Law on Electronic Transactions and Commerce of 2002, the European approach regarding contracts concluded at a distance issued on May 20, 1997, the French legislation under Decree No. 2001-741 regulating distance contracting, the Law on Electronic Commerce issued on August 9, 2000, and in accordance with the multiplicity of references and the divergence of legislations, some laws in certain countries have used the term "electronic commerce," while others have referred to the term "electronic transactions."

In the French legislation, an electronic contract is considered as one of the forms of distance contracts, regardless of the means used to conclude it. Additionally, the Canadian legislator has addressed it as a contract between a merchant and a consumer without physical presence between them in the case of offer or acceptance, given that the offer is not directed to a specific consumer⁶.



As for Arab legislations, we find that the draft Egyptian Electronic Commerce Law defines it as "any contract from which the will of one or both parties is expressed, or negotiations or the exchange of documents are conducted, either wholly or partially, without electronic intermediation."

The Jordanian Law on Electronic Transactions addresses it as: "The completion of a contract through electronic means, either wholly or partially⁷ ."

Article 2 of the European Directive issued on May 20, 1997, concerning the protection of consumers in respect of distance contracts, states: "A contract relating to goods or services concluded between a supplier and a consumer, under an organized distance sales or service-provision scheme run by the supplier, who, for the purpose of the said contract, makes use of one or more means of distance communication up to and including the moment at which the contract is concluded." This provision defines the concept by clarifying the notion of distance contracts. On the other hand, the first chapter of the Tunisian Law on Exchanges and Electronic Commerce defines it as: "Electronic contracts shall abide by the rules of written contracts, insofar as they do not contradict the provisions of this law." Thus, this definition suggests that there is no difference between a contract concluded between two present individuals in a contractual meeting and an electronic contract, except for the means used, as evident from the definition of electronic commerce as commercial operations conducted through electronic means⁸ .

Article 2 of the United Nations International Electronic Commerce Law defines an electronic contract as the formation of a contract through the exchange of data messages, whether by electronic or other means, in accordance with an agreed-upon standard for the formation of information. Similarly, Article 2 of the law specifically addressing electronic transactions defines it as "an agreement formed through electronic means, either wholly or partially."

As for the Algerian legislator, it is defined in Article 6, paragraph 2, of Law 18-05 related to electronic commerce that⁹ an electronic contract is defined as follows: "The contract, within the meaning of Law 04-02 dated 5 Jumada al-Ula 1425 corresponding to 23 June 2004, which determines the rules applicable to commercial practices, is concluded remotely without the physical and simultaneous presence of the parties, exclusively by resorting to electronic communication technology." Thus, an electronic contract is a commercial contract regulated by the Electronic Commerce Law, which refers to "the activity whereby an electronic supplier proposes or guarantees the provision of goods or services remotely to an electronic consumer through electronic communications¹⁰ " Article 3 of Law 04-02, which determines the rules applicable to commercial practices, states that "a contract is any agreement or convention aimed at selling goods or providing a service, previously drafted by one of the parties, with the consent of the other party, in such a way that the latter cannot make any substantial changes to it. The contract can be executed in the form of an order, invoice, guarantee document, schedule, delivery receipt, or any other document, regardless of its form or support, that includes the specific provisions or references consistent with the pre-established general terms and conditions of sale¹¹ "

Second, The legal nature of an electronic contract:

According to French jurisprudence, an electronic contract is often considered a contract of adhesion. This is because the merchant sets the terms on their website based on a standardized contract that does not allow for modifications. The contracting party can only select options provided on the seller's website to specify the desired specifications of the goods, with the price predetermined. They can either accept these terms and conclude the contract or reject them and not enter into the agreement¹² . However, some argue that it is a consensual contract¹³ , especially if the contracting parties engage in means of communication and negotiation such as email, and that the contracting party can choose freely through electronic platforms.

Second Requirement: Characteristics of the Electronic Contract and its Distinction from Other Contracts

The inherent nature of the electronic contract itself constitutes a distinct feature, as it is conducted through a virtual network on a digital platform. This renders it entirely different from other contracts. This article aims to delineate the characteristics of the electronic contract (first section) and its differentiation from other contracts (second section).



