

The Role of Proof of Written Vice Electronic Documents: A Study of the Laws of Jordan and the United Arab Emirates

Professor. Dr. Mohammed Ibrahim Abu El-Haija¹

The World Islamic Sciences & Education University, Amman, Jordan

mohammedhaija@yahoo.com

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ABSTRACT: *Proof of document means that a document is required to be produced and proved according to law to be called evidence. Whether such evidence is relevant, irrelevant, admissible or inadmissible, is a matter of trial. Every piece of documentation can make a difference in supporting your case. It is crucial to proving the case to ensure that as much evidence as possible is gathered and detailed records are well maintained. Don't wait till it's too late. Electronic document (e-document) refers to any transactional document which is exchanged between trading partners in an electronic format and manner. Distinct from PDF or image files, e-documents are machine readable and typically exchanged via software or online platforms rather than email. E-documents are generally characterized by authenticity, accuracy, integrity, and accessibility. Project documentation, minutes of meetings, emergency plans, and inspection reports are all examples of records. Good written records are accurate, written in plain English with no jargon, and contain all relevant information. For the importance role of documents in proof before the courts and other dispute settlement tribunal in civil and commercial disputes. Documentation plays a crucial role in legal proceedings. It can be used as evidence to support your case and prove claims. In order for documentation to be admissible in court, it must be relevant, authentic, and have been obtained legally. This paper focuses on evaluating the equivalence between official and electronic documents in proof in both, the laws of Jordan and the United Arab Emirates (UAE). The differences in legislators' situation from the equivalences between official and electronic documents are examined. This study followed Analytical methodology approach represented in analyzing the governing texts, judicial rulings, and jurisprudential opinions. In the conclusion the study finds many differences in legislature's situations in cogency and power between written and electronic documents. This study thus offers recommendations with some essential modifications.*

KEYWORDS: official document, non-official document, electronic document, transaction law

¹ Mohammedhaija75@gmail.com

INTRODUCTION

When it comes to legal proceedings, documentation is key. Documentation plays a crucial role in legal proceedings. It can be used as evidence to support your case and help prove your claims. In order for documentation to be admissible in court, it must be relevant, authentic, and have been obtained legally

Different legislation² supported by jurisprudence agreed on the supremacy of written evidence over all other means of proof. This is because the characteristics of written evidence are superior to other means of proof dealt with by legislation regulation. Among these characteristics are continuity, stability, and the difficulty of changing the document without leaving a trace. This in turn facilitates the task of the court if a dispute arises before it is supported by written evidence of judgment according to written evidence if its conditions regulated by the legislator are met.

In addition, it guarantees the rights of individuals in their civil and commercial transactions and as evidence that can be prepared in advance, that is, when the legal act arises and before the dispute arises. Therefore, written evidence is considered as one of the best means of proof for the Emirati and Jordanian legislators. Similarly, other legislations enact on this supremacy for written proof. Thus, two types of written documents, namely traditional and the official document will be extensively discussed in this study, including their conditions and cogency.

With the advent of the Internet, its electronic transactions³, and the contracts concluded via the Internet, many questions have arisen regarding the legal value of these transactions and the extent to which they are considered before the court. For example, is the cogency equal to non-official written evidence or not, what are the standards and the conditions of the two types?

One of these important topics, which includes the similarity between the traditional and electronic document in proof, was chosen by indicating the extent to which the Emirati and Jordanian legislators recognize its power of proof compared to the traditional document.

The Importance of the Study

The study derives its importance from the large increase in transactions and contracts that take place in the virtual environment and the possibility of relying on them before the court,

² Such as Jordan legislation in article (2) in Evidence Law number 30 of the year 1952 and its amendments, Egypt legislation in article (10) from the Evidence Law number 25 of the year 1968, Iraq legislation in the article (18) from the law number 107 of the year 1979 and its amendments.

³ The Kingdom of Jordan is one of the first Arab countries to enact a law on electronic transactions after the Republic of Tunisia when the Jordanian legislator issued Temporary Law No. 85 of the year 2000.

particularly when a dispute arises and the extent to which they are equal to the traditional written evidence.

The Problem of the Study

Although the UAE and Jordanian legislators have regulated the laws of evidence and electronic transactions, which is the evidentiary power of electronic writing and signature, they did not indicate that authenticity in some cases, as well as the effect of the competent person requires approval on the electronic document. Thus, this problem generates specific questions: What is the written document and what are its most important types? What is the criterion for distinguishing a traditional and electronic document? What are the conditions for authentication of the electronic document by a competent person? Are traditional documents (official and non-official) equal in proof with electronic documents?

Paper and electronic documents are both types of written or printed materials that are used to convey information, but there are several key differences and similarities between them. Generally speaking, paper and electronic documents both have their own advantages and disadvantages, and the choice between them will depend on the specific use case and the user's preferences.

STUDY METHODOLOGY

To answer the questions, the descriptive approach of reviewing the governing texts, judicial rulings, and jurisprudential opinions will be followed. This is in addition to the analytical approach represented in analyzing those texts, the position of the judiciary on them, how jurisprudence operates, and the comparative approach between the Jordanian and UAE legislation.

