



PROBLEMS OF ELIGIBILITY AND CONSENT IN THE ELECTRONIC ARBITRATION AGREEMENT

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Abstract:

In view of the great importance that electronic arbitration holds as a mechanism for resolving electronic commerce disputes, and given that the electronic arbitration agreement is the constitution of the electronic arbitration process, when concluding an electronic arbitration agreement, the requirements of international treaties, agreements, and national laws in the field of electronic arbitration must be taken into account, as well as the conclusion of electronic contracts. Considering that the electronic arbitration agreement is an electronic contract through which the parties agree to remove the dispute from the jurisdiction of the national judiciary and submit it to arbitrators, it is necessary to verify the availability of the formal and substantive conditions required for concluding electronic contracts. Therefore, the aim of this study is to shed light on the problems and difficulties related to verifying the eligibility of the parties and the method of expressing their will when concluding an electronic arbitration agreement, as well as the difficulty of determining the place and time of concluding that agreement.

Keywords: *Electronic Arbitration Agreement; Eligibility; Consensual; Offer; Acceptance.*

1. INTRODUCTION

Electronic arbitration is a consensual judicial system in which the disputing parties select their arbitrators and, through their agreement, entrust them with the task of resolving disputes that have arisen or may arise between them in relation to the conclusion or execution of e-commerce contracts. These disputes can be settled through electronic arbitration.

The electronic arbitration agreement is the cornerstone of the electronic arbitration process. Without it, the dispute related to an e-commerce contract cannot be removed from the jurisdiction of the competent court and subjected to electronic arbitration. This is because electronic arbitration is a consensual system, based on the will of those who choose to engage in it.

Like traditional arbitration agreements, the electronic arbitration agreement marks the starting point and serves as the foundation of the arbitration process, regardless of its type. It distinguishes itself from other dispute resolution systems that aim to fulfill judicial functions. The electronic arbitration agreement is the sole path through which the parties can access the electronic arbitration system, as they cannot turn to specialized arbitration bodies for managing electronic arbitration without it.

Since the electronic arbitration agreement is a contract concluded electronically, it carries specific characteristics regarding how consent is expressed electronically and how the identity and capacity of the contracting parties are verified. Various laws related to electronic transactions allow for the expression of will electronically, provided the conditions for valid consent and its expression are met.

As the electronic arbitration agreement is, by nature, an electronic contract, it, like other contracts, imposes obligations on the parties. Therefore, it must meet the necessary conditions for



the validity of the commitment, including the requirement that the parties signing the agreement possess the necessary legal capacity and that they consent to choosing electronic arbitration as the means for resolving the disputes that have arisen or may arise between them.

1.1 Study problem

The primary inquiry of this investigation is as follows:

How can the capacity of the parties and the methods of expressing their will be verified when concluding an electronic arbitration agreement?

The nature of this study necessitates the use of a descriptive-analytical approach, detailing every aspect of the study, whether from a jurisprudential perspective by presenting different legal opinions on the contentious issues, or from a legislative perspective.

To answer this question, we will divide this research paper into two sections. The first section will address the particularities and challenges of capacity in electronic arbitration agreements, while the second section will focus on the specifics of consent in electronic arbitration agreements.

2-The Particularities and Challenges of Legal Capacity in Electronic Arbitration Agreements

An electronic arbitration agreement is defined as a legal action in which the parties' intent is directed toward creating a specific legal effect, namely, withdrawing the authority to resolve the dispute from the state's judiciary and entrusting it to the authority of electronic arbitration.

Therefore, the electronic arbitration agreement does not differ from the general principles governing all contracts in terms of the conditions required for its validity. Consequently, an electronic arbitration agreement can only be valid if it is concluded by those who possess the legal capacity to dispose of their rights (Nassif, 2012, p. 88), (Sanhoury, 2010, p. 226), (Suleiman, 2015, p. 48).

For an electronic arbitration agreement to be valid, it must be concluded by parties who have the capacity to contract. However, verifying the capacity of the parties presents a challenge, as one party may find it difficult to confirm the capacity of the other. One party may claim full legal capacity while in reality, this may not be the case. As a result, some attempts have been made to propose technical solutions for verifying the identity of the parties (Ibrahim, 2011, p. 173).

