

ELECTRONIC COMMERCE CONTRACTS UNDER JORDANIAN LAW: A LEGAL PERSPECTIVE

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ABSTRACT

This study explores the legal framework governing electronic commerce contracts within the context of Jordanian Law. It examines the concept, legal nature, and distinctive characteristics of electronic contracts which are essential for determining the legal validity of commercial transactions and contracts in the realm of e-commerce. This study also addresses the disparity between the consumer and the contractor in the performance of electronic contracts, focusing on how the contractors can protect and ensure that both parties uphold their contractual obligations. It further examines potential remedies for this legislative deficiency. There are legal deficiencies in certain aspects of regulating and ensuring the execution of contracts related to electronic commerce. This imbalance must be addressed through the statement of rules of evidence in accordance with the nature of electronic business contracts. The Jordanian Electronic Transactions Law, in particular, served as the legal foundation for this study. The main focus is Jordanian law's regulations pertaining to electronic contracts and the procedures for establishing their existence. This study adopts descriptive and content analytical approach, culminating in several key findings. Among the most significant is the recognition that electronic contracts can be formed without the physical presence of the parties, relying on telecommunication techniques, electronic writing, and digital signatures. This concludes with several recommendations, most notably the necessity for stronger legal protections in online contracting to safeguard against fraud by fictitious companies. Additionally, it highlights the need for a dedicated legal system to address disputes that arise from electronic contracts.

Introduction

It is estimated that 48% of all commercial operations worldwide are carried out electronically through a massive global communication network. In addition, significant electronic transactions are taking place through this network to support transactions on a governmental or personal scale, and a massive global communication network also represents these operations. To correctly complete the legal transaction that safeguards the parties' rights, both parties must acquire a legal understanding of all these activities in numerous spheres of life (Al-Freihat, M. et al., 2025).

Therefore, one requirement for keeping up with e-commerce is being aware of the legal procedures that enable the person who encounters difficulties during the sale and purchase. These operations are carried out in various ways, whether at the international or local level. From a legal standpoint, the aspects that govern commercial operations in their legal form are of concern.

As a result, this research shall discuss how dispute regulations and rules apply to e-commerce-related issues. This will include answering the above questions and indicating the correct legal application based on standards in the rules of e-commerce contracts. It will also cover all dealers' perceptions when operating within e-commerce frameworks. The problem which the research aims to address is knowing the legal framework of electronic contracts and, the criteria for determining the status of new electronic contracts, the challenges in qualifying these contracts, and the means of proving them.

The presence of commercial contractual aspects and electronic transactions carried out by various segments of society—both individuals and institutions—constitutes a significant number of contracts that yield material benefits within electronic commerce. This relevance makes the topic of this research highly pertinent to daily life.

This research aims to illuminate the concept of an electronic commercial contract, its characteristics, the importance of determining its quality, the problems that confront the law in electronic contracts, and advocacy. This study employs the following methodologies:

- (1) Descriptive Approach: This involves a comprehensive description of the topic, explaining the content and nature of the research, the relevant facts, the constraints involved, and the extent of its legitimacy. This method provides a comprehensive overview of the topic, detailing the content and nature of electronic commercial contracts, relevant facts, existing constraints, and the extent of their legitimacy. By systematically describing these aspects, the study aims to build a foundational understanding of the legal context surrounding electronic contracts.
- (2) Content Analysis Method: This approach focuses on critically analyzing legal texts and regulations related to electronic contracts, particularly examining the stance of the Jordanian legislator. By evaluating the legislative framework, the study seeks to identify gaps, interpret legislative intent, and provide insights into how current laws address or fail to address the challenges posed by electronic contracts.

The Nature and Legal Concept of E-Commerce

Every existing phenomenon has an essence, meaning that it possesses a nature defined by its apparent components—those elements that came together to create the phenomenon. In this context, e-commerce emerges as a new phenomenon in the contemporary era, influenced by globalisation and the increasing prevalence of electronic transactions for acquiring goods and services. Notably, in light of recent global events, e-commerce has become a significant trade volume between nations and individuals. The electronic contract is at the core of this trade, which serves as the essence and foundation of electronic commerce.

The term “electronic commerce” has multiple definitions, varying across different legislative frameworks and contexts. For instance, the Jordanian legislator defined electronic transactions in the Electronic Transactions Law No. (15) of 2015, according to Article 2, as transactions carried out by electronic means. Similarly, the United Arab Emirates (UAE) legislature defined electronic transactions in Article II of the Emirate of Dubai's Electronic Transactions and Commerce Law as:

“any transaction, contract, or agreement concluded or implemented in whole or in part by electronic correspondence”.

