

## THE LEGAL FRAMEWORK OF ELECTRONIC CONTRACT IN THE JORDANIAN LEGISLATION

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**ABSTRACT:** *Electronic contract requires acceptance, reason, price and place and all the condition which specifying the responsibilities of the contractual obligations, but the electronic contract differs from the traditional contract in the usage mean that show or offering the contract. Therefore; the electronic contract is being done without the presence of the parties in the council of the contract, which raises some legal difficulties, like the opening nature and global of the internet and the confidentiality of exchanged information. And to determine the eligibility of contractor, place and time of the contract, this refer to the privacy of the non-material electronic letters such as: information message which raised a question about the extent of counting it in the contract and the approval of it too, the legislator should put the lines and the principles of electronic contract to held it correctly in the electronic way.*

**KEYWORDS:** Electronic Contract, Electronic Offer, Electronic Acceptance, Electronic Transaction Act, Jordan.

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### INTRODUCTION

After the quick evolving in the world of technology and the effects of information technology which has been reflected in the development in the field of communication technologies, so these days the contractors can use the modern means of communication to conclude their contracts and facilitate the implementation of their works and transaction, for these reasons many traders prompting to use these modern methods such as the contracting through online, also people can purchase their needs through online at their own expense without charge through a designate sites.<sup>1</sup> it is necessary to research in the possibility of proving these electronic contracts in order to indicate the compatibility of the legal text with the new modern means of communication, specifically internet, within the scope of the legal systems and the rules of contracting and the theory of compliance which is one of the most accurate and important topics of contemporary law because it contains a fixed general rules, also this topic raised many renewable topics which needs to alteration in the legislative system continuously, and the subject of the contract has importance scientific and practical too, also it based on three main general principles:

1. The principle of fulfilling covenant
2. The principle of compensation for damage as resulting from an unlawful act.
3. The principle of unjust enrichment at the expense of others.

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<sup>1</sup> Mohamed Amin Al Roumi, Online Electronic Contracting, First Edition, University Publications, Alexandria, 2004, p38

The electronic contracts which are concluded through internet are an agreement that have the acceptance of the communication of information systems with each other.<sup>2</sup> Electronic contracts are not different from the traditional contract in their essence and conditions, but in some aspects it requires a legal treatment that adequate with the nature of the innovation mean that had done by it, also its not confined between business companies and institutions, it includes people, so it raised a several legal problematic, such as the conditions of these kinds of contracts, in other words the electronic problematic which expresses the management is the corner in approving the electronic contracts.

Based on the information above, it is important to show the compatibility of the provision of the decision general rules of the Jordanian civil law and the evidence act with the laws which are governing the legal regulation of the electronic contracts in the Jordanian legislation by referring to the mean which is used in the electronic contracting, are the clauses conclusion in the electronic transaction comprehensive and organized to approve the electronic contract or not?.

The online contractual activity may takes a legal dimensions, so the contractor must take care of the validity of their procedures in order to obtain the legal valid results. Therefore the validity of these contracts goes to the local trade to the international contracting too, as a result of that the controversy is still raised about finding the suitable and fair solution which could be applied it and modifying the legislation or changing the conception of it by the flexibility of its interpretation which deal with the availability of electronic formality in approving it.

### **The concept of electronic contract**

In order to cover the subject matter of the research, it is necessary to state the concept of the contract in general, as it state in the Jordanian civil law and it accordance to the article 87 which stated that the contract is the acceptance from one of the parties of the contract to another and the acceptance which approved that in the contract and both of them should be restricted of the conditions of the contract for one another.<sup>3</sup> The electronic contract according to this concept represents a legal translation in order to represent the wills for both the seller and buyer and based on a full trust as the traditional contract, but it requires a legal electronic form to provide guarantees to avoid the risks that influenced on the electronic transaction remotely.<sup>4</sup>

The old Jordanian electronic transaction law No.(85) is defined as the agreement which is held by the electronic means in a whole or in part, moreover the Jordanian electronic law defined the electronic transactions as a procedures between two parties or more to establish obligation on one party or mutual obligations between more than one party that related to a business or civil commitment or a relation with any government department,<sup>5</sup> the new

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<sup>2</sup> Taib Hassan Abdullah Al-Awad, Conclusion and the implementation of the electronic contract, comparative study, Master's thesis, University of Rabat National School of Graduate Studies and Research, Morocco, 2015, p. 15

<sup>3</sup> Article 87 of the Jordanian Civil Code No. 43 of 1976

<sup>4</sup> Tayeb Hassan Abdullah Al-Awad, Conclusion and the implementation of the electronic contract, a previous source, p. 15 and beyond.

<sup>5</sup> Article 2 of the Jordanian Transaction Law No. 85 of 2001.

Jordanian electronic transaction act,<sup>6</sup> did not address the definition of the electronic contract because it's not the task of legislator but left it to the jurisprudence and the justice.

