



Proof the electronic contract in Palestinian law

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Abstract: Electronic contracts are international contracts, cross-border, and do not fall within the borders of a specific country, and are commercial, civil, or mixed according to the nature of each contract and the relationship between the parties to the contract. In the conclusion of the electronic contract, the offer must be clear, indicating all the basic elements so that the midwife is aware of his matter, so the legislator was keen to provide a sufficient degree of protection for electronic transactions, due to the ignorance of each party to who deals with him, the image displayed on the computer screen must reflect the real situation of the goods without ambiguity or shortage, and the electronic acceptance must be clear, explicit, and silence is not considered acceptance in electronic contracting.

In the matter of proof of an electronic contract, the Palestinian Evidence Law adopted modern means of communication within the scope of exceptions, which means that no complete written evidence is required to give it legal authority, so freedom of proof was taken in commercial matters, noting that the nature of the rules of the law of evidence is complementary, and not preemptory, i.e. the parties may agree otherwise.

Since writing needs the signature of its parties to indicate their approval of its content, the signature on electronic documents has several forms, due to its nature, and the fact that it is done through electronic means, including biometric and digital signatures, electronic pen signatures, and others. The granting of authenticity to an electronic signature is closely related to the degree of security available in it among the concerned parties, so many legislations have sought to impose certain conditions on the electronic signature, to give it authenticity in proof, and there has been a convergence between these laws in their conditions.

The researcher believes that there is nothing wrong with adopting electronic signatures under the Palestinian Evidence Law by agreement of the parties, and this is due to the freedom of the parties to agree to prove their actions in any way they deem appropriate. The electronic signature is not accepted in all transactions by law, as some transactions are taken, such as official transactions, and transactions agreed upon by the parties, and there are transactions that are not accepted by electronic signature, depending on their specificity and sensitivity, which requires written documentation, and they have been received exclusively, so they may not be expanded, including the establishment of the endowment, the will, and their amendment, transactions for the disposal of immovable property, agencies, transactions related to personal status, and others.

I. INTRODUCTION

There is no doubt that the digital revolution, and the information awakening that the world knows today, where information technology has become a form of the nervous system of modern societies, so that contractual processes have known a set of changes that touched their legal system, so the conclusion of contracts that are made through modern means of communication arouses everyone's interest, especially with regard to the possibility of proving these contracts.

On the occasion of the tremendous development of modern Internet networks and the growing spread of this phenomenon, this has led to the prevalence of so-called electronic contracts, the latter today poses a set of legal problems, especially the part related to evidence, so that this element occupies a prominent position in all relations and transactions personal, civil and commercial, as it is an essential means of obtaining rights and to oblige others to what is contained therein, In practice, the right has no value when its owner is unable to prove it, as the success of the proof gives the right full effectiveness. With the failure of proof, the right is stripped of its value, in short, "where there is no proof.... Later".

The world has witnessed a great development in modern means of communication as a result of the information revolution in the field of information and communication, which has been credited with the

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emergence of a new type of contract through electronic means, especially through the Internet, and these contracts are known as electronic contracts.

The Internet has become at the present time a fertile environment for the conclusion of electronic contracts after it has exceeded its traditional nature as a means of transferring and exchanging electronic correspondence to complete electronic transactions, so the Internet has become a means of management in the management of public utilities, and the spread of electronic contracts plays a prominent role in the development of various sectors and individuals, and in being an economic means used by individuals and used by countries in order to build the national economy or encourage investment.

II.Importance of the study:

The importance of this study lies in the fact that it will try to organize the electronic contract in terms of how to prove it in the event of a specific dispute about the contract by indicating the extent of the authenticity of the documents, to rely on them in proof.

In the fact the electronic contract are conducted remotely and without the presence and meeting of the two parties face to face, which necessitates studying the extent of the binding and authenticity of these contracts, especially since the contract is often through the Internet and websites, and this matter and by virtue of the fact that dealing through the Internet is not controlled or monitored and is not available from the parties to see the other party or verify it or its eligibility.

III.Literature review :

1) Yahya Yousef Falah Hassan, Legal Regulation of Electronic Contracts "A Comparative Study" (Master's Thesis) was discussed in 2007, An-Najah National University, Nablus, Palestine, so that this study dealt with and focused on the provisions of electronic commerce and the effects of the contract and electronic signature

2) Iyad "Muhammad Aref" Atta Saddah, the extent of the authenticity of electronic documents in proof "a comparative study" (Master's thesis) was discussed in the year 5/2/2009, An-Najah National University, Nablus, Palestine, so that this study dealt with and focused on the means used in traditional proof in terms of what it is, its conditions and its authenticity of proof, as well as the electronic means of juvenile and then the electronic signature.

IV.study problems

The problems of the study in this research can be summarized as follows:

1) The extent of compatibility and harmony between the traditional provisions of the law of evidence and the electronic rules of evidence and the extent to which these traditional texts absorb the provisions of the rules of evidence with regard to electronic transactions?

2) The rigidity of legal texts and their survival as they are made the provisions and rules of evidence of electronic transactions deduced from traditional texts, which led to some shortcomings regarding some issues. As a result, electronic documents are not given a clear authority that keeps pace with technological developments and elevates them to what they should actually be.

V.Scope of the study:

This research did not deal with the full effects that can arise from electronic contracts, nor the reasons for the expiry of electronic contracts, as the above topics follow the nature of each contract separately, but the scope of the research was limited to the qualitative determinant by exposure to traditional means of proof in terms of what they are, conditions and authenticity of proof, and as a result the search in the appropriateness of dropping these factors on electronic documents.