First, Characteristics of the Electronic Contract

Electronic contracts possess a set of distinctive features, including:

1. Executed through an electronic medium: An electronic contract is formed using an electronic system connected to a global communication network. Computers, being electronic devices, have immense capabilities to receive, store, and retrieve a large amount of information, perform high-speed calculations, and ensure exceptional precision, and smart devices: These devices consist of chips that enable access to the internet, facilitate communication, and allow for the transmission and reception of signals. For example, a smart refrigerator can autonomously place orders for specific food products from virtual stores via the internet, without human intervention. Alternatively, smartphones can be utilized in electronic commerce contracts, known as "WAP" (Wireless Application Protocol), leading to the emergence of mobile commerce, also referred to as "COMMERCE-M."
2. The electronic contract is characterized by being a contract concluded remotely, where the parties enter into an agreement without physically convening in a single contract assembly and without direct communication between them. There exists a time gap between the issuance of the offer and the knowledge of its acceptance, which can be as short as a few seconds. Furthermore, the electronic contract has emerged within the realm of international e-commerce¹⁴, making it an international electronic commercial contract. It refers to the execution of some or all commercial transactions carried out between commercial entities or between a merchant and a consumer using information and communication technology. However, it is considered a commercial contract from the perspective of the merchant, while it is a civil contract from the perspective of the consumer.

Second, Distinguishing the Electronic Contract from Other Contracts

1. Distinguishing the Electronic Contract from the Traditional Contract:

In both the traditional and electronic contracts, it is necessary for the intentions of the parties to align. However, they differ in terms of the physical presence of the contracting parties in a contract assembly. While the traditional contract is characterized by the physical presence of the parties in terms of place and time, the parties to an electronic contract are absent in terms of place but present in terms of time.

2. Distinguishing the Electronic Contract from Contracting over the Telephone:

The electronic contract varies depending on the means used. A contract concluded over the telephone is an oral contract that requires a written confirmation from the obligated party to ensure its proof. It is directed to the person on the other end of the call. In contrast, when using a computer, the offer is directed to the public, and the contract is formed as soon as the second party expresses acceptance by clicking on the "Agree" button. This message can be stored.

3. Distinguishing the electronic contract from contracting via fax and telex:

Contracting via fax and telex is limited to printing the agreement on a paper medium with the parties' signatures. In contrast, the electronic contract appears on an electronic medium processed by a computer and authenticated with an electronic signature. Therefore, contracting over the telephone, fax, and telex is not considered an electronic contract in nature.

Third Requirement: Electronic Contract Formation

A contract is formed when the parties express their will and their intentions positively and accept each other's offer. The elements of a contract are completed through consent, subject matter, consideration, and formalities, as required by the law. The elements of an electronic contract will be clarified accordingly.

First: Consent in the Electronic Contract

The parties' intention to contract is expressed through the electronic information message, which is a legally acceptable means to convey the contract's content, resulting in a positive acceptance and agreement to create contractual obligations.

In the same context, the Civil Law stipulates that consent can be expressed through any means, whether traditional or modern¹⁵.

1. Electronic Acceptance

Acceptance is the expression of will emanating from the first party, which is a clear and definitive offer presented to a specific person or to the general public. Electronic acceptance refers to "any

remote communication that includes all the necessary elements for the recipient of the acceptance to directly accept the contract, excluding mere advertisement¹⁶ "

1. Forms of Electronic Acceptance

Forms of electronic acceptance vary depending on the means of transmission. There is acceptance via email, where the expression of will is directed to a specific individual, and acceptance directed to the public, which constitutes an invitation to contract and negotiate. Acceptance can also occur through the Internet, continuously reaching anyone accessing the network worldwide. Additionally, acceptance can be made through conversation and observation, forming a virtual contract assembly.

2. Electronic Promise

Acceptance is defined as "the declaration by which the acceptor expresses their intention to consent to the contract¹⁷ "

Electronic Promise, similar to acceptance in a contractual assembly, is carried out through electronic means. The promise must be issued while the offer is still valid. If a specific timeframe is specified in the offer, the promise must be issued within that timeframe. If the offer is made through chat and video services, the promise must be issued during that conversation. If the conversation ends without the acceptance being issued, it will have no effect if issued afterward.