According to the jurisprudence and justice area, it's clear that the scholars<sup>7</sup> have a different opinion on the definition of the electronic contract, on the basis that shows the way of how contract be held, and the extent in order to be regarded as a distance contracts, so some jurists define it as: is any agreement which met between the offer and acceptance on the international network which is remoted by means of audiovisual media, so the condition of this definition is to have an audiovisual means for the contract, to considered electronically, however electronic contracts can be concluded by other means such as, contracting email, or facebook and it considered electronic contract by writing. While other scholars;<sup>8</sup> have known the electronic contract is the implementation of all or some commercial transactions in goods and services between business and other or between business and consumer by using the information technology and communication. The American jurisprudence defined the electronic contract as: exchange of preparing letters which are made on mold before and it processing electronically; and it creates a contractual obligation between the seller and buyer.<sup>9</sup> On this basis the electronic contract considered as a legal act in two main capacities:

1. The electronic contract between two separated parties with no real council, it's a contract between two absentees, and what is combine between them is the council contracting.
2. It is concluded through the electronic means.<sup>10</sup>

### **The clauses of electronic contracts**

The clauses of electronic contracts appear in the term of convergence with electronic acceptance and offeror until the contract is concluded and the legal impact of it, the electronic contract will not clause without the will of the two parties on the internet, the will is a basic element in the to establish the contract and it also indicates the determination to carry out the legal process in the contract, regardless the of the means which considered of it existence, and before it materialize externally with the intention of making its legal effects because it's a psychological state inside of the human, if it take an external appearance to express it to be explicit or implicit.<sup>11</sup>

Article (93) of the Jordanian civil law states that the explicit expression is the direct expression to have a direct appearance of will by either writing or speech or sign or the position which not leave any doubt about the will which could make any certain legal effect.

<sup>6</sup> Jordanian Electronic Transactions Law No. 15 of 2015, published in the Official Gazette No. (5292) dated 10/3/2015

<sup>7</sup> Khaled Mamdouh Ibrahim, The Conclusion of the Electronic Contract, University Thought House, Second Edition, 2011, p. 73, as well as Muhammad Ahmad Ali Al-Mahasna, Conflict of Laws, Dar Al-Hamed 1, 2013, p.25

<sup>8</sup> Mohammed Fawaz al-matlaqah, Electronic Commerce Contracts, Dar al-Thaqafa, 1, 2006, p28

<sup>9</sup> Khaled Mamdouh Ibrahim, former source, p. 73

<sup>10</sup> Mohammed Ahmed Subaih, Consumer Protection in Electronic Transactions, Comparative Study, Journal of Law, Issue 2, Kuwait, 2008 p183

<sup>11</sup> Anwar Sultan, Sources of Compliance in Civil Law, 6th Edition, Dar Al-Thaqafa for Publishing and Distribution, 2012, p. 43

According to the implicit expression of the will, it's the indirect expression which could be explained by the assumption of its existence such as: the one who accepts the agency and begins to accept it implicitly, therefore that what is referred in the article 95/2 from the civil law, and it considered the silence is acceptance if it had worked on it before, in addition to the customary commercial.

It is clear that the general rules in the civil law and the private rules which are texted in the various rules that belong to the electronic transactions allowed to express the will in the traditional contracts and this is applied on the clauses contracts electronically when it achieved the conditions of expression the will in the contracts.

### **The will in the electronic contract**

The validity of the consensual will be realized if the will of the two parties is issued by a competent person, otherwise the contract became void, to solve the problem of the competent of contractors remoteness through of what is called publicity authorities which is a neutral third party which regulates the relationships between the parties on a line so the publicity authority is third part who identifies the parties and the legal capacity of both by issued the certificates of the parties and the competent of them, more over by approving a specific facts which belong to the contracts which take a place on the internet. The website might be designed on the internet in such away it oblige the one of the parties to declare his identity and to disclose the age and if he forget those two conditions it will not allow him/her in contracting.<sup>12</sup>

Perhaps the purpose behind that is to protect the parties who were less ability or experience and then if the third party who is more experience and did not provide experience to the other part so he/she had to performed it. The non-expert contractor might be stuck of his mistake due to of his lack of the knowledge of the place of the contract or the condition of the contract or because of his unknown of the technological or technical things of the product or the service contracted and the consequences of dealing with them of legal effects.

The error of the electronic contract is something could be happened, for example: one of the parties believes that other party has known to him as he made a painting manually and he wants to contract with him because of his skills and experience too. Then he clears that the client is not a painter and he hasn't known to him or because of the similarities of the names or the websites which offers a fake signature to a person who is international painter, on this basis the contractor can terminates the contract.<sup>13</sup>

The coercion in the is unlikely in the electronic contract, or at least inconceivable because the electronic contract between the two parties is separated by a place and collected by governing contract council and its not real, the trick is not affect in the electronic contract but in some exception which are texted by the legislator and there is no consequences of it as the legislator mentioned it explicitly,<sup>14</sup>

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<sup>12</sup> Ayed Rashed Al-Marri, The Authenticity of Modern Technology in Proof of Commercial Contracts, PhD Thesis, Cairo University, 1998, pp. 100-101

<sup>13</sup> Sahib Obeid Al-Fatawi, Sources of Commitment, First Edition, Dar Al-Jamal Publishing House, Jordan, 2014, p. 129.

<sup>14</sup> Sahib Obeid Al-Fatawi, the previous source, p. 134.

In our estimation it doesn't preclude to the electronic service provider and his claim to compensate for the consequent harm if the mistake or misrepresentation in the transfer of will is due to fault or defect in the connecting devices which were used it.