In the French Republic, e-commerce can be concluded as (International Trade Administration, 2023):

“the set of digital transactions associated with commercial activities between enterprises and between enterprises and individuals, between projects and management”.

In particular, national legislation and EU rules pertaining to digital signatures, consumer protection, and data privacy govern the French legal environment for e-commerce. Additionally, France has strict regulations governing consumer rights and intellectual property, which guarantees a strict environment for online companies and their transactions. The European Union broadly defines e-commerce as all activities conducted by electronic means, whether between commercial enterprises and consumers, between each of them separately and the government administration (Sultan, 2002).

The nature of electronic commerce is defined by the concept and nature of the electronic contract, as well as its distinguishing characteristics that facilitate the assessment of commercial contracts and related transactions. This understanding allows for the selection of the appropriate legal framework to be applied. Therefore, the following sections will present and demonstrate the fundamental elements of electronic commerce, ultimately leading to a correct interpretation of the electronic contract.

The term contract has numerous meanings in Arabic, all of which pertain to the linkage, which is the opposite of the solution. It is often said that a rope is knotted; thus, in its linguistic origin, a contract signifies pulling and tying (Murad, 2023). According to the legal concept, a contract is a legally binding agreement that is the link between one of the contracting parties' offers and the acceptance of the other contracting party in a way that proves its effect on the contractor. This entails the obligation of both parties to do what is due to the other (Amer, 2022).

The transformation in commercial dealings in the modern era and the subsequent technology and simulation of this scientific progress, whether at the level of individuals or institutions, has led to the emergence of the electronic contract in its commercial nature. This development is a key element in electronic commerce because it is the means through which an agreement is concluded between the parties to the contract on the information network to carry out business between its parties (Al-Ajlouni 2002).

Electronic contracts of a commercial nature are one of the most important tools of e-commerce, as they do not depart in their composition and content from the context of recognised commercial contracts. This is because e-commerce, in its general form, no longer requests goods or services in which the buyer is in a place other than where the service or goods are required. A prime example is the rise of virtual stores where goods are displayed on a website, and consumers purchase by browsing the site. In this scenario, the website itself acts as the supply medium, connecting the place of contract formation with the agreed-upon price (Abu Shmeis, 2020).

The determination of what is meant by an international commercial electronic contract is still controversial among scholars, raising problems related to its effects and consequences. This includes the determination of the law applicable in the event of a dispute in international electronic contracts, which raises a problem in the field of legal rules governing such conflict in contracts (Abu al-Haija, 2017).

Several legislations have included a definition of an electronic contract or an electronic commerce contract, including its definition in such a way as “an agreement in which the offer converges with acceptance on an open international network for remote communication by audible means. The European directive has provided a definition in this regard, which states:

“any contract related to goods or services concluded between a supplier and a consumer within the scope of the sale or provision of services remotely, organised by resources that are used to conclude and implement one or more codifications for remote connection”

(El-Desouky, I., 2003, p. 31)

Despite the definitions regarding the commercial electronic contract, like the international commercial contract, there is still no universally accepted definition. This is because the international contract may relate to a specific activity that does not confer a commercial nature.

This issue is even more pronounced in the case of international electronic contracts, where transactions may occur via a network or website that operates beyond national boundaries. This can lead to jurisdictional challenges in determining the legal rules applicable to the contract, particularly in countries that do not recognise the validity of electronic contracts executed (Abu Al-Haija, 2017).

Since this is the case of international electronic commerce, it has caused pushes the exploration of applicable law to the disputed issues in these contracts. Many of these contracts are governed by legal rules to which disputing parties often resort. Despite the problems they have caused regarding the discrepancy between the international and local contracts, this paper addresses the standards that must be linked to the electronic contract in more detail through branches next.

Characteristics of A Commercial Electronic Contract

First of all, the concept of an electronic contract is closely linked to certain characteristics that help distinguish it as an international commercial electronic contract. These characteristics are essential in determining the applicable legal framework to protect the contractual terms between the parties (al-Atoum, 2020):

- a) The electronic contract should be concluded remotely without physical presence: The contract between the contractors for a product or service is concluded at the initiative of the resources without the simultaneous physical presence of the materials or the consumer, using telecommunication techniques to transmit the supplier's offer and purchase order from the consumer.
- b) Electronic contract is an international commercial contract: The electronic contract often revolves around the scope of contracts of sale, provision of services, leasing, mediation, brokerage, guarantee, loan, and other similar contracts, and the electronic contract may be considered a mixed contract.