2.1 Mechanism for Verifying Capacity to Conclude an Electronic Arbitration Agreement

The legal capacity required to conclude an electronic arbitration agreement is the capacity to dispose of rights, which must be present in the parties involved in the arbitration, regardless of whether the arbitration agreement takes the form of a clause or a submission agreement (Al-Maani, 2014, p. 98).

If an e-commerce contract is concluded and the parties resort to electronic arbitration to settle disputes arising from that contract, the parties to the electronic arbitration agreement will be the merchant and the consumer. Both must have the capacity to dispose of the disputed right. As for the merchant, there is no dispute regarding the required capacity, as the fact that they practice commercial activities professionally and are registered in the commercial register of their country confirms that they possess the necessary legal capacity (Houhou, 2016, p. 37).

However, the situation is not as straightforward for the consumer. Verifying the consumer's capacity when they conclude an e-commerce contract, including an electronic arbitration agreement, requires access to personal data and information to determine their identity. Nevertheless, it can be difficult to verify the accuracy of the information provided. Often, website visitors intentionally provide inaccurate information about their identity to protect their privacy and out of concern that their information may be misused against their will. In such cases, the electronic arbitration agreement is at risk of being nullified (Mansi, 2011, p. 231).

A potential issue may arise when one of the parties to an electronic arbitration agreement possesses full legal capacity according to the laws of their own country but is considered partially incapacitated under the laws of the other party's country (Al-Manzalawi, 2023, p. 380).



In Arab countries, their laws generally agree that the rules governing capacity are subject to the law of the nationality of the parties. Thus, if each party to an electronic arbitration agreement holds a different nationality, the law of their respective country is applied. The relevant time for determining the legal capacity of the parties is the moment the electronic arbitration agreement is concluded, not before or after (Sharkawy, 2011, p. 70).

As for the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, it did not address the issue of the applicable law for determining capacity, leaving it to the discretion of courts in different countries. The reason for this omission is likely due to the drafters' concern about engaging in issues of conflicting characterizations, so they left the matter of determining the capacity of the parties to the conflict of law rules in the legal system of the state where enforcement is sought (Ibrahim, 2008, p. 292).

Some legal scholars believe that if one party to the electronic arbitration agreement has full legal capacity under their national law while the other party is partially incapacitated, without the former being aware of this incapacity, the interests of the fully capable party, particularly professionals, should be favored, applying the doctrine of apparent authority (Mujahid, 2000, p. 112).

For instance, if a minor steals a parent's credit card and uses it to conclude an e-commerce contract with a merchant, the merchant's interests should be prioritized if they acted in good faith. The merchant may argue that the minor, by using the credit card, presented the appearance of the rightful owner. While American law allows a minor to withdraw from an online contract, it holds the minor responsible for tortious liability rather than contractual liability, based on the damages caused to the other party by withdrawing from the contract (Al-Khalidi, 2009, p. 224).

While there is consensus among legal scholars that an electronic arbitration agreement is void in cases of complete incapacity, there is disagreement regarding the nature of the nullity in cases of partial incapacity. However, the dominant view leans toward considering nullity due to partial incapacity as relative, rather than affecting public order, since it relates to a private interest. Consequently, only the partially incapacitated party or their representative may invoke the nullity (Jamal & Akasha Mohamed Abdel, 1998, p. 422).

2.2 Technical Means for Verifying Legal Capacity in Electronic Contracts

In traditional contracts, it is generally easy to verify the contracting party's capacity, as the agreement occurs between present parties in a physical setting. Each party can verify the identity and legal capacity of the other through official identification documents or by reviewing the commercial register for a legal entity (Gomaa, 2016, p. 215).

However, in electronic contracts, including the conclusion of electronic arbitration agreements, it is difficult to verify the identity and capacity of the other party. It is easy for anyone to access the internet and claim to have legal capacity when they do not (Ibrahim, 2011, p. 215).