The study is divided into two main parts. The first part defines the written document, as well as the power and function in proof. The second part focuses on the electronic document and reviews its meaning, the function in proof. Subsequently, both documents will be compared.

Part One: Definition of Written Document

There are many varied written evidence dealt with by the Emirati and Jordanian legislators. However, arranging a probative value varies according to the type of written evidence. Therefore, in line with the subject of the research, two types of written evidence will be addressed, namely official document and non-official document. Also, clarity will be provided regarding their meaning, conditions, and function in proof.

Official Documents

As mentioned in the introduction, the official document sits on the throne of proof in both civil and commercial transactions. Nonetheless, it is important to address the significance of this clue in proof and the conditions required by the legislator to consider the official deed and its evidentiary value respectively.

Definition of the Official Document

Generally, official documents are defined as legal documents that state some contractual relationship or grant some rights. Written documents are writing that provide information (especially information of an official nature).

The UAE legislator in paragraph (1) of Article (7) of the Law of Evidence in Civil and Commercial Transactions⁴ embodies the definition of official document whereby a public official or a person entrusted with a public service proves what has been done or received from the concerned parties, in accordance with the legal conditions and within the limits of authority and competence. On the other hand, the Jordanian legislator defined it through the first paragraph of Article (4) of the Evidence Law as: (a) Deed organized by employees who are competent to organize them in accordance with the legal conditions and shall be governed by them without the obligation of the proposer to prove what is stipulated therein and shall be applied unless it is proven that they are forged. (B) Deed organized by their owners and certified by employees who have the competence to certify them in accordance with the law, and their work is limited to date and signature only.

Although the Jordanian legislator outlined the definition and the provisions of the official document, the UAE legislator devoted a special paragraph to the definition without being subjected to provisions. However, the Jordanian legislator omitted persons authorized by former judges or permitted lawyers under permeation from the Minister of Justice to exercise the functions of a notary public. The reason for this omission may be due to the date of issuance of the last law since it was issued after the Evidence Law. Nonetheless, it is expected that the legislator will include this in the amended law.

In addition, an official deed (Al-Mansour, 2020) is regarded as an organized or approved deed by a public official within the limits of authority and competence in accordance with the prescribed legal procedures. It is noted that the definition focuses on the public employee without mentioning the persons authorized by law to assume the functions of the notary public, such as

⁴ Federal Law No. 10 of 1992 published in Issue No. 233 of January 25, 1992 as amended by Federal Law No. 36 of 2006 Published in Issue 455 of October 12, 2006

<https://www.vocabulary.com/dictionary/official%20document#:~:text=Definitions%20of%20official%20document,instrument%2C%20legal%20document%2C%20legal%20instrument>

former judges and lawyers who are licensed to ratify based on the decision of the Minister of Justice⁵.

Another definition: (a document is interpreted as the material form of displaying disseminating, using and storing information that gives it legal force) (Shemshuchenko Yuril, 2019), Therefore, an official document can be defined as the document that is organized by a public employee within certain levels of powers and competence or by one who is licensed by non-employees of the organization or who takes over its approval without regulation.

Conditions of Official Documents

A document to be considered official must contain specific information such as data; the information must have been recorded in a written, digital or signed form, and contain certain details such as stamp or seal (Shemshuchenko Yuril 2019). Official Documents include Company's Sales and Marketing Plan; Rules of Conduct; Compensation Plan; Privacy Policy; Company's Policies and Procedures The UAE and Jordanian legislators stipulated two conditions, namely: the issuance or ratification of the document by a public official and position and power.

The first condition stipulates that the document must be organized or only ratified by the person who has been entrusted with permanent work in the service of a public utility managed by the state or a public law person. With emphasis on the exception of this condition in Jordanian legislation to persons authorized by the Minister of Justice under a license to exercise the powers of the notary public in the certification of former judges or practicing lawyers. The second condition mentions that the legislators must take into account the competence level of the employee. This means that the owner of the job must be in the ratification or organization of this type of document and the employee must be competent enough to edit the document when the document is included in the work in terms of the type of paper and within spatial competence. (Al-Qudah, 2007)

Authenticity of Official Document in Proof

The best possible direct evidence of a document's authenticity is to have a party who executed or signed it testify as to its genuineness or to have a witness to the execution of the document provides a testimony. To ensure the authenticity of the document, the party producing the file should be put to proof, detailing how the document was created and where it was sourced from. In addition, the original version of the document should be sought

⁵ According to the text of Article No. (4) in paragraph (A) of the Jordanian Notary Public Law No. 11 of 1952 and its amendments, which stated: The Minister of Justice may license any of the former judges or lawyer professors to carry out all or some of the work entrusted to the notary.

(<https://www.mondaq.com/uk/trials--appeals--compensation/1391758/false-evidence-questioning-document-authenticity-in-uk-court-proceedings> n.d.).