### **Offer and acceptance in the electronic contracts**

After the researcher has shown how both contractors expresses their wills according to the article 93 from the Jordanian civil law, it is sign that the expression on the will through the internet is a special kind that different of what exist on the papers, it is not written on the papers, but electronic writing which can be written and read by a machine and by a human after it changed from the language of the machine to it language or vice versa.<sup>15</sup> Article 90 from the same law gives the formal termination which decided from the same law that the contract is held as soon as with the relation with the offer and acceptance that regard to certain condition for the contract.<sup>16</sup>

If the writing is required in the traditional contract, it is possible to achieve that in the formality of the electronic contracts, it must be written on the electronic supports especially the concept of the writing which extends to include writing on papers in the electronic forms, that it is installed on the electronic supports, if the law requires written writing as a base of contract or it requires that the data is restrictive, it should written in a handwriting and the signature in a handwriting, therefore writing in this way is not electronic and the contract is not be clause by the electronic mean.

### **Electronic offer**

Article 9 from the Jordanian electronic transaction law dealt with the concept of the electronic information message, it stating that the information message is considered as a means of expressing the acceptance will legally to express the offer or acceptance with establish a contractual obligation,<sup>17</sup> article 2 from the same law includes that the electronic information which is created or send it or receive it or store it in any electronic mean such as electronic mail, or SMS or any exchange to this electronic information.<sup>18</sup>

The study of the validity of the will of the contractors in the e-commerce contracts invite us to refer to the competent of the contractors through the electronic communication means which means contracting between two absentees parties, it is possible to contract between two people one of them has not the required competent to contract in accordance with the applicable law, therefore the data on the electronic communication network are incorrect and the contractor may not be able to verify the identity data from the other contractor which is certainly affect the validity of the contract.

Article 2 from the Jordanian electronic transaction refers to the electronic information message in other word it is possible to express the will in a non-verbal way, there is writing and the usual sign and other means of expression such as signs and symbols that indicate the will for the acceptance such as the smiley face, or the sign of admiration, it is possible to

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<sup>15</sup> Nidal Ismail Barham, Rules of Electronic Commerce Contracts, First Edition, Dar Al-Thaqafa for Publishing and Distribution, 2005, p. 32.

<sup>16</sup> Article 90 of the Jordanian Civil Code.

<sup>17</sup> Article 9 of the Jordanian Electronic Transactions Law No. 15 of 2015, published in the Official Gazette on page 5292 of the year 2015

<sup>18</sup> Article 2 of the Jordanian Electronic Transactions Law

direct the affirmation via email, or the visible electronic websites without confusing between the offer and the invitation to the contracting.<sup>19</sup>

The contract is held when the offer and acceptance are identical to each other which means that it is subject to the general rules which governing the authentication on a supporter papers but it has a special provisions because it is linked to the electronic media that combine between two absentees in the same time but the contractor are not meeting in the same place, as it stated in the article (101) from the Jordanian civil law and article (14) from the Jordanian electronic transaction law.

According of what is above, it can be a pointed briefly that the electronic affirmation is to direct the will to clause the contract so the affirmation is clear and transparent and there is no fraud or deceit or misleading am dot hold all the essential conditions and doesn't bear the interpretation and it has of one of the electronic means the party would have on the whole details of affirmation therefore it could be accept it or refuse it too, and this is characterized by some of it clauses, as the expression of the will is often uses the electronic message with different mean.

### **Electronic acceptance**

It should be noted that the Jordanian legislator did not specify a definition of the electronic admission but it talked about the form and the means of expression which express on the will in the traditional acceptance as it stated in article (91) paragraph (1) and article 99 of the Jordanian civil law to texted on the acceptance: "[1] The acceptance must be identical to the offer. [2] If the acceptance is associated with affirmative action and restricted, it shall be rejection containing a new affirmative."

Article (100/1) of the Jordanian civil law clarifies the following: acceptance and affirmative are agreed on all substantive issues that they negotiated, either agreement on some issues are not enough to restrict the two parties even if this agreement approved by writing and the judicial justice magazine defines the acceptance as the second speech which issued by one of the contractors to create act and the contract would be done.<sup>20</sup>

As it is cleared from the research that some of the comparison legislation did not define the electronic acceptance and did not specify a specific form of it, but it stipulated in some articles to follow a certain procedures until the electronic acceptance produce the legal effect of it, and those legislation referred to a certain means until the conclusion of the electronic contract which is the US legislation, the unified commercial law stipulated that the acceptance is submitted in the same way as affirmative, so if the affirmative is made through the online the acceptance would be on the same way.<sup>21</sup>

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<sup>19</sup> Mohamed Hussein Abbas, The Contract and the Single Administration, Dar Al-Nahda Al-Arabiya for Publishing and Distribution, Cairo 1959, pp. 66-67

<sup>20</sup> Article 102 of the Code of Judicial Judgments

<sup>21</sup> Belkacem Hamidi, the conclusion of the electronic contract, PhD thesis, Faculty of Business Law, University of Haj Lakhverbatneh (2015) p 79



The electronic acceptance is defined as the expression of the affirmative of the will by concluding the contract according to the terms and conditions which is sent to him/her. It doesn't require a specific form or method of rejection.<sup>22</sup>

However there is some difference in the electronic acceptance depending on some privacy which is due to its electronic nature, some of people,<sup>23</sup> believe that the acceptance is an explicit expression of intention to enter the contract according to the condition in the offer, the contract is not be done or appear it to the existence after the accepting of the contract, while the other;<sup>24</sup> said that the acceptance is the expression of the will to the person who is directed the electronic affirmative and its equal and implicit and in order to verify the effects which is contained in the contract so the affirmative should be identical to the acceptance, if the electronic acceptance differs from the electronic affirmation, it considered a new electronic affirmation and not an electronic acceptance accordance to the article 99 of the Jordanian civil law.