This is because it can be between a trader and a non-trader; hence, it comes out of the scope of the civil contract and is a mixed contract. The electronic contract is also executed on an international network in the case of permanent communication on a permanent international line, and it takes place outside the borders of the country (Al-Mongi, 2002).

- c) Lack of a direct relationship between the parties to the electronic contract: Since modern communication technology is what contractors rely on to complete the contract between them, this phenomenon creates a virtual contract council in which the parties to the contract are separated by distances that may be thousands of kilometers.

Additionally, the difference in timing in some cases necessitates the existence of an intermediary between the parties to the contract to be concluded, which is the computer connected to the international electronic network (Al-Zaben, 2019).

- d) Non-approval of paper documents when concluding the electronic contract: The electronic contract is concluded electronically, and there are no papers to be dealt with when concluding this type of contract.

Therefore, the legal basis available to all parties to the contract when the dispute arises is the electronic message, and dealing with such contracts necessitates dispensing with dealing with paper documents, which leads to slow procedures (Dudin, 2006).

- e) Means of proof in electronic contracts: Electronic contracts are evidenced by electronic means and through electronic signatures. Still, these means continue to be a burden of proof because they can be manipulated through and modification of programmers (Al-Khashram, 2003).
- f) The implementation of electronic contracts is carried out remotely: Electronic contracts are often carried out remotely, without requiring the physical presence or movement of the parties to a specific location.

A common example is banking contracts, such as those for opening accounts or issuing credit cards, where the contract is completed over a direct electronic network, and in some cases, the execution is instantaneous.

- g) Electronic contracts with the right of reversal: According to the general rule under the binding force of a contract, once the offer is accepted, none of the parties can withdraw the agreement.

However, since the consumer in the electronic contract does not have the actual possibility to inspect the commodity and familiarise oneself with the characteristics of the service before concluding the contract and that the contract is done remotely, the consumer has the right to withdraw from the electronic contract (Alissa, 2002).

Requirements Governing the Concept of Electronic Contracts

The law governing commercial electronic contracts typically depends on the choice of law agreed upon by the contracting parties. However, if no such option is specified, many states apply either the law of the jurisdiction where the service was provided or the law of the consumer's residence, as these are often deemed most relevant to the transaction (Abu Shmeis, 2020).

The requirements governing the concept of an electronic contract as an electronic commercial contract are clear when viewed from the holistic side of the contract in terms of being a national or international electronic contract (Abu Al-Haija, 2017).

First Criterion: Legal Standard

The legal standard has two directions in the case of governing the electronic contract in terms of its regional or international status. The trend in this criterion measures the contract with a view of its structure in terms of elements linked to more than one legal system. This could include the nationalities or domiciles of the parties or the location where the contract is executed. For example, a contract concluded between a French citizen residing in France and a Jordanian citizen for execution in Iraq would be classified as international, as it engages the legal systems of three different countries.

According to this criterion, a legal relationship is considered international if the contract is made abroad, executed in another foreign country, one of the parties is a foreigner, or the dispute is focused on funds located in another foreign country (Abu Muglia, 2014). Based on this theory, the provision of the contract is clear through the circumstances surrounding the contract to ensure that it is linked to legal elements that exceed the internal system of one state.

Therefore, if the legal relationship of the contract is based on all its material and moral elements on legal processes of a purely internal nature, the electronic contract is not considered international.

Second Criterion: Economic Criterion

This criterion implies that an international electronic contract is anything that relates to the interests of international trade, goes beyond the internal economy of a state concerned, and involves the movement of funds across territorial borders.

In other words, an electronic contract is not an international contract if it relates to internal trade and is governed by the domestic law of the state concerned, even if it is made through international networks and parties to the contract operate within that international network. Therefore, the contract is governed by the internal regulations of a state (Abu Mughlai, 2014).

The international character of an electronic contract is determined by looking at the subject matter of the contract. Such subject matter is the process of creating an international commercial contract, which is represented by an international commercial interest, regardless of the other elements of the contract, such as nationality, place of residence, domicile, and place of performance, as well as the effects of the contract at the international level. Transactions within the framework of the international commercial sphere, rather than on contract elements, are not considered by this economic criterion.

Thus, determining whether a contractual relationship is national or international is based on examining the cause of the relationship and its connection with an international transaction within the framework of the international commercial sphere rather than on contract elements not considered by this economic criterion.

Proof of Electronic Commerce Contract

Proof is one of the most critical impediments to electronic commerce. This is because of the difference between an electronic contract, the customary contract in place to the editor and the traditional signature as a primary proof factor. Electronic commerce does not recognise such media as proof of its convergence of acceptance and positivity in electronic surroundings based on electronic data exchange.