Therefore, it is necessary to seek a method to ensure the verification of the electronic contracting party's legal capacity through technical procedures designed to overcome this challenge, even if the merchant bears the greater burden, whether procedural or financial, as the primary beneficiary (Al-Rashidi, 2014, p. 115).

The issue of verifying the contracting party's capacity in electronic contracts is a technically complex one, requiring the collaboration of specialized technology experts and legal scholars. Although no definitive technical solutions currently exist, there are warning mechanisms that can be employed, including (Al-Khalidi, 2009, p. 225):

2.2.1 Electronic Payment Cards

Electronic payment cards are smart cards consisting of silicon-based electronic chips. These chips are equipped with memory that stores all the data of the cardholder, such as their name, age, place of residence, affiliated bank, and all transactions associated with the card (Al-Roumi, 2008, p. 69).



These cards function as portable computers, containing a complete record of information and a personal identification number (PIN). They allow the cardholder to easily conduct financial transactions and are protected against forgery, fraud, and misuse in case of theft, as they are secured with a PIN known only to the owner (Ibrahim A. S., 2015, p. 102).

The electronic payment card enables the cardholder to withdraw cash from their account, subject to a predetermined limit agreed upon with the bank, via electronic cash machines. The cardholder receives a paper slip recording the amount withdrawn, along with the date and time of the withdrawal (Al-Bahji, 2017, p. 200).

The electronic payment card is the primary method for verifying the identity of an online purchaser, as it stores all personal data and information. It is equipped with technology to protect this data, allowing the merchant to confirm the identity of the consumer, including their age (Houhou, 2016, p. 43).

2.2.2 Electronic Certification Certificates

An electronic certification certificate is defined as a document issued by licensed certification service providers, authorized by relevant state authorities, attesting that the electronic signature is valid and belongs to the person who issued it, thereby making it a reliable proof of authenticity (Gomaa, 2016, p. 221).

The electronic certification certificate acts as an electronic intermediary and neutral third party, tasked with organizing the relationship between the parties to the electronic contract. It is relied upon to verify the identity and legal capacity of the contracting parties (Houhou, 2016, p. 44).

The provider of the electronic certification service must verify the accuracy of the submitted data through various means. The individual concerned may be asked to provide certain documents, such as a passport or identification card, which are sent via mail or fax. In some cases, personal attendance may be required (Al-Naemi, 2009, p. 1004), (Al-Roumi, 2008, p. 69).

However, some argue that using this mechanism to verify the identity and capacity of the contracting parties imposes an additional burden on both parties to the dispute. Certification authorities charge fees for their services, which may deter parties from using electronic arbitration as a method for dispute resolution (El-Khouly, 2017, p. 244), (Al-Hejja M. I., 2005, p. 66).

2.2.3 Warning Mechanisms

Some websites are equipped with warning messages that notify users that only individuals with legal capacity may enter the site. Before accessing the site, users must disclose their identity or age by filling out an information form. If the user has the required legal capacity, they are allowed to enter the site and enter into contracts. If they fail to complete the form or it becomes apparent that they lack legal capacity, they are denied access to the site and, consequently, cannot enter into contracts, including electronic arbitration agreements (Al-Khalidi, 2009, p. 226), (Ibrahim A. S., 2015, p. 104), (Verbiest, 2004, p. 100).

Additionally, some propose designing websites in a way that requires individuals who wish to conclude an electronic arbitration agreement to disclose their identity and age. If the individual refuses or neglects to do so, they are not allowed to proceed with the agreement (Al-Hejja M. I., 2005, p. 65), (El-Khouly, 2017, p. 244). These warning mechanisms are currently among the most widely used methods, but they carry risks, as users may provide false information regarding their legal capacity (Al-Naemi, 2009, p. 1002).

3- The Particularity of Consent in Electronic Arbitration Agreements

The development and widespread use of global communication networks have led to contracts and transactions being concluded electronically. This prompted many national legislators, as well as regional and international organizations, to recognize this reality and permit the expression of contractual intent through electronic means (Farah, 2009, p. 73).