The electronic acceptance is valid since as long as the electronic affirmation is exists too, and this will is expressed explicitly or implicitly and the silence is not accepted electronically, unless if it described or associated with a circumstances that reveal it significance in the acceptance,<sup>25</sup> which is incompatible with the electronic commerce the styles of expression of will in the electronic acceptance and it specified in the forms which is imposed by the nature of the internet and the needs to pour the administration in the form which reflected the impact on the contract and the law doesn't confess on the electronic acceptance in the case of silence as it contained in the traditional acceptance so there is a difference between the traditional acceptance and the electronic acceptance in the case of issuance, so the electronic acceptance depends on the electronic mean, this acceptance is often explicit and maybe implicit in a specific case and implicit in other specific cases, and to be explicit it should be includes the expression of the will of the contractor by accepting the conditions in the offer.<sup>26</sup>

Based on the information above the electronic acceptance is not require a certain formality or a specific way to express the will, if the electronic offer is submitted by email, it can be answered in the same way , this is certainly dependent on the commercial dealings between them and it's not refer that the electronic Jordanian civil transaction law texted to the contractors of not buying the item because it's not on the same characteristic in the offer from the seller , because the nature of the contract was remotely, and the buyer could not see the actual item before it ,in this case the will should be known and the will should be competent from the two parties and in this case there is no match in the will,

But we would like to point out that there is a possibility of electronic acceptance of a commercial, which are displayed on the internet by clicking on the icons(I accept) or (ok) or (I agree), some of the electronic websites requires from the contractors some procedures to

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<sup>22</sup> Mohamed Fawaz Matalqa, Electronic Commerce Contracts, former source, p. 64

<sup>23</sup> Azza Ali Mohamed Al Hassan, Legal and Legal Frameworks for Electronic Commerce, PhD Thesis, Faculty of Law, University of Khartoum, 2005, p. 76

<sup>24</sup> Mohamed Ibrahim Abu Al-Haija, Electronic Commerce Contracts, Dar Al-Thaqafa for Publishing and Distribution, First Edition, Amman, 2005, p. 48

<sup>25</sup> Tayeb Hassan Abdullah Al-Awad, conclusion and the implementation of the electronic contract, a previous source, p. Hamidi Qabilat, Law of Public Administration, 1, Dar Wael Publishing and Distribution, Jordan, 2014, p. 171

<sup>26</sup> Adel Ali Al-Miqdadi, Conclusion of the Electronic Contract in accordance with the Omani Electronic Transactions Law, Comparative Study, Faculty of Law, Sultan Qaboos University, No Publication Year, p 213

confirm this acceptance and these procedures is repeated pressure on the icons which allocated again until the confirmation of the will of the person contracted and some of it requires writing and other are to answer some questions which is more effective and to be confirmed in the desire to contracting but if the electronic acceptance is found after the electronic affirmation so the acceptance would be useless because the affirmation is expired.

### **The attestation of the electronic contracts:**

It is clear through the research that there is a large group of the Jordanian legislation tried to organize the electronic attestation, accordance to the general legal rule which states that: onus of proof lies with the plaintiff and denial shall be supported by oath.<sup>27</sup> in the absence of the rules which recognize the attestation the party who is harmful cant approve that so he couldn't get his right especially that the exchange data system on the internet is not fully to the legal rules, which leads to the instability of the legal rules with the requirements of the of electronic exchange data process, which usually come from the writing, signing, and storing the documents, the electronic data sometimes is successful because of the agreement of the two parties and often it includes the agreements for the contracting site.

In addition of that the private legislation of the rules of the attestation requires a written document to approve the legal act, but the electronic commerce does not rely on papers, this is raise a certain problem namely the difficulty of proving the fact, which is obstacle to the development of the electronic commerce through the internet, because it is difficult of protestation of its writing for the purpose of the proof it at any time if there is a dispute over the electronic document in contrast to dealing with papers documents. The law stipulates the writing for the purpose of writing and the electronic transactions are done through the internet without papers documents, in this type of contracting, there are many marginal wonderings and pivotal in the same time, in the term of the extent to considering what is documented on the pillars paperless is like a writing of the papers and to what extent that this writing is authoritative, and the situation becomes very complicated if one of the parties wants the electronic drafter as a completely electronic evidence, but there is issues that contradict the modern electronic means that used in the online commerce, the confession of the electronic evidence come from the establishment of the legal rules that confess the authoritative of electronic written and the electronic signature and they are the elements of the electronic proof and they are equivalent functionally with the ordinary writing and signing, therefore it requires from us to draw the reader's attention to two things:

### **The concept of electronic drafter**

The electronic drafter shall be called (the information message) according to article 2 from the Jordanian transaction law and it is also defines as the electronic information that this data, texts, images, drawing, shapes, sounds, symbols or databases etc. article 2 of the UNCITRAL law on the electronic commerce that the electronic drafter is the electronic information and it means that the information which is created or send it or deliver it, or store it in any electronic means such as the electronic mail, SMS or exchange electronic data, for example: there is no limited for exchange the electronic data on the email, telegraph.<sup>28</sup>

<sup>27</sup> Article 77 of the Jordanian Civil Code

<sup>28</sup> UNCITRAL Model Law on Electronic Commerce No. 605 of 12 June 1996



Based on the information above the purpose is not limited on the data message which is informed to the two contractor parties but also wanted the records which produced from the computer that is not intend to inform it. And it expand to include the electronic drafters which is store on the computer or the network or any electronic medium, where we find that these customary drafter defined by the legislator in the law of evidence, in one condition which is data message must be completed the requirements of the written draft which is required by the law, if it is access to these data easily in anytime, in addition to expand it to all means of informing the information which contained in the present definition.

Some of them;<sup>29</sup> have defined the electronic drafter as what is written on a certain type of supporter whether papers or other electronic means or it is electronic means of the extraction in the place of receiving. In this way the electronic drafters a wide range of information on the network through other electronic means such as: fax, telex, or any other means of technology that available in the future.

The electronic drafters are defined as a data or information which is exchange it through network or through the hard desk or the computer screen or any electronic mean, these exchange data represent through the correspondence between the two parties of the relationship to receive the information between them.

According to the conditions which should available in the electronic drafters, article 7 of the Jordanian electronic transaction law: the registration, contract, documents it must have a several matter:

“[1] To be saved in the form, in which it was created, sent or receives it in such away to ensure that there is no change or modification on the content. [2] To be saved in such way to make it possible to access it in the information and refer it again in anytime. [3] To be able to identify the originator and the addressee, date and the time of creation or send it or receive it.”

As for the observance of the rules that relevant to the relation which required that the drafter is written as a base condition, the convention of the work on codification the official drafters such as papers and special letter in the language of contractors or the language to adopt contract, the successful document on the electronic transaction is a written evidence, the written evidence and or official for the purposes of legal recognition and it must include confirmation of the a legal act, and it signed from the person whom the evidence is attached, so the element of the written evidence is the written and the sign too.<sup>30</sup>

In order to be able to object on the content of the written drafters in the face of other, so the drafter requires a conditions includes readable written with a letter or known symbols and understandable to the person who objected by the drafter in spite of that the computer outputs doesn't raise any difficulties while other outputs raises a problems such as the magnetic cylinders and the microfilm.

In addition to the writing on the legal authentication it should be signed according to the article 11 of the Jordanian act and article 15 of the Jordanian electronic transaction law, the

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<sup>29</sup> Abdel Fattah Bayoumi Hegazi, Introduction to Arab Electronic Commerce, University Thought House, Alexandria, 2004, p. 81

<sup>30</sup> Mufleh Awad Al-Qadah, Evidence in Civil and Commercial Materials, Third Edition, Dar Al-Thaqafa for Publishing and Distribution, Amman, 2009, pp. 86-87

signature is a sign that allow the person who signed and it means in the scope of proof, in this case we can summarize the elements of signature such as the a personal written mark that the authentic belongs to it, and special impact and can't change,<sup>31</sup> and specify the document and sign it with no change, perhaps the most important reasons which invite to doubt of the value of the electronic signature is the separation of this type of signature from the personality of the owner and the possibility of repeating it without his consent or knowledge therefore it is not use a complex technology to secure it.

In spite of the possibility of linking the authentication and the electronic signature and secure them both from the manipulation, we maintain that the electronic authentication acceptance by the judge is a written evidence which required in the beginning that the judge is determine the effectiveness of this usage technology in charging the whole conditions which requires the signature in play the role of evidence, which lead the power of electronic authentication and leads to the threat of trust that should be available for the clients.

Thus the signed customary authentication is a complete written evidence, so the electronic authentication is an evidence in the proof, and it is going to be in subject of the judge and it is particularly equal with the official processing in turning of the burden of the evidence in the validity of the written evidence, so the it is necessary to let the legislator specify the technical that is used in the electronic signature and make it correctly, and it could be linked physically with the electronic authentication.

### **The electronic formality**

It is known that the contract in the civil law is voluntary, which means is link the affirmation with the acceptance, therefore the formulation of the contract is should be in a certain form so the principle form is one of the restriction on the power of will in the contracting, so the law may require the discharge of voluntary in a specific forma, such as the written contract, so writing is required not only for the proof but for clauses of the contract and the correctness of the contract, so that the contract doesn't have any legal existence unless it is written, in this case the contract maybe formality and the writing is essential element in the contract and it is not true without it, and this is not be done without the consent of the contractors and follow a form through the law such as an official form of papers which recorded the contract on it,<sup>32</sup> in spite of that the modern law has only a few formal contracts.