The legislators regulate the authenticity of official document and documents in evidence. In Article (8) of the Evidence Law, the UAE legislator stipulates that the official document is an argument against all the matters recorded in it. This is done by the official person within the limits of the mission. Unless it is found that it was forged by the legally prescribed methods, which is equivalent to Article (7) of the Jordanian Evidence Law. Thus, based on the definition, it can be said that official document derives their authority from the document itself, that is, without the need to acknowledge them, which is known as the official presumption. (Al-Mansour (2020) This implies that it does not need to acknowledge its content or signatures and does not require those who adhere to it to prove its validity. Thus, anyone who disputes the content of the document can claim that it has been forged (Al-Kilani, 2022). This authority shall be between the contracting parties and shall extend to all. Every person can be subject to the legal disposition covered by the official document.

The legislators also give the authenticity of the copy of the official document if the original of the document exists and the correspondence between them was made to give the image the authenticity of the original in this case. Nevertheless, in the absence of the original, the legislators considered that the lack of dispute in the content of the document is an evidence of the validity of the copy. As a result, it is granted authenticity according to what was stated in Articles (9 and 10)⁶ of the UAE Evidence Law. This was confirmed by the judicial in many decisions, including the decision of the Court of Cassation, which stated that the plaintiff initially has the option to submit the original evidence or a copy certified as a true copy.⁷

Accordingly, this authority granted to the official document is available when its external appearance gives reassurance from erasure, scraping, writing off or otherwise, which may call into question the integrity of the document. This is in addition to its authority to invite the employee who organized the document or ratified it by signature to clarify the document (Al-Aboudi, 2007).

Non-Official Document

In addition to the official document in its place on the throne of proof, there is the non-official document which will be explained later in the proof. Therefore, it is important to define the non-official document, the conditions required by the legislators to consider it non-official, and its evidentiary value in proof, respectively.

⁶ Which is equivalent to Article (8) of the Jordanian Evidence Law.

⁷ Jordanian Court of Cassation Decree No. 790 of 2020 issued on 26/6/2019. The same trend was confirmed by the decision issued by the Amman Court of Appeal under No. 5037/2019 dated 24/9/2019.

Definition of Non-Official Document

The phrase “non-official document” is widely used to describe a document that doesn't have official recognition or authority. For example, "This document is a non official record of our meeting."(<https://ludwig.guru/s/non+official+document#>).

In most cases, unofficial documents are copies or downloads that are easily accessible such as final grades or screenshots. Unofficial documents generally have no associated cost and are generally required before a specified deadline.

In Article (11), the UAE legislator expounded on the Evidence Law with the forms⁸ and conditions of the customary, non-official document. Although he did not address the definition of it, the Jordanian legislator defined it in Article No. (10) of the Evidence Law and stated that a non-official, non-official document is a document that includes the signature, seal or fingerprint of the person who issued it, and it does not have the status of an official document.

From the previous definition, the focus on the acceptance contained in the non-official document is seen through the signature and other forms mentioned to reflect acceptance. Also, the document was denied official status based on the definition and the legislator was the first to mention that result within the provisions of the document and not within the definition. In another definition, it is the writing signed by a person regarding a legal act without interfering with its editing by an official employee (Al-Aboudi, 2007). Another has defined it as a written document that includes the signature, seal or fingerprint of the person who issued it, and it does not have the status of an official document (Al-Mansour,2020).

Subsequently, another defines it as every paper issued by individuals, which are not interfered with by an official employee. This document also includes the signature, seal or fingerprint of the person who issued it. Furthermore, it is not characterized by officiants (Al-Qudah, 2007).

The previous definitions are influenced by the definition adopted by the Jordanian legislator of the non-official document. This is in addition to the failure to observe the certification and the considered regulation issued by non-public officials, as mentioned above, who are authorized to certify based on the decision of the Minister of Justice. Therefore, a non-official document can be defined as a document that is regulated by individuals without its approval or ratified by any competent authority.

Conditions of Non-Official Document

Official and unofficial documents generally contain the same information. However, Official documents have a couple of features that unofficial documents don't. A document is considered

⁸ These types mentioned by the UAE legislator to the customary document are: calligraphy, signature or fingerprint.

official when received directly from the issuing institution digitally via secure delivery service or PDF, or in a sealed envelope via mail.

Official documents have a couple of features that unofficial documents don't. A document is considered official when received directly from the issuing institution digitally via secure delivery service or PDF, or in a sealed envelope via mail.

In order for the document to be considered non-official, the legislators stipulated two conditions: writing and signature. Writing means letters, symbols or shapes that include the necessary data on which the will of the contracting parties have met. Thus, the writing does not have to be in a particular language, as what is meant is the contracting parties' awareness of what they agreed upon which is reflected in the writing. On the other hand, signature means writing, symbol or form that reflects the acceptance and consent of the party to what was signed. The UAE legislator also specified the forms of expression of acceptance in Article (11)⁹, which can be done by seal, fingerprint or signature. Subsequently, it is issued by the signatory and the identity and personality of the issuer is specified. Also, the signature is contained on the document itself (Al-Kilani, 2022) (Al-Mansour, 2020).