Electronic consent does not differ from traditional consent; an electronic contract is only concluded when both parties agree, and their wills are aligned. The expression of intent involves offer and acceptance, and both must be in agreement (Houhou, 2016, p. 56), (Sanhoury, 2010, p. 178), (Al-Saadi, 2007, p. 102), (Article 59 of Order No. 75-58, 2007). Since an electronic arbitration agreement is, by nature, an electronic contract, the expression of intent also occurs through electronic means, where the offer and acceptance are transmitted and received electronically (Mansi, 2011, p. 157), (Al-Naemi, 2009, p. 997).

3.1 Expression of Will in Electronic Arbitration Agreements

Arbitration is generally a consensual judicial system based on the mutual agreement and consent of the parties to accept it as a means of resolving their disputes. As an arbitration agreement is a bilateral legal act, it is fundamentally a contract based on the will of the parties. If this will is absent, the arbitration agreement is null; if the will is defective, the arbitration agreement is void according to civil law principles (El-Tahyawi, 2006, p. 78), (Al-Naemi, 2009, p. 996).

The electronic arbitration agreement does not differ from a traditional arbitration agreement in essence. It involves the parties agreeing to resolve existing or future disputes through electronic arbitration, with both parties consenting to this arrangement. Thus, an electronic arbitration agreement must reflect the intent of the parties to pursue electronic arbitration, whether in the form of an electronic arbitration clause or submission agreement. A mere agreement to avoid litigation is insufficient (Saleh, 2004, p. 91), (Ndiaye, 2006, p. 144).

Since an electronic arbitration agreement is, by nature, an electronic contract, it falls under the category of contracts concluded remotely. Therefore, it is necessary to identify legal mechanisms suited to the environment and nature of these transactions. Verifying the parties' consent to electronic arbitration, whether in the form of a clause or a submission agreement, must occur at the time of concluding the agreement through an electronic arbitration body. This body performs an initial assessment to ensure the existence of genuine consent to the electronic arbitration agreement, based on the principle that arbitrators have the authority to determine their own jurisdiction, similar to the role of judges when reviewing an electronic arbitration agreement afterward (Gomaa, 2016, p. 406).

The essential condition for concluding an electronic arbitration agreement is the mutual consent of the parties to resolve their disputes through electronic arbitration. Since consent is the foundation of any contract, including electronic ones, the agreement relies on this fundamental principle. However, certain electronic arbitration systems mandate its use, such as the unified policy of ICANN (Saleh, 2004, p. 91).

Since an electronic arbitration agreement is concluded via electronic means, the alignment of the parties' intentions to choose electronic arbitration as a method of resolving disputes arising from e-commerce contracts must also occur electronically. The offer and corresponding acceptance, matching one another, must be exchanged electronically to resort to arbitration as a means of resolving the dispute, whether current or potential. Therefore, it is necessary to discuss both offer and acceptance in electronic contracting (Al-Matalqa, 2008, p. 58), (Al-Sharifat, 2009, p. 127).

3.1.1 Electronic Offer

An offer is generally defined as "a definitive and clear expression of intent by one party to enter into a contract under specific terms. (Al-Saadi, 2007, p. 103), (Suleiman, 2015, p. 33), (Ghestin, 1993, p. 260)" It is the first step in concluding any contract, as one party must initiate by presenting an offer to the other (Al-Mariyah, 2017, p. 232), (Ibrahim A. S., 2015, p. 59). The definition of an electronic offer does not differ in substance from that of a traditional offer, except in its adaptation to the nature of remote contracting. Labeling the offer as "electronic" does not alter its essence simply because it is made through an electronic communication network (Tantawi, 2016, p. 166).



The Paris Chamber of Commerce (CCI) defines an electronic offer as "any remote communication that contains all the necessary elements enabling the recipient to directly accept to enter into a contract." Additionally, the European Directive on Consumer Protection No. 97/7 defines it as "any remote communication that includes all the necessary elements allowing the recipient of the offer to directly accept the contract, excluding mere advertisements (Barham, 2005, p. 35)."

Legal scholars have defined an electronic offer as "the expression of the will of a party desiring to contract remotely, conducted through an international communication network via an audio-visual medium, and containing all the necessary elements for contract formation, allowing the recipient to directly accept the contract (Al-Jamal, 2007, p. 105)."