To introduce a new type of writing and signature in electronic style, non-paper pillars are uploaded inside or outside the communication devices and signed by the email sender using encryption or plasticization. Writing is the recording of letters, forms, symbols or data that are readable and understandable. In order to be relied upon in evidence, several conditions are required (Rushdi, 2021).

Referring to technical developments and improvements in electronic media innovations, modes with tremendous carrying capacity have been devised to allow the storage of long-stored data. Therefore, the electronic editor's continuity requirement is similar to that of the customary editor (Jemai, 2019).

Accordingly, the Jordanian Court of Appeal ruled in Decision No. 3099/2022 Article 13 of the Law on Evidence. Article 15 of the Law on Electronic Transactions of Electronic Mails gave the normal power of proof without a certificate as long as the Law on Electronic Transactions requirements were met in Articles 6 and 7, which recognised the authenticity of computer extracts and e-mail correspondence.

The legislator has adopted this trend to ensure reading and continuity and to ensure that there is no doubt about the validity of these editors in reversing the wishes of the contractors. Article 2 of the Electronic Transactions Act stipulates that:

“Information messages are a means of expressing the legally accepted will to give an affirmative or consent with a view to creating a contractual obligation”.

Authenticity of Electronic Signature

To use the electronic editor as full evidence, the protesting person's signatory must sign it. Signature means the mark the person places on a written document expressing the material's quality of disposition. The Jordanian legislator did not come out of the Electronic Transactions Act in the context of an electronic signature tariff since Article II defines it as:

“It is data in the form of letters, numbers, symbols or other references and is included in electronic form or any other similar means in the electronic record or is added to it in order to identify the signatory and unilaterally to use and distinguish from jealousy”.

Accordingly, the Jordanian Court of Appeal ruled in Decision No. 3052/2021 since e-mails serve as evidence in this case, the parties and within the general conditions have agreed that e-mails, fax and signatures are the means of (communication and interaction between them to complete the project and serve as evidence based on the provisions of article 13C of the Evidence Act. The definition of the preceding signature to be used in proof clearly states that it is distinctive, readable, specific to an owner, and known.

The signature shall be specific to the signatory, thereby achieving a course of proof. Article 15 of the Electronic Transactions Act provides for this:

“An electronic signature shall be protected if the following conditions are met together”.

Besides the possibility of identifying the contractor, the electronic signature must reflect the contractor's true will to ensure that the electronic signature is safe from any changes in the course of moving through the electronic space from the sender to the consignor after the signature.

Refer to the dual public key encryption system and encryption of the content of the data message via the public key of an automated sender and the electronic signature encryption using the private sender key. This is achieved by ensuring the integrity of the electronic message from any modifications, as the automatic sender can only solve the message code (Lutfi, 2020).

To verify this requirement, there is nothing to prevent the editor from invoking electronic signature as full written evidence in the proof. This is provided for in Article 17 of Jordan's Electronic Transactions Act. An electronic record bound by an electronic signature shall have the exact authenticity protected as an ordinary bond. Parties to an electronic transaction may invoke it (Abu Al-Haija, 2017).

Conclusion

This study has examined the legal framework governing electronic contracts, a crucial component of electronic commerce. As Jordanian legislation recognises, these contracts facilitate agreements between parties through information networks. E-commerce contracts have become a significant and effective phenomenon at both domestic and international levels, stemming from legal and economic complexities that all states cannot uniformly address. The study found that electronic contracts are concluded without the parties' physical presence, utilising telecommunications technologies and no physical paper.

As a result, the only legal guarantee available to the parties is the exchange of electronic messages. Additionally, it was determined that the applicable law in electronic contracts is based on the parties' choice of jurisdiction. Jordanian law grants full recognition to electronic writing and signatures as valid proof. The study produced several key recommendations. The most important is the proposal to establish specific rules for electronic commerce contracts, particularly to enhance consumer protection by allowing both the consumer and supplier to choose the applicable law, similar to the approach taken by the Egyptian legislator.

Furthermore, the study advocates for including provisions in the Jordanian Electronic Transactions Law that address the time and place of the contract's conclusion rather than relying on the general rules of Jordanian civil law. The establishment of an electronic documentation centre is also recommended to provide greater trust and credibility in electronic transactions. Finally, concerning the right of consumers to return goods purchased online without giving a reason, the study suggests that the international community should work towards developing uniform international legislation for electronic commerce, comparable to other standardised international legal frameworks.

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