Authenticity of Non-Official Document in Proof

Document authentication is the process of authenticating a document to ensure that it is accurate, genuine, and appropriate for its intended purpose. Unlike the authenticity of official document, the authenticity of non-official document is considered a minor cogency. Thus, it is limited to its parties without extending to third parties¹⁰ before it has an authorized date. This is confirmed by Article (12)¹¹ of the Evidence Law which stipulates that the customary document shall not be an argument against others in its date except it has an authorized date, and it shall be in the following cases.

Furthermore, this authority shall not be achieved for the document if its content is denied or the signature on what is dealt with in the document is denied (Al-Qudah, 2007). Consequently, this denial has a temporary effect if technical expertise is used and the signature is proven by the person who denied it. The temporary disappearance of the authenticity of the document does not also exist unless it denies the signature or any other statement expressly stated in the document,

⁹ Which is equivalent to Article No. (10) of the Jordanian Evidence Law.

¹⁰ With the exception of the public and private successors, they may insist on not knowing the handwriting or signing in accordance with the view of the UAE legislator in Article (11) and the Jordanian legislator in paragraph (b) of Article (10) of the Evidence Law.

¹¹ The article dealt with cases in which the deed has a fixed and authorized date, and these cases are: Adherence to the register prepared for this. From the day of his death, I determine who has a recognized effect on the document. From the day that its content is written in another paper with authorized date. Regulated by the Jordanian legislator in paragraph (b) of Article (12) of the Evidence Law.

especially when it is not sufficient to merely object. This was confirmed by the Court of Cassation in the decision. The mere fact that they object to these invoices without denying the signatures contained thereon makes it an argument against the defendants pursuant to Article 11 of the Evidence Law (Jordanian Cassation Decision No. 4083/2018).

In addition, the copy of the non-official document is considered in certain cases, including the copy signed by its parties. This indicates that the copy is authentic as the original document. The same authority also extends in the event that the copy is not disputed by denial or if there is a case of supporting document¹².

Part Two: Electronic Document

An electronic document (e-doc) is a digital file that takes the place of a physical copy or printout. E-doc generated, sent, received, or stored by electronic, optical, or similar means, including electronic data interchange, electronic mail, telegram, telex, or telecopy. It is known that electronic document was founded by electronic commerce based on electronic data interchange through the Internet. The significant shift in the replacement of papers with intangible data exchanged through cyberspace has seen an increase in the numbers of transactions in international trade through this form of electronic data interchange, which was one of the reasons for the adoption by the United Nations Commission on International Trade Law of the Model Law on Electronic Commerce¹³. The aim is to facilitate the use of electronic commerce through the development of uniform systems by States under the mentioned law. Both the UAE and Jordan¹⁴ were among the countries that adopted in their legislation special laws regulate transactions and e-commerce.

Among the regulations dealt with by the legislators based on the subject of this study is electronic document, which generates the following questions: How can it be defined? is there a criterion for considering the document electronically, what is its function and authenticity in proof, and to what extent is this function equivalent to the traditional document, whether non-official or official?

The Definition of Electronic Document

An electronic document (e-doc) is any electronic media content that is intended to be used in either an electronic form or as printed output. E-doc also refers to any transactional document

¹² A supporting document means a deed supporting a previous one which is evidence against the debtor, but it may prove a mistake here by presenting the original one. Article (14) of the Jordan Evidence Act.

¹³ Adopted on December 17, 1996 according to the resolution by the General Assembly of the United Nations Commission on International Trade Law, which is based on the report of one of its commissions, i.e., the Sixth Committee.

¹⁴ The first federal law on e-commerce was issued in 2006, while the first Jordanian law was issued in 2000.

which is exchanged between trading partners in an electronic format. It is machine readable and typically exchanged via software or online platforms rather than email.

The UAE legislator dealt with the definition of the electronic document under the name of "electronic document". It is defined as an electronic record, electronic message or information statement that is created, stored, extracted, copied, sent, informed or received by means of information technology, on any medium, and is recoverable in an understandable form¹⁵.

According to Article (2) of the Electronic Transactions Law¹⁶, the Jordanian legislator defined electronic document as a document that is created, signed, and circulated electronically. Subsequently, the Emirati and Jordanian legislators are affected by the requirement of a set of conditions in the document to be considered electronic, and these elements or conditions include creation, signature, and circulation through the electronic environment.

Creation

Neither Emirati nor Jordanian legislators defined creation while defining the originator as the natural or legal person who creates or sends an information message¹⁷. However, from the aforementioned definition, the sender of the message is considered the originator of the message, while the transmission is at a later stage on the creation. Since the transmission may be from a person other than the originator, it would have been better for legislators to exclude the transmission from the definition.

The UNCITRAL Model Law on Electronic Commerce defines the originator as follows: "originator" means a person who considers that the sending or creation of the data message prior to its storage, if any, was done by or on his behalf, but does not include a person acting as an intermediary with respect to such a message¹⁸.