It is possible that the formalities are required for contracting in order to ensure of the convened of the contract legally, for example is the registration contract of the sale in the registration department,<sup>33</sup> or registering car at the drivers and vehicles license department contract company, and the salary contract for the life and marriage contract and the will too. The legislator requires the protection of the minors, and the need to obtain the prior permission in the court before the guardian donates the minor's money for the humanitarian duty.

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<sup>31</sup> Mohammed Al-Saeed Rushdie, Contracting of Modern Means of Communication and its Reliability in Persistence, Al-Ma'aref Establishment, Alexandria, 2005, pp. 184-186.

<sup>32</sup> Nazih Mohamed Sadiq Al-Mahdi, The General Theory of Commitment, Part I, Sources of Commitment, Dar Al-Nahda Al-Arabiya, Cairo, 2000, pp. 32-33

<sup>33</sup> Resolution of Discrimination, No. 149/95 "The contract in the property is required to be registered in the Land Registry Department whether it is a sale or a promise to sell." Journal of the Bar Association, No. 6, p. 1430

The formality could be in the form of writing, which means without the intervention of the authentication contract such as the agreement of establishing the ownership between the members of the family who are combined the unity of the work without the requiring the official writing because it's an important element and the contract is not complete without it

The electronic form has raised some crisis;<sup>34</sup> which made the countries to put the solution through the laws and legislation and excluded the private laws to some legal act, for example article 3 of the Jordanian electronic transaction law that indicates the provision of this law shall be applied on the transaction that are done through the electronic means, the provision of this law shall not apply on a certain act if it not text through other law.

The creation of the will and the amendment and the creation of the '*wakf*' and the condition of its amendment, the transaction of the disposal of immovable which demand the legislation of it registration and the agencies which belong of it and the documents and the title deeds except the private renting contracts of this money, as well as the agencies and the transaction which related to the personal funds and the notification of the cancellation or the termination of water electric services contracts and the insurance of life, bill, procedures, legal serving, court decision, securities.

The formalities that the law required it has many purposes and it is different from case to another but it had the attention of the comparative legislation,<sup>35</sup> on the one hand and on the other hand the purpose of it is to protect the consumer in the consumer contracts such as the '*Al- Tabseer contract*'.<sup>36</sup>

### Electronic signature

Article 3 of the Jordanian electronic transactions law,<sup>37</sup> define the electronic signature as data which have taken in the form of letters, numbers, symbols, signs or others and it shall be electronically, or any other same means in the electronic records or added to it or belong to it to specify the identity of the signature and it exclusive of using the signature,

The majority of the modern legislation regulates the e-commerce define the electronic signature,<sup>38</sup> as data in an electronic form that is included in a data message and it could be added or linked it logically, and it may be used to identify the identity of the signatory accordance to the data message and to show the agreement of the signatory on the data, so

<sup>34</sup> The European directive No 2000/31 about the electronic commerce which prohibits their members of states from placing any obstacles or obstacles to the recognition of the electronic contracts and working on developing their legislation to approve the electronic transaction

<sup>35</sup> The united states electronic commerce has excluded certain legal acts such as: family law, marriage, divorce, wills, adoption, court decision, and litigation documents, the US federal law consider the electronic signature for year 2000 specific exception that not apply to this law , social status, courts, credit agreement, health insurance papers and lottery tickets.

The electronic transaction law No 2 ,year 2002 , it is stipulate that the provision of this law except some material, matters and transaction which related to the personal status such as marriage contract , divorce certificate, title deeds, of real state ( by nature or privatization) or registration of any rights as well as securities and negotiable securities the documents and papers which requires the law of ratification before the competent state employee such as the private and public one.

<sup>36</sup> Al Tabseer contract defines as: letting the buyer knows about the products that is going to buy it, the quality of it, and expired date etc.

<sup>37</sup> Jordanian Electronic Transactions Law No. 15 of 2015

<sup>38</sup> Recent legislations have defined the electronic signature, Egypt, Tunisia, Bahrain, UAE, Dubai, Oman, America, France, Canada, China and other countries.

the electronic signature is the effectiveness element in the international and domestic electronic transactions through the internet which has become the major contributor to a domestic and international trade.

Electronic signature is a placed on the an electronic authentication (electronic chip) and takes a form of letters, numbers, symbols, or signs or others, and it has a distinctive characters, which allows to identify the signatory and distinguish him/her on the other persons, the electronic signature uses the testing system which depends on the private and public keys. The (private keys) is an expression which used by the person to create an electronic signature in an electronic transaction ,or information message or electronic record, and it uses in the development of the electronic signature on the electronic authentication and it kept on a secured smart card like the fingerprint which is not repeat with anyone else, and the public key is an code which assigned or approved by the electronic authentication departments to the user of the electronic document certificate to verify the electronic signature and it private for the same person and it issued from the company which is going to issue the electronic signature and it used to realize the personality of the signatory on the electronic authentication and to ensure of the content of the original authentication and for more safety it used a (pin code) on the slide so that no one can use it in case of lose it or theft.