The promise must correspond exactly to the offer without any additions or omissions. Otherwise, it will be considered a rejection that includes a new offer, not acceptance.

1. Forms of Electronic Promise:

Expression of promise via email involves the recipient, to whom the offer was directed, sending their acceptance in the form of an electronic message that encompasses all the elements required to complete the contract. Consequently, the mutual correspondence of acceptance and offer leads to the formation of the contract.

Expression of acceptance through a website can take various forms, including the following: an electronic message, or a single click on the acceptance icon. However, to prevent errors, some websites facilitate acceptance in stages. Even after clicking the acceptance button, there may be a confirmation button that requires clicking to confirm the acceptance.

3. Time and Place of Electronic Contract Formation

An electronic contract is a remote contract formed in a virtual contractual assembly where the contracting parties are present in terms of time but absent in terms of physical location. It is crucial to determine the time and place of contract formation to establish the applicable law, the commencement and duration of the contract, the period of prescription, and the jurisdiction.

A. Time of Electronic Contract Formation

There are four theories in jurisprudence that determine the time of contract formation:

1. **Theory of Communication of Acceptance:** According to this theory, the contract is formed as soon as the acceptance is communicated, without the need for the offeror to have knowledge of it. In other words, the contract is formed at the time when the offeree sends the acceptance message, but the expression of intent only takes effect when it is known to the offeror, ensuring the alignment of both intentions.

2. **Theory of Dispatch of Acceptance:** This theory states that the contract is formed at the moment when the acceptance is sent from the offeree to the offeror, i.e., when the electronic message exits and enters the electronic intermediary of the offeror. However, in the case of electronic acceptance, the contract is considered concluded at the time of the communication of acceptance because electronic acceptance is received immediately upon declaration due to the fast nature of the Internet.

3. **Time of Electronic Contract Formation:** The theory of acceptance receipt holds that the contract is considered formed upon receipt of acceptance by the offeree, regardless of whether the offeror is aware of the acceptance or not. Receipt serves as evidence of knowledge of acceptance, meaning that the contract is formed at the time when the message reaches the offeree's email, even if they have not yet accessed or read it. This theory is particularly suitable for electronic contracting when the message arrives intact, providing consumer protection.

4. Theory of receiving Acceptance: This theory states that the contract is formed upon the offeror's knowledge of the offeree's acceptance. The expression of intent only takes effect when it reaches the knowledge of the offeror. Therefore, the contract is formed at the time when the offeror opens their electronic mailbox and becomes aware of the message containing the acceptance. Algerian legislation, under Article 67 of the Civil Code, adopts this theory, which is most suitable for electronic contracting, ensuring that the message containing the acceptance has reached the offeree, has been accessed and acknowledged, leading to the alignment of intentions and the formation of the contract¹⁸. However, this theory has been criticized for making knowledge of acceptance a condition for the validity rather than the formation of the contract.

The text of European Directive No. 31-2000 states in Article 5 that: "The contract is deemed to have been concluded at the moment the offeree receives an electronically confirmed acceptance from the offeror." Therefore, the time of contract formation is when the offeree receives a confirmed acceptance from the offeror after being able to review the offer and correct any potential errors to ensure legal security through electronic means. As for the Egyptian legislator, Article 2 of the Electronic Commerce Law states that: "The contract is considered concluded upon confirmation of receipt of acceptance."

B. Place of Electronic Contract Formation:

The theories that determine the place of contract formation in electronic contracts are called dual theories, and they consist of two opinions:

1. The place of contract formation is the place of dispatch of acceptance or the place to which the offer was sent, which is the location of the offeree.
2. The place of the contract is the cyberspace because an electronic contract is a type of virtual meeting, according to their opinion.

In accordance with the theory adopted by Islamic law, the place of contract formation is the place where the acceptance is issued because the place where the contract takes place is the location of the message's arrival and the offeree's access to it¹⁹.