Thus, from the definition above, the originator creates the data message and is the sender as well, or on whose behalf the preparation and transmission were made. Creation can be defined as the template that is prepared with its contents of data that reflects the desire and will of its author to conclude an act or the person who sent the data on behalf of the author to its intended destination.

¹⁵ Article (1) of Federal Law No. (1) of 2006 issued on 30/01/2006 as amended by Federal Law No. 46 of 2021.

¹⁶ Law No. 15 of 2015.

¹⁷ Article (1) of the UAE Federal Law and Article (2) of the Jordanian Electronic Transactions Law.

¹⁸ Paragraph (C) of Article (1) of the Law. Model UNCITRAL on Electronic Commerce

Electronic Signature

An electronic signature is defined as "data in electronic form which is attached to or logically associated with other data in electronic form and which is used by the signatory to sign". Thus, something as simple as writing your name under an e-mail might constitute an electronic signature (<https://www.pagero.com>, n.d.).

The UAE legislator defined an electronic signature¹⁹ as a signature consisting of letters, numbers, symbols, sound or fingerprint of a processing system with an electronic form and is attached or logically linked to an electronic document that would verify the identity of the signatory person, including the acceptance of the content of the data associated with it²⁰.

Conversely, the Jordanian legislator defined it as data that takes the form of letters, numbers, symbols, signs or others, and is included electronically or by any other similar means in the electronic record, or is added to it or linked to it with the aim of identifying the owner of the signature and the sole use which creates a significant distinction from others²¹.

In another definition, the signal is listed in electronic form and is either in the form of a letter, symbol, number or other data that leaves no doubt about the identity of the person who signs it (El-Haija Mohammed,2021).

Hence, from the above definitions, it is evident that they deal with the form that an electronic signature may take, which is consistent as a result of the electronic environment. Nevertheless, the aim is to identify the person who owns the signature.

Trading

Although trading is the exchange of data, the UAE²² and Jordanian legislators did not take the exchange of data by definition. The UNCITRAL Model Law thus defined the term "electronic

¹⁹ The UAE legislator also dealt with the definition of an electronic signature in the Evidence Law and defines it as all letters, numbers, symbols, signs, images or sounds of an individual nature that allows the identification of the owner of the signature, which creates a significant distinction from others as stated in the Electronic Transactions and Commerce Law of Article (17), paragraph (1).

²⁰ Article (1) of the UAE Federal Law No. 1.

²¹Article (2) of the Jordanian Electronic Transactions Law.

<https://ec.europa.eu/digital-building-blocks/sites/display/DIGITAL/What+is+eSignature#:~:text=An%20electronic%20signature%20is%20defined,might%20constitute%20an%20electronic%20signature.>

²² While the UAE legislator defined "data" in Article (1) of the Federal Law as a set of facts, measurements, and observations which are in the form of numbers, letters, symbols or special shapes that are collected until they are used.

data interchange” as the transfer of information electronically from one computer to another using an agreed standard for the formation ²³.

This definition is in line, especially since it takes into account the mechanism by which information is transmitted. This happens through cyberspace from one computer to another according to specific and pre-agreed criteria.

The Function of the Electronic Document in Proof

The e-doc has legal force and can be used as evidence in a court of law. The electronic form is not the reason for denying the validity of the document. There are cases such as providing proof of the right of inheritance where e-docs cannot be used in place of originals. According to the UAE legislator, there is a significant difference between the two types of electronic signature, i.e., the approved electronic signature and the reliable electronic signature. Conversely, the Jordanian legislator dealt with the protected and authenticated electronic signature. However, there was discrimination and difference in terms of creation and function.

There is no doubt that Electronic Information and Electronic Documents are legitimate to be used as evidence in court proceedings. However, this electronic document evidence still requires more detailed rules relating to procedures in search and seizure as well as the mechanism for obtaining electronic evidence, as well as other matters that can strengthen the validity of electronic evidence that can have evidentiary value in court.

Based on the above, these electronic signatures will be addressed for the UAE and Jordanian legislation. Thus, the conditions required by the two legislators will be reviewed, including their function in proof, and the process by which the legislators identified equality or difference between the written document and the electronic document in proof.

The Certified and Protected Electronic Signatures

A certified digital signature makes it easier to prove that the signature is genuine and it has not been tampered with. In the same way that your handwritten signature is unique, so is the certified digital signature. Unique pair of encryption keys are issued when a digital certificate is acquired. It is important to identify each of the conditions that must be met to consider an electronic signature approved in accordance with UAE law and protected according to Jordanian law and their respective functions of proof, with reference to compatibility and disagreement with the written document.

Conditions for Approved and Protected Electronic Signatures

It's important to understand that electronic signatures and documents are only as secure as the software used to protect them. Using a signing platform helps ensure the safety and validity of

²³ In article (1), paragraph (b), of the UNCITRAL Model Law on Electronic Commerce.

the documents. Authentication is about verifying that the user is who he claims to be. A digital signature is about protecting the integrity of certain data and asserting that the data originated from a certain user.