It is noted that the public and private keys if they are different but they are connected to their works, so those people who are dealing electronically, they write a message and sign on it electronically by using their own keys and access to it through a computer testing system and it test the transaction in a complex calculation that the written message convert to a digital message, so the user of the message could be read it he has to decode the message by using the public key that can be sent to the recipient of the message through a reliable neutral side that act as an intermediary between the sender and the addressee.<sup>39</sup>

The difference between the ordinary signature and the electronic signature is that the ordinary signature is an art which is made by the person and not a science which easy to forgery it but the electronic signature is a science and not art and its difficult to falsify,<sup>40</sup> the electronic signature is signed by a special computer program, for this purpose the person has signed on the message and he signed materially.

The electronic signature is technical procedures which allow determining the personality of the author of such proceeding and their acceptance of the content of the conduct to which the signatures is issued.<sup>41</sup>

### **The authentic of the electronic signature and the documenting authority**

The authenticity of the electronic signature is linked to the document authority in order to verify the validity of the official electronic authentication and customary electronic publication, the Jordanian legislator is linked the validity of the electronic signature with the electronic authentication in a conditions which is texted by the law. Therefore the verification of its validity by reviewing the availability of these conditions or not,

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<sup>39</sup> Mohamed Fawaz Matalqa, E-Commerce Contracts, previous source, p. 173

<sup>40</sup> Khalid Mamdouh Ibrahim, conclusion of the electronic contract, a previous source, p. 247

<sup>41</sup> For further information on the concept of electronic signature, both technical and functional, see article 7/1/1 of the UNCITRAL Law of 1996 and article 2/1 of the UNCITRAL Law on Electronic Signatures. See also Taher Shawqi Momen, Contract of electronic sales, research in electronic commerce, Dar al-Nahda Arab, Cairo, 2007, p72

### **The authentic of the electronic signature**

In order to make the electronic signature authentic and binding for all parties of the contract and to be producer of the legal effects on the written documents and the written signature in accordance with the provision of the legislated legislation, article 6 of the Jordanian transaction stipulate that article 3 of this law, if any legislation requires the submission of any restriction, contract, document or any written document it shall be considered as a product of the same legal effects: “[1] Access the electronic record information. [2] The possibility of storing the electronic record and return to it at any time without any change.”

As it stated in article 2 of the EU directive, that the electronic signature must fulfill several conditions including that the signature is linked to the person of the signatory and identify his identity and it has been found through the means which keep the signatory under the exclusive control and the signature shall be linked to the data which refer to it by making amendment later,<sup>42</sup>

However its clear that from this research the Jordanian legislator did not manipulate in the data law No 30 year 1952 the issue of proving the contract through the means of communication, but the legislator avoid this legislative deficiency when he amended the law of approving the contract through the electronic means, article 13, paragraph 3 of the amended evidence No 37 of 2001 as follows:

"[3/ A] fax, telex, electronic mails have the power of ordinary documents in approving. [B] The telex message with a serial number which is dealt before between the sender and receiver and it's authentic between them too. [C] The certified output or signed has the power of the ordinary documents in the term of proof unless that if there is no one extracting them."

The Jordanian legislation has the issuance of the electronic transaction law and making the amendment on the evidence law, and make a new stage which based on the signed electronic documents in electronic way in approving as article 8 of the Jordanian electronic transaction law: "if the law requires to keep the document for any reason, it considered that keeping of the document in an electronic way is product to it impact".

The electronic record has the legal impact and has the original status if the following conditions are available:<sup>43</sup>

“[1] Saving it in the form in the form in which it was created, sent or delivered and to ensure that there is no change or modification on their content. [2] To preserve it in such a way to access it and use it and refer to the information in anytime. [3] The ability to identify the originator and the addressee and the date and time of creation, dispatch or delivery.”

According to the condition of the validity of the electronic signature;<sup>44</sup> the legislator stipulates that the signature shall be protected the following conditions should be available of it:

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<sup>42</sup> Michel Toni Issa, Legal Network of the Internet, First Edition, Dar Sadiq Publishing, Beirut, 2001, p. 35.

<sup>43</sup> Article 7 of the Jordanian Electronic Transactions Law



“[a] If the signature is unique to the owner to distinguish from other. [b] If it specify the identity of the signature. [c] If the private key under the control of the signature holder at the time of signature. [d] If it linked to the electronic record in a manner that does not permit any amendment on the electronic record after its signature without any change of the signature.”

The electronic record has the authenticity as to the ordinary document if it linked to the protective electronic signature but if the electronic record does not protect or not documented the electronic record has the same authenticity for the ordinary document in the face of the electronic transaction parties and it's a big burden in approving if it denial on who objected in the electronic record and the electronic record has the authority of not signing papers in the approving but if the electronic record does not linked with the electronic signature and if there is no legal impediment in issuing any document or attesting it in electronic means in a condition which is to link the electronic record with electronic signature,

Therefore it is clear that the Jordanian legislator has given the electronic record a legal value or the validity in proving, while the other legislation doesn't give the method of electronic preservation of the documents or any authoritative evidence unless if it demand a later legislation of keeping the papers of the electronic records for the purpose of documentation.

### **Electronic documenting authorities**

The essence of an electronic signature is to approve the link between the electronic holder and document or the electronic authenticity, which means to allow the electronic signature to specify the identity of the signatory in case to allow of objection of the electronic document and give the legal impact which include the rights and the restriction, the electronic signature is legally documented of the conditions are available that article 15 is mentioned it from the Jordanian electronic transaction law, which we have referred on it.