The electronic offer must be clear, definitive, and unambiguous, without reservations, and it must include the essential elements of the contract to be concluded. If the offer or proposal does not clearly specify the elements of the contract, it is not considered an offer but merely an invitation to negotiate (El-Tahyawi, 2006, p. 167).

The electronic offer may be a specific offer directed to certain individuals, typically occurring in contracting proposals via email or messaging programs. It may also be a general offer directed to the public, as is the case with contracting through commercial websites (Al-Hejja M. I., 2005, p. 42), (Hegazy, 2007, p. 231).

The offeror, in an electronic offer as in a traditional one, retains the right to withdraw the offer. This can be done by removing the offer from its display on the internet, provided that the offeror announces their intention to retract the offer, thereby nullifying its legal effect. However, if the offer is tied to a time limit for acceptance, it becomes binding, and the retraction has no legal effect unless the offeree is informed of it. The burden of proof lies with the offeror (Bochurberg, 1999, p. 114).

If the offer is withdrawn from the internet, it is considered terminated, as the electronic intermediary no longer makes it accessible to the contracting parties. However, if the offer disappears due to technical or system issues with the network or the computer, these reasons are unrelated to the offeror and are not considered a retraction or withdrawal of the offer, meaning the offer remains valid as long as the event does not terminate the offer (Al-Mariyah, 2017, p. 248), (Al-Matalqa, 2008, p. 63).

In the context of an electronic arbitration agreement, the offer refers to a proposal containing the essential elements of the electronic arbitration agreement, which definitively indicates the offeror's intent to contract. This intent is demonstrated by the willingness to remove the authority to resolve the dispute concerning e-commerce contracts from the jurisdiction of the courts and entrust it to an electronic arbitration body, with the dispute being clearly defined (Al-Bahji, 2017, p. 212), (Al-Naemi, 2009, p. 997).

Other elements, such as the formation of the electronic arbitration tribunal, the procedures, or the substantive rules applied, are not considered essential to forming the offer, as solutions are provided in case there is no agreement on them. However, if the electronic correspondence includes a condition requiring agreement on all or some of these matters, the message is considered merely an invitation to agree on electronic arbitration, not an actual offer of arbitration (jamal & Akasha Mohamed Abdel, 1998, p. 396).

3.1.2 Electronic Acceptance

According to general principles, the formation of a contract requires more than just an offer; it must be met with another contractual intent that includes acceptance of that offer. Acceptance is the second will in the contract, issued by the party to whom the offer was directed (Nassima, 2012, p. 40). The acceptance must reflect a clear intent to contract, without any conditions or reservations (Lazhar, 2014, p. 84).

The definition of electronic acceptance does not differ from that of traditional acceptance in substance, except that it is conducted via electronic means, through the internet. It is a form of



remote acceptance, governed by the same rules and principles that regulate traditional acceptance, though it carries certain nuances due to its electronic nature (Lazhar, 2014, p. 87).

The Uniform Commercial Code (UCC) stipulates that acceptance must be delivered in the same manner as the offer, and the acceptance must be final, reflecting a serious and genuine intent to create the legal effect that arises from its alignment with the offer (Tantawi, 2016, p. 189).

While silence, according to general principles, cannot be considered an expression of an offer, it may, under certain circumstances, constitute acceptance. Silence or taking a passive stance does not indicate any specific intent and is not considered acceptance unless accompanied by specific circumstances showing that the offeror was not expecting a response to their offer (El-Khouly, 2017, p. 254).

Regarding electronic arbitration agreements, acceptance occurs in the same way as in other electronic contracts. An electronic arbitration agreement is concluded when the offer containing that agreement is met with acceptance from the other party in the same manner in which the offer was made.

As with general acceptance, the acceptance of an electronic arbitration agreement must match the offer in every aspect, both essential and secondary, and must be given within the specified time frame (Al-Bahji, 2017, p. 212).