The UAE legislator has specified the conditions that must be met in the electronic signature in order for it to be approved. These conditions stipulate the following: that the signature is based on an approved and valid authentication certificate, the signature is created with an approved signature tool, the validity data of the electronic signature is identical to the data provided to the accredited party, the data identified to the signatory person is provided in the approved authentication certificate, and the signature is created with technical and security techniques²⁴. From the above, it is clear that the UAE legislator connects the validity of the approved signature to the valid authentication certificate. Thus, the data contained in the signature must be compatible with the data contained in the certificate of authentication, which establishes the validity of the approved signature.

With regard to the protected electronic signature regulated by the Jordanian legislator, a set of conditions have been put in place in order for the electronic signature to be protected. These conditions are to be distinguished in order to identify the signatory. The private key²⁵ is under the control of the signatory at the time of signature, and the signature is linked to the electronic message in an unchangeable manner.

On the other hand, the conditions are consistent with virtual reality, where the signature is signed in its environment through the text. Also, the electronic document should be kept unchanged after adding the signature to the document. This reflects the real will of the owner of the signature and provides protection from tweaking in the electronic data that has been signed.

The Function of the Approved and Protected Electronic Signatures in Proof

The digital signature provides a unique electronic binding of the identity of the signer. A digital signature provides proof of the message origin and a method to verify the integrity of the message. A digital certificate owner combines the data to be signed with their private key, and then transforms the data with an algorithm.²⁶

²⁴ For details, see Article (20) of the Federal Law.

²⁵ Private key means the code used by a person to create an electronic signature in an electronic transaction, information message or electronic record. Article (2) of the Jordanian Electronic Transactions Law.

²⁵<https://www.ibm.com/docs/en/b2badv-communication/1.0.0?topic=overview-digital-signature>

²⁶ Private key means the code used by a person to create an electronic signature in an electronic transaction, information message or electronic record. Article (2) of the Jordanian Electronic Transactions Law.

²⁶<https://www.ibm.com/docs/en/b2badv-communication/1.0.0?topic=overview-digital-signature>

With the availability of an electronic signature, whether approved or protected, its conditions required by the legislators arrange an authority in proof that enables those who want to adhere to the document signed with an approved or protected electronic signature to invoke it before the court. As the UAE legislator recognizes the authenticity of the approved electronic signature in evidence²⁷ when it is stipulated, the approved electronic signature is equal in its authenticity to the manual signature and has the same legal effect when it meets the conditions. Therefore, it is clear that the approved electronic signature is equal to the non-official signature in terms of authenticity in proof.

As far as the protected signature is concerned, the Jordanian legislator has drawn this authority by stipulating that "The register associated with a protected electronic signature shall have the same authority as the non-official document, and the parties to the electronic transaction may invoke it."²⁸

Thus, the Jordanian legislator grants equality to the document with an electronic signature protected by the authenticity granted to the non-official document in proof in terms of the ability to invoke between the electronic agreement parties. Although the effects are similar, the authenticity is not extended to all. This denotes that both Emirati and Jordanian legislators agree in terms of the result in equality with the customary or non-official signature, with their differences in naming and conditions.

Hence, it is eminent to identify the conditions required by any of the legislators and the effect of breaching any of these conditions if the approved or protected signature is violated. While reviewing the situation of the UAE legislator, it was revealed that this issue has not been addressed. As a result, the approved signature loses its character and becomes an electronic signature and is therefore valid as evidence in accordance with paragraph (1) of Article (18)²⁹. On the other hand, the Jordanian legislator has embodied a special provision in this case which is stipulated in paragraph (c) of article 17³⁰: "In cases other than those provided for in paragraphs (a) and (b) of this article, the electronic record bearing an electronic signature shall have the same power as the non-official document against the parties to the electronic transaction. It is evident that the Jordanian legislator grants the document signed with an unprotected electronic signature an authority equal to the authenticity of the protected electronic signature. This is associated with a single difference in the mechanism of denial of the signature in the case where the signature is not protected, especially when the legislator has authorized the person who invoked the document that was denied by proof. In the sense of contravention of the Jordanian

²⁷ In paragraph (1) of Article (18) of the Federal Law.

²⁸ In paragraph (a) of Article (17) of the Electronic Transactions Law.

²⁹ Of Federal Electronic Transactions Law.

³⁰ From Jordan Electronic Transactions Law.

legislator's orientation through the text referred to, the protected electronic signature does not accept denial by the protester with an electronic document bearing a protected signature. Nonetheless, the legislator stipulates in paragraph (c) that denial is enabled for those who protest against it with an electronic document signed with an electronic signature in the protest. However, this result may not be consistent with the phrase mentioned by the legislator in paragraph (a) of Article (17), which states "the same authority as the non-official document". Hence, it is evident that the non-official document accepts denial.

Reliable and Authenticated Electronic Signatures

Similar to handwritten signatures, electronic signatures must meet certain minimum criteria to be reliable and valid for use in a court of law. As with a handwritten signature, a signer must show clear intent to sign an agreement electronically, security of the signed document, and prevention of tampering in the future. An electronic signature cannot be denied legal effect, validity, or enforceability solely because it is in electronic form (<https://www.docuSign.com>, n.d.).