It is noticeable that article 2 of the Jordanian electronic transaction law includes several concepts which belong to the documentation, the electronic record defined the information message which contains of the document, contract, or any document of any other type which is created, stored it, using it, send it, copying it, or deliver it through the electronic mediator, and it define the documentation procedures, the procedures which is used to verify the electronic signature or the electronic record or to follow the changes and errors which happened in the electronic record after creating it, including the uses of electronic methods to identify the code and words and numbers and decoding it too. The electronic signature certificate is defined as the certificate which issued by the electronic authentication authority to approve the percentage of the electronic signature for a specific person by depending on the documenting procedures, the electronic authentication is defined as realizing of the personality identity of the user of the electronic documentation and the validity of it.

The electronic authentication authority in Jordan, according to the Jordanian electronic transaction law,<sup>44</sup> it is the licensed department or the approval from the telecommunication regulatory authority, or the authority which is authorized to issue the authentication certificates and to present any services which belong to this certificate depending on the regulation and the instruction, this department is a public or private body which work under the executive power which often composed to three different levels of authority, the authority

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<sup>44</sup> Article 15 of the Jordanian Electronic Transactions Law

<sup>45</sup> Article 5 of the Jordanian Transaction ACt



is the supreme which is competent to certify on a technology related to the using of keys, certification authority, is an authority which is related to the authentication of the general keys of one of the users and the private keys too, third level is local registration authority which is specialized to receiving the requests from persons who wish to obtain the pairs of coding keys (general and public) and to ensure of the personality of the users and gives the documenting certificates to certify the authenticity of the customers, the documentation departments have declared their responsibilities and commitment to the certificate which contain data and information.<sup>46</sup>

To verify the validity of the electronic signature, there must be a convincing strategy in order to connect a particular person or a department with a couple of keys, the solution of that is to use one or more third parties that are trusted, to link a particular site to a specific public key, this trusted parties is called the electronic authentic certificate which issued a certificates for a certain department, article 2 of the Jordanian electronic transaction law define the documenting certificate is a "certificate which is issued on electronic documenting authorities to approve the percentage of electronic signature to a particular person based on a certified documentation of procedures".

To link the pair of the keys with a potential signatory the electronic certification authority issues an electronic record stating the public keys as the subject of the certificate and confirms the potential signatory in the certificate, to verify the validity of the electronic signature it was created by the corresponding private key, this series of facts and introduction provide confidence and guarantee. What is legally important is the obligation on the three parties which resulted in the adoption of the electronic signature technology;<sup>47</sup> therefore it shows the nature of the legal responsibilities and the points as follows:

“[a] The processing of authenticity department to issue the certificates. [b] Issuing the certificate with the public and private keys to the new user. [c] When you send email, you code the message by using the general and private keys or private keys and attach the signature in the message. [d] There is a special program for the receiver by sending a copy of the electronic signature to the body that issued the certificate to ensure of the validity of the signature. [e] The specialized computer in the authority reviews their database and the validity of the signature is identified and the results return back to the authority again. [f] The information and result are sent again to ensure the validity and the integrity of the message. [g] The receiver read the message by using his private key, if the code is made on the base on a general number by the public numbers of the sender and the sender is going to answer in the same way.”

<sup>46</sup> Abeer M. Safadi, The Legal System of Electronic Signature Signatories, Master Thesis, Faculty of Law, Middle East University, 2009, p107

<sup>47</sup> Mohammed Jaafar Hadi Legal Concept of Electronic Signature, Journal of the Local Investigator of Legal and Political Sciences, Faculty of Law, University of Babylon, 2012, p. 152.

## CONCLUSION

The electronic contract is a reality which is decided and confers by law and different legislation by acknowledging the data messages as the means of expressing the will and applied it through the electronic mail, web pages, therefore; the contract is signed between the contractors in a virtual contract board, the contract is present in a time and absence in the term of location, the place of the contract via the internet entails important issues of proof, execution and contract judgment. A certified electronic signature based on a certified certificate of the authenticity has a legal power for the ordinary signature. Some of the formal contract requires a private form which can't be a premise for the electronic contract on the internet, in addition of that silence can't be considered as acceptance in the contracting online. So the team of this research recommends the following steps which could be a legal base in this field:

- 1) The intensive of effort should be increased between the legal and technical professionals in order to secure the electronic transaction especially the defense of penetration and the preservation of documents of change or forgery and to increase the confidentiality and safety to increase the confidence on these transactions.
- 2) Working to find special courts in the field of electronic commerce and holding training courses for the judges in this area to let the judges specialized in this field to keep with the development and the era of technology.
- 3) The necessity of working on cooperation between the countries to develop a uniform and specific system between the provisions of the law for the ease of application and the implementation of the court judgments that issued in electronic disputes.
- 4) The working on amending the law by entering what is necessary for the electronic contract parties by specifying the applicable law to their disputes and go to the special court in this field, the researcher team recommends the developing of the Jordanian electronic transaction law to include the consumer protection in electronic contracting and benefiting from the experience comparative legislation and the western legislation too.

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