The UNCITRAL Model Law on Electronic Commerce, in Article 15(4), grants freedom to the contracting parties to determine the place of the contract. It can be the place where the data message was sent or where it was received. If the sender and the recipient do not agree on the place of the contract, the place of dispatch is considered the sender's place of business. If the originator or the recipient has more than one place of business, the place of business most closely related to the transaction is chosen, or the main place of business if such a transaction does not exist. If the originator or the recipient does not have a place of business, their usual place of residence is considered their place of business. As for Tunisian law, in Chapter 8, it states that an electronic contract is established at the address of the seller.

Second, Place in Electronic Contracts

1. Definition:

The place of performance is the obligation that the debtor is committed to fulfill. This performance can be giving something, doing an act, or refraining from an act. In the case of an electronic contract, the subject matter is often a sales contract. Therefore, the place of performance in this case is the transfer of ownership from the electronic seller and enabling the buyer to take possession of it in exchange for the agreed-upon purchase price. In some cases, the subject matter of the electronic contract may be a lease agreement. In this case, the place of the contract is the enjoyment of the leased property, the duration of the lease, and the amount of rent. It is also possible for an individual to enter into an electronic contract with an insurance company to provide insurance services. In this case, the place of the contract is the premium, the insured risk, and the insurance amount.

2. Conditions of the Place of Performance

The place of performance must be existing, possible, determinate, or capable of being determined, and lawful. For example, if the place of performance is the transfer of ownership of an item, it must be in existence at the time of the obligation's creation. Article 15 of the Electronic Commerce Law stipulates that a prepayment cannot be a place of payment unless the product is available in stock. If the payment is made before the product is available in stock, the electronic supplier must refund



the price to the consumer with compensation. The place of performance can also be something future and achievable. If the place of performance is inherently impossible or contrary to public order and morals, it is absolutely void. If the place of performance is not specifically determined by itself, it must be determined by its type and quantity, otherwise, the contract is void. It is sufficient for the place to be determined by its type alone if the contract includes a means by which its quantity can be determined. If the contracting parties do not agree on the quality of the item, and it cannot be ascertained by custom or any other circumstances, the debtor is obliged to deliver an item of average quality²⁰.

The place of the contract must be determinate, lawful, and not in violation of public order and public morals. Accordingly, all electronic transactions relating to the following are prohibited: gambling, betting, and lotteries; alcoholic beverages and tobacco; pharmaceutical products; products that infringe upon intellectual, industrial, or commercial property rights; any goods or services prohibited by applicable legislation; any goods or services requiring the preparation of an official contract; as well as all electronic transactions involving specific equipment, supplies, and sensitive products as defined by the applicable regulations, and likewise any other products and/or services that may undermine national defense, public order, and public security²¹.

3. Consideration in Electronic Contracts

Consideration is the motivating factor behind a contract and must be present, valid, and lawful. If a party undertakes an obligation for an unlawful consideration or for a consideration contrary to public order or public morals, the contract is considered void. It is presumed that every obligation has a valid consideration unless evidence suggests otherwise. The consideration stated in the contract is considered the true consideration unless evidence proves otherwise. If evidence proves the existence of another valid consideration for the obligation, it is the responsibility of the party claiming such consideration to substantiate their claim²².

Apologies for any confusion caused. I understand your request to keep the form of the paragraph unchanged. Here is the translation of the passage while maintaining the original form:

Part Two

Proof of Electronic Contracts

The electronic nature of these contracts has influenced the traditional methods of proof. Previously, writing was recorded on paper, and signatures were handwritten, through fingerprinting, or by using a seal. However, with the emergence of electronic devices and electronic signatures, which accompany the advancements in e-commerce, the means of proof have been transformed. Therefore, we will divide this paragraph into three points. In the first point, we will discuss electronic records and writing (requirement one). In the second point, we will discuss electronic signatures (requirement two). Finally, in the third point, we will discuss electronic authentication (requirement three).

Requirement One: Electronic Records and Writing

Among the means of proof in electronic contracts are electronic records, electronic writing, and electronic editors, which are considered necessary conditions in electronic contracts. Therefore, we will address them as follows:

First: Electronic Records

Electronic records are defined as "information that is created, sent, received, or stored by electronic means, as appropriate. It includes all information logically related to the record or otherwise interconnected with it in such a way that it becomes part of it, whether it arises at the same time or not²³."