Conditions for Reliable and Authenticated Electronic Signatures

In order for the electronic signature to be considered reliable, the UAE legislator stipulated a set of conditions that guide its association with the person of the signatory and that it is under its full control, its characterization of the identification of the signatory person, its association with the signed data in a way that detects any change or modification in the data³¹ to show that it is created with technical and security techniques, and any other conditions specified in the executive regulations³².

It is clear from these conditions that the UAE legislator is keen to verify the identity of the signatory when making the signature and ensure protection from any change in data so that the signature is considered reliable.

On the other hand, the Jordanian legislator stipulates that an electronic signature shall be considered authenticated if it fulfills all the conditions mentioned in Article (15) of this Law and is linked to an electronic authentication certificate issued in accordance with the provisions of this Law, including the regulations and instructions issued to the pursuant. Furthermore, the electronic signature can be created by any of the following bodies: An electronic authentication authority licensed³³ in the Kingdom, an accredited electronic authentication body, any

³¹The similarity between the conditions required by the UAE legislator for a reliable signature and those required by the Jordanian legislator in a protected signature is noted.

³² Article (19) of the UAE Federal Law.

<https://www.docuSign.com/products/electronic-signature/legality>

³³ Electronic Authentication Authority means the entity licensed or approved by the Telecommunications Regulatory Authority or legally authorized to issue authentication certificates and provide any services related to

government entity, whether it is a ministry, a public toxic institution, a public institution or a municipality approved by the Council of Ministers to do. However, this is allowed when the requirements of the Telecommunications Regulatory Commission and the Central Bank of Jordan with regard to electronic banking or finance are met.

In addition, the authenticated electronic signature must meet all the conditions that have been reviewed according to the protected electronic signature. This includes the link of this signature to an electronic authentication certificate by the authority authorized to issue it according to what the legislator stated. The electronic authentication certificate is the certificate issued by the electronic authentication authority to prove the attribution of an electronic signature to a specific person based on approved authentication procedures³⁴. With this new requirement of the electronic authentication certificate issued by the authority authorized by law, there is no doubt about the attribution of the signature to the person who issued it.

Based on the conditions mentioned by each of the legislators, a certain level of agreement has been reached in terms of the result in the ratio of the signature to the person who issued it in order to verify that the document is saved from any change, irrespective of the difference in conditions.

The Function of Reliable and Authenticated Electronic Signatures in Proof

Signature authentication is an official confirmation that a signature on a document belongs to the person who has signed it. Authenticating electronic signatures is important for keeping electronic documents and agreements secure and legitimate. It helps protect sensitive information, prevent fraud, meet legal standards, and build trust in electronic transactions.

When the conditions required by the legislators for a reliable and authenticated electronic signature are met, the document signed with this type of signature enjoys authority in proof before the judicial authorities.

According to the UAE legislator, "A reliable electronic signature shall be considered and their legal effect shall be upon them when the conditions are met."³⁵ Thus, the UAE legislator did not specify this authenticity in a clear and explicit text in the same way as the certified electronic signature. Regarding the Law of Evidence in civil and commercial matters, in paragraph No. (4) of Article No. (17)³⁶, the legislator mentioned equality between electronic documents and official

such certificates in accordance with the provisions of the Law and the regulations and instructions issued thereunder.

³⁴ Article (2) of the Jordanian Electronic Transactions Law.

³⁵ In paragraph (7) of Article (18) of the Federal Law.

³⁶ Which is stipulated for electronic writing, electronic documents, electronic records and documents with the authority prescribed for writing, including official and customary documents in the provisions of this law when they meet the terms and conditions prescribed in the Electronic Transactions and Commerce Law). The authority

documents in evidence if their conditions are met. Hence, it can be said that the UAE legislator has equated between the electronic editor signed by a reliable signature and the official signature. Therefore, it would be preferable if the legislator stipulated this authority in the Law of Electronic Transactions and Commerce.

This is contrary to the situation of the Jordanian legislator. The authenticity of the authenticated electronic signature was specified according to paragraph (b) of Article (17) of the Electronic Transactions Law, which stipulates that the register associated with a notarized electronic signature shall have the same authority as the non-official document, and the parties to the electronic transaction and third parties may invoke it.

This implies that the legislator grants the electronic document signed with a notarized signature based on the authority of the non-official document. Nevertheless, this function of proof exceeded the limits granted to the non-official document, which was dealt with in the regulation of the Law of Evidence in consideration of the document against third parties. Therefore, the Law of Evidence retains the authority of evidence in the non-official document of the contracting parties, as well as their public and private successors. There is an exception, however, when the legislator is required to have a fixed and authorized date because the authority extends here before third parties on this date. Also, authority is granted before third parties under the electronic document signed with a protected electronic signature, which is similar to the official document that is considered against all. The reason for this approach adopted by the Jordanian legislator may be the authority issuing the electronic certification certificate and the protection it provides to the signatory.