If one party proposes resolving a dispute arising from an e-commerce contract through electronic arbitration via modern communication methods, and the other party responds by agreeing but adding another issue to the arbitration, this response is not considered acceptance. Instead, it constitutes a new offer that modifies the original one and requires acceptance by the other party (Jamal & Akasha Mohamed Abdel, 1998, p. 398).

Consent in an electronic arbitration agreement is achieved through the expression of the will of both arbitration parties. In e-commerce contracts, merchants often include contractual terms on their websites, including the electronic arbitration clause. If the other party wishes to conclude the contract, they press an icon with a phrase indicating acceptance, such as "I accept" or "Add to cart." This positive action signifies acceptance of both the contract and the electronic arbitration clause simultaneously (Karim, 2012, p. 44), (Mansi, 2011, p. 157).

For the click on the acceptance icon to be valid, the visitor must have reviewed all the terms of the contract, including the electronic arbitration clause. Most legal scholars emphasize the importance of double-click acceptance, where the user explicitly confirms having read and accepted all terms (Al-Naemi, 2009, p. 998), (Tantawi, 2016, p. 191), (Ndiaye, 2006, p. 145).

3.2 Means of Expressing Intent in an Electronic Arbitration Agreement

There are various ways to express intent in an electronic arbitration agreement, as is the case with other electronic contracts, whether by the offeror or the acceptor. Expression of intent may occur through email, website, chat, or downloading (Al-Khalidi, 2009, p. 218).

3.2.1 Expression of Intent via the Website (Le Site Web)

The World Wide Web (WWW) is one of the most significant services provided by the internet (Al-Sharif, 2009, p. 29), (Lazhar, 2014, p. 65), (Gola, 2013, p. 38), offering a vast source of information. The World Wide Web is defined as "a method of accessing and exchanging information via the internet and search engines. (Houhou, 2016, p. 76)"

There is often confusion between the concepts of a website and the internet. A website is not synonymous with the internet, but rather one of the communication tools offered through the internet (Ibrahim K. M., 2011, p. 170). To access a specific website, users may need to use a browser such as Microsoft Office Live, Google Reader, Alta Vista, or Internet Explorer. Thus, the internet is a broader concept than a website (Al-Sharif, 2009, p. 30).

Contracting through a website is characterized by the continuous offer from the website owner, where the general terms of the contract are automatically presented to consumers by the program managing the site. This program handles the contract process with the consumer without the need for the website owner's presence (Al-Tuhami, 2008, p. 70).



The electronic expression of intent via websites can be done by writing, clicking on an acceptance icon on the keyboard, or using the mouse to click on the designated area on the webpage (Karim, 2012, p. 44), (Al-Khalidi, 2009, p. 219).

This method of contracting via websites is referred to as the "OK BOX" system. Once the consumer selects the product offered on the site and clicks on the acceptance icon, a new page automatically appears containing a standard, non-negotiable contract. This contract includes the terms and conditions of the agreement, one of which outlines how disputes related to the contract will be resolved and the applicable law (Mansi, 2011, p. 172), (Tantawi, 2016, p. 195).

The contracting party must review the offer, its details, and conditions, including the electronic arbitration clause, before expressing their acceptance by clicking on the acceptance icon.

The website must be designed in such a way that the standard contract is clearly and legibly displayed, and the acceptance icon must be linked to the standard contract. It does not matter whether the electronic arbitration clause is part of the general terms of the contract or highlighted separately, as long as it is not hidden (Al-Naemi, 2009, p. 1000).

Previously, acceptance of an electronic contract, including the electronic arbitration clause, was done by a single click on the designated acceptance icon. However, given the possibility of accidental, unintentional, or erroneous clicks, most commercial websites now use an information system that requires a double-click on the acceptance icon to confirm a genuine intent to enter into the contract. This double-click mechanism is referred to as the "final click of acceptance" (Nassima, 2012, p. 41).

Acceptance may also be confirmed through an email message, or the offeror may take certain steps following acceptance, such as asking the acceptor to answer questions, specify their residence, or enter specific personal information, such as their credit card number and type, which appears on the computer screen.

Consent may also be expressed using certain symbols and icons commonly recognized by internet users, such as a smiling face to indicate acceptance or an angry face to indicate rejection (Ibrahim K. M., 2011).