Electronic records can be considered as evidence in case of doubt or dispute between the contracting parties²⁴.

Second: Electronic Writing

Referring to the provisions of Article 60 of the Algerian Civil Code²⁵, the legislator indicated the means of concluding electronic contracts. This position leaves no doubt as to its intention, indicating that it indirectly addressed the means of concluding electronic contracts. The legislator is satisfied with the text of Articles 323 (repeated) and 327/2 of the same law²⁶.



The Algerian legislator provided a definition of writing in Article 323 (repeated) of the Civil Code, stating: "Proof by writing is produced by a sequence of letters, descriptions, numbers, and any meaningful signs or symbols, regardless of the means by which they are included, as well as the methods of transmission." The expression "regardless of the means" encompasses all electronic media that currently exist or may exist in the future.

The Algerian legislator provided a definition for writing in Article 323 (repeated) of the Civil Code, which states: "Proof by writing is produced by a sequence of letters, descriptions, numbers, and any meaningful signs or symbols, regardless of the means by which they are included, as well as the methods of transmission." The expression "regardless of the means" encompasses all electronic media that currently exist or may exist in the future.

Based on this, electronic writing is intended to include "any letters, numbers, symbols, or other marks that are recorded on an electronic, digital, optical, or similar medium and convey perceptible meaning."

As for the electronic editor, it refers to a "data message that contains information created, integrated, stored, sent, or received, either wholly or partially, by electronic, digital, optical, or similar means."²⁷

Requirement Two: Electronic Signature

The true origin of the electronic signature began with the emergence of banking transactions and magnetic cards, where credit cards were used for withdrawals, deposits, and payment of goods and services through the use of the electronic signature, which relies on the card and the secret code known only to its owner. Subsequently, the importance of adopting the electronic signature and recognizing it legally in various other types of transactions, whether administrative, civil, or others, became evident. Modern technologies have created new forms of transactions that have highlighted the reliance on the electronic signature as a means of interaction between the parties to a contract²⁸

First: Definition of Electronic Signature

The electronic signature has been defined as "a set of technical procedures that allow for the identification of the person issuing these procedures and their acceptance of the content of the act to which the signature relates."

It is noteworthy that this definition relies on identifying the functions of the electronic signature, which the recognized technical procedures should strive to achieve. These functions include establishing the identity of the signer and expressing their intention to approve the content of the document they have signed²⁹.

The Algerian legislator defines the electronic signature as "data in electronic form attached or logically associated with other electronic data, used as a means of authentication."³⁰

Second: Types of Electronic Signatures

There are several forms of electronic signatures, including:

1. Electronic Pen Signature:

In this method, the sender of the message writes their personal signature using a specialized electronic pen on a computer screen through specific software. This software captures the signature and verifies its authenticity. However, it is worth noting that this system requires a computer with specific specifications. It is commonly used by security and intelligence agencies as a means of personal verification³¹.

2. Biometric Signature:

This refers to the use of an individual's unique physical and behavioral characteristics to distinguish and identify them. Each person has their own distinct physical traits, which vary from one person to another. These traits have a relatively stable nature, making them highly reliable for authentication and proof. Examples of such traits include fingerprint, iris scan, facial recognition, hand characteristics, and voice tone³².

3. Digital Signature

It is accomplished through encryption, transforming the regular writing pattern into a mathematical equation using secret keys and complex computational methods. This converts the electronic



document of a digital message into an unintelligible form that cannot be reverted back to its original readable format by anyone³³.

Third: Validity of the Electronic Signature

According to Article 08 of Law 15_04, which pertains to the electronic signature, "the described electronic signature alone is deemed equivalent to a written signature, whether it belongs to a natural or legal person." The conditions for its validity are outlined in Article 07 of the same law, which states the following:

- It is based on a defined electronic certification.
- It is associated with the signer alone and allows for their identification.
- It is generated using a secure mechanism specifically designed for creating electronic signatures.
- It is produced through means that are under the exclusive control of the signer.
- To be linked to its own data, allowing for the detection of subsequent changes³⁴.