According to the Jordanian legislator, the limits of the task in proving the notarized electronic document remains at the limits of the non-official document, except it is invoked to all, The Jordanian legislator further authorizes the issuance and authentication of a document signed by a notarized electronic signature. This is stipulated in article (17), paragraph (E), of the Electronic Transactions Law: "Any official document may be issued or certified by electronic means, provided that its electronic record is linked to a notarized electronic signature." Despite the authorization mentioned in the ratification or official issuance of the document stamped with a notarized electronic signature, the legislator did not indicate the function of the bond in proving in this case. Does its authority and function in proof extend to the equivalent of that official

between the electronic signature and the customary signature is also equated and is stipulated in paragraph (2) of the same article that the electronic signature shall have the same authority as the signatures referred to in this law if it takes into account the provisions prescribed in the Electronic Transactions and Commerce Law.

<https://getsmarteye.com/how-to-create-an-electronic-signature-authenticated/#:~:text=They%20exist%20to%20authenticate%20the,work%20and%20global%20business%20transactions.>

document or does it remain within the limits of the non-official document according to the detail referred to above?

CONCLUSION

This study discussed in detail the issue of parity in the function between traditional and electronic attributions. Based on evidence and electronic transactions that regulate attribution and their function in proof, a set of results and recommendations were generated from the position of the UAE and Jordan legislators.

Results

- The UAE legislator does not address the authenticity of the reliable electronic document in proof in the Electronic Transactions and Commerce Law, unlike the approved electronic document.
- The Jordanian legislator does not address the authenticity of the authenticated electronic document, whether certified or regulated by an official authority.
- The Jordanian legislator grants the electronic document with a notarized signature, which is a greater authority in proof than the non-official document in extending the authenticity of the first to third parties. On the other hand, the UAE legislator equates proof in terms of authenticity between the non-official document and the approved electronic document.
- In the Evidence Law, the UAE legislator equates official and non-official attributions on the one hand and electronic ones on the other.
- The Jordanian legislator equates the non-official document with the electronic document signed with a protected signature in terms of authenticity. Thus, the latter is preferred in a situation where the non-official document does not have a fixed date.
- There is also supremacy of the traditional official document over the electronic according to Jordanian law.

Recommendations

The study recommends the UAE legislator to regulate the function of the reliable electronic document in evidence in the Electronic Transactions and Commerce Law. In addition, the Jordanian legislator should regulate the function of the notarized electronic document that has been regulated or certified through an official authority by amending paragraph (E) of Article (17) of the Electronic Transactions Law, irrespective of a notarized electronic signature. To ensure firmness for electronic document, the Jordanian Electronic Transactions Law can amend paragraph (A) of Article (17) and include this phrase: The content of the document cannot be denied once it is signed by the protester.

References

- Abu El-Haija Mohammed Ibrahim (2021). Contracts of E-Commerce, Dar Al-Thaqafa for Publishing and Distribution, Amman, Jordan, Third Edition.
- Al-Aboudi Abbas (2007). Explanation of the provisions of the Law of Evidence, Dar Al-Thaqafa for Publishing and Distribution, first edition.
- Al-Kilani Mahmoud (2022). Rules of Evidence and Execution Provisions, Dar Al-Thaqafa for Publishing and Distribution, Fourth Edition.
- Al-Qudah Mufleh (2007). Evidence in Civil and Commercial Matters, Dar Al-Thaqafa for Publishing and Distribution, First Edition
- Al-Mansour Anees (2020). Explanation of the provisions of the Jordanian Evidence Law according to the latest amendments, without publisher, third edition.
- Shemshuchenko Yurii, Parkhomenko Nataliia and others: Official Document as A Legal Act: Essential Aspects, Journal of Legal, Ethical Regulatory Issues, Vol 22, Issue 6, 2019 Page 3.
- <https://www.linkedin.com/pulse/role-documentation-legal-proceedings-how-/>
- <https://smarttender.biz/en/terms/view/electronic-document/>
- <https://www.quora.com/What-are-the-differences-and-similarities-between-paper-documents-and-electronic-documents>
- <https://www.pagero.com/blog/what-is-an-e-document>
- Power of Proof Electronic Document Evidence in the Court Siti Mariyam(B) and Zabidin Universitas 17 Agustus 1945 Semarang, Semarang, Indonesi
- <https://www.pandadoc.com/ask/certified-digital-signatures/>

Legislation and Court Decisions

- Law of Evidence in Civil and Commercial Transactions of the United Arab Emirates 36 of 2006 published in issue No. 455 of the Official Gazette dated October 12, 2006.
- Egyptian Evidence Law No. 25 of 1968 and its amendments.
- Iraqi Evidence Law No. 107 of 1979 and its amendments.
- Jordanian Evidence Law No. 3 of 2019.
- Notary Public Law No. 11 of 1952 and its amendments.
- UAE Electronic Transactions Law No. 46 of 2021.
- Jordanian Electronic Transactions Law No. 15 of 2015.