3.2.2 Expression of Intent via Email (E-mail)

Email refers to the exchange of messages between parties electronically. It has been defined as "documents sent or received via an electronic postal communication system containing brief, formal notes (Tantawi, 2016, p. 193)."

Email has become a common method for concluding many e-commerce contracts. Like traditional mail, once an email is sent, the sender loses control over the message and cannot retrieve it (Youssef, 2004, p. 395).

Given the different locations of the parties communicating via email, a standardized time system is necessary to avoid any ambiguity regarding the time and date of the electronic contract's conclusion. Therefore, a global time system known as Greenwich Mean Time (GMT) has been adopted (Ibrahim K. M., 2011, p. 170).

Based on this, if a person wishes to conclude an electronic arbitration agreement, they would send an electronic message via email to the other party. If the other party agrees and expresses their consent in the same manner, mutual consent is achieved, and electronic arbitration is accepted as a means to resolve the dispute between the two parties (Al-Maani, 2014, p. 79).

3.2.3 Expression of Intent via Chat or Video Conference

Intent can be expressed through written chat, where the parties exchange written messages in real time, sending and receiving responses directly, a process known as the chat system.

Some programs also allow parties to communicate through both audio and video, provided the computer is equipped with a digital camera. This is referred to as video conferencing. In this case, intent can be expressed through commonly recognized gestures. This method is effective in



expressing intent in an electronic arbitration agreement and plays a significant role in managing electronic arbitration sessions, allowing for the exchange of documents and messages (Mansi, 2011, p. 175).

3.2.4 Expression of Intent via Remote Download

The term "remote download" refers to the transfer, reception, or downloading of messages, programs, or data from the internet to the customer's computer. In e-commerce, this is known as intangible delivery, such as downloading books or music. It contrasts with "upload," which refers to sending a file or program to another computer (Al-Tuhami, 2008, p. 79).

3.2.5 Expression of Intent through an Electronic Agent

An electronic agent is simply a software program designed to assist internet users in completing their electronic transactions. Unlike a regular computer, electronic agent programs operate autonomously, with the ability to perform tasks independently without direct human intervention to execute the tasks assigned to them (Al-Khalidi, 2009, p. 219), (Tantawi, 2016, p. 195).

Contracting through an electronic agent takes three forms. It can occur between a human and an electronic agent, or vice versa, provided that the person is aware, or reasonably should be aware, that they are contracting with an electronic agent. It can also happen between two computers equipped with electronic agent programs, without human involvement, whether a prior agreement exists or not (Al-Naimee, 2010, p. 01).

As a result, electronic transactions carried out by an electronic agent, including electronic arbitration agreements, produce all the legal effects associated with contracts concluded by individuals using traditional methods. The legal effects of the electronic arbitration agreement are attributed to the principal, as if they were a party to the agreement themselves (Al-Tuhami, 2008, p. 85).

4. Conclusion

The electronic arbitration agreement serves as the sole pathway through which parties can access the electronic arbitration system. Without such an agreement, it is impossible to resort to arbitration bodies to handle disputes arising from e-commerce transactions between the parties. The arbitration agreement has not been isolated from the tremendous advancements in communication and information technologies.

The validity of an electronic arbitration agreement, as a contract concluded in a virtual world through electronic means, is subject to the general rules of contracts regarding the conditions for their formation, with consideration given to the particularities of concluding such agreements electronically. These particularities relate to the ability to express intent in a traditional manner and the extent to which national laws recognize such expressions.

4.1 Study Results

The key findings from this research paper can be summarized as follows:

- The electronic arbitration agreement does not differ from traditional arbitration agreements in terms of the conditions for its validity, except for formal requirements, where it is written and signed electronically. The conditions for valid consent in an electronic arbitration agreement are the same as those in general contract law, requiring that it be free of defects and issued by a party with full legal capacity.
- Allowing the expression of intent in an electronic arbitration agreement through electronic means raises several challenges, the most significant of which is determining the contracting party's identity and verifying their legal capacity. Despite efforts to verify the identity and capacity of the contracting parties, there is still no completely effective or secure method for doing so.



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