The Third Requirement: Electronic Authentication

Confidence and security are at the forefront of the guarantees necessary for the prosperity of electronic transactions. These transactions are conducted remotely between individuals who may not meet or know each other, necessitating the presence of reliable assurances to identify the parties involved and determine the authenticity and content of the transaction.

Given that writing, signature, and authentication are inherently interconnected, each complements and strengthens the other according to its mechanisms and methods. Electronic signatures always require authentication, which is also implemented in an electronic format. Electronic authentication encompasses several points, starting with defining its concept.

First: Definition of Electronic Authentication

It is also referred to as electronic notarization. It encompasses the set of approved or commercially accepted procedures agreed upon by the parties involved with the aim of verifying that an electronic signature has not been altered since its verification date, according to the authentication procedures, before the competent authority.

The neutral third party is represented by individuals, companies, or independent neutral entities that act as intermediaries between the parties in order to authenticate their electronic transactions. They are referred to as notary bodies³⁶, authentication authorities³⁷, or registration authorities. In Europe, they are called trust service providers, while in the United Arab Emirates, they may be referred to as authentication service providers. In Egypt, they are known as the authentication authority. Algerian legislation refers to them as electronic authentication service providers³⁸.

Second: Electronic Authentication Certificate

Islamic jurisprudence defines the electronic authentication certificate as "a certificate issued by licensed authentication service providers authorized by the responsible authorities in the country, attesting that the electronic signature is a valid signature attributed to its issuer and fulfills the required conditions and regulations, serving as reliable evidence."³⁹

Algerian legislation distinguishes between two types of electronic authentication certificates: the simple electronic authentication certificate, which is defined as "an electronic document that proves the link between the verification data of the electronic signature and the signer."⁴⁰

As for the second type, it is referred to as the Qualified Electronic Authentication Certificate. In addition to proving the link between the verification data of the electronic signature and the signer, it must comply with specific conditions and requirements specified in a legal provision, namely Article 15 of the previously mentioned Law No. 15_04.

Conclusion:

After discussing the topic of electronic contracts in this study, which is considered one of the most important subjects that have gained significant prominence in recent years due to the scientific and technological advancements in e-commerce contracts, we have reached a set of results and recommendations, summarized as follows:

- The electronic contract is considered a significant manifestation of the development brought about by the information revolution, and it, in turn, affects the development of contracts in general, particularly in terms of the means of communication between the contracting parties. Previously,


contracts were concluded in person in a physical contractual assembly where all parties were physically present. However, now contracts are concluded remotely in a virtual contractual assembly, where the parties are present in terms of time but absent in terms of location.

- The legislator has recognized the importance of addressing the issue of the identity of the contracting party in electronic contracts. The solution provided by the legislator is for the supplier to clearly indicate on their website that they are indeed an electronic merchant and provide all relevant information about the product. This means that electronic consumers must exercise caution in their electronic transactions and verify the authenticity of the merchant websites.
- The legislator began regulating electronic transactions with the amendment of the Civil Code under Law 05-10 on June 20, 2005, which addressed the issue of electronic evidence under Article 323 bis 1. Subsequently, Law 09-04 was issued, which contains specific rules for the prevention and combating of crimes related to information and communication technologies. Furthermore, Law 18-05 was enacted, which pertains to e-commerce.
- It can be concluded that the Algerian legislator considers the electronic contract, like any other traditional contract, subject to the legal provisions governing such contracts. The only difference lies in the means of formation, which is electronic. The legislator continuously works on regulating electronic contracts within the framework of e-commerce, with the aim of developing trade and protecting electronic consumers.
- The Algerian legislator should reconsider Law No. 18-05 concerning e-commerce to avoid many legal issues arising from the existing legal gap in these electronic transactions. The provisions regarding electronic contracts in this law are insufficient in terms of formation and evidence.
- It is advisable to appoint an expert specialized in technology and information systems who can provide consultation on technical matters that may be unfamiliar to both judges and legal professionals.

The legal nature of the electronic contract is clearly defined and leaves no room for ambiguity or deficiency, considering that it can be concluded remotely. It predominantly bears the characteristics of consumer and commercial contracts.

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