VI. Study Questions:

This study will answer the following key questions:

- 1) What is the authenticity of the electronic document according to the terms of the customary document?
- 2) Is electronic writing accepted in evidence according to the Palestinian Evidence Law?

VII.Objectives of the study:

- 1) Identify the nature of electronic contracts
- 2) Explanation of how the Palestinian Evidence Law deals with electronic writing, methods of proving it and the exceptions contained therein
- 3) Identify the extent of the authenticity of the electronic editor in proof.

VIII. Study Methodology:

In this research, the comparative analytical approach will be followed, which is based on the analysis and linking of causes to results, and comparison between legal systems, as this comparison helps to know the advantages of the laws in question and know their disadvantages.

IX. Study Plan:

This research has been divided into three chapters, the first of which was to define electronic writing. While the second one came to indicate the conditions that must be met by electronic writing in order to be authentic. The third one was to clarify the exceptions contained in the need to prove in writing.

1. the concept of writing

Writing comes at the top of the means of proving legal actions, due to the ease of preservation and therefore the possibility of referring to it in the event of a dispute between the parties to the contractual relationship, and this means that writing is a means of

preparing evidence to prove the agreement and satisfaction of the parties, and therefore the agreement to write may be in non-material means, but according to the supports that lead to the same purpose of traditional writing.

So that if the concept of writing is referred to, we will know that it does not exceed symbols that express thought, and saying, and it is not a condition to understand this expression that it is assigned to a specific medium, whether on wood, paper, stone, or on leather plates. As long as this medium is able to transmit writing symbols, it is reliable. As long as this medium is able to transmit writing symbols, it is reliable.

The legislator did not address the definition of writing, but the work was stabilized and the definition of official documents as ((documents recorded by the official employee in the records in accordance with the conditions prescribed by law)). This was confirmed by the Jordanian Court of Cassation in its decision to define the official editor by saying: "The official editor is the document edited by a public official competent to edit it by virtue of his job, or falsely attributed to a competent public official, and gives the form of official documents issued by him (Decision No. (49/1962) issued in (1962) on page No. (622/5), and customary documents are defined as papers issued by individuals and that a public official does not enter into editing (Jami, Hassan Abdul Basit, 2000, p. 16).

In this direction, electronic writing will be talked about as long as the concept of writing must be determined within the framework of its function, and its role in proof, and not on the basis of the type of paper medium in the traditional sense.

Accordingly, the UNCITRAL Model Law is defined in Article 2 that the term data message means "information generated, sent, received or stored by electronic, optical or similar means, including but not limited to electronic data interchange or e-mail, telegraph or teletype. UNCITRAL Model Law on Electronic Signatures (2001).

Article (1) of the Palestinian Electronic Trade and Exchange Law defines an information message as "information that is generated, sent, received, or stored by electronic or similar means, including electronic data interchange, e-mail, telegraph, telex, or telecopying (Palestinian Electronic Trade and Commerce Law, Article (1)).

In Egyptian law, the definition is as follows: "Any letter, numbers, symbols or any other signs affixed to electronic, digital, optical or any other similar means and giving a perceptible connotation.

It is clear that electronic writing is an effective means in the field of written proof as long as it achieves the same purpose of traditional writing.

So that the process of transferring data electronically via a computer is summarized in entering the material to be sent from the sending device, whether by writing or by photographing it. When the device is given a command to send, it converts the sent material into digital data transmitted through telephone lines to the addressee computer to store it in its files, so that the sent material can be retrieved when needed, using one of the forms of electronic outputs such as papers and disks in addition to writing printed on the device screen. Thus, the data is transmitted electronically, which takes the form of an electronic editor (Suleiman, 2008, p. 190).

2. The conditions that must be met in electronic writing

In order for electronic writing to perform its legal function in proof, some conditions must be met that extinguish the necessary authenticity.

2.0. The writing should be readable:

The idea of writing has evolved due to scientific progress, and the emergence of new contracting methods, and writing is no longer linked to the traditional paper, but legal thought calls for electronic writing extracted from computers. And the Internet, as long as there is a possibility of verifying its content, to prove civil transactions between contractors (Momani, Bashar Talal, 2004, p. 12)

There is no difference between the customary editor and the electronic editor in the need to meet this condition, and if the electronic editor is consulted, it is done through electronic media in machine language consisting of combinations and permutations between zero and one, and therefore the human being is unable to understand this complex logarithmic language, which prompted the creation of special programs carried on the computer, to translate the machine language into human language, and convert machine codes into letters readable to humans, and the reading condition has been achieved accordingly (Abu Al-Haija, Muhammad Ibrahim, 2005)

The written document prepared for proof must be legible by entering the letters, symbols and numbers known to the person to be protested against these documents.

With regard to talking about electronic editors and the mechanism by which these editors are issued, it turns out that the computer system processes the data entering it in a way to deliver it to understand the reader, so that this process takes place through electronic media in the language of the machine consisting of combinations and permutations between zero and one, and therefore the human being is unable to understand this language, which prompted the creation of special programs carried on the computer, to translate the machine language into human language, and convert machine codes into letters It is legible to humans, and therefore has value and authority in proof whenever it is possible to decipher this encryption (Obeidat, 2005, p. 79).

The reading requirement is fulfilled accordingly and it is easy for him to understand it, and the language that appears on the screen of the device is understandable and readable to the contractor.

2.1. The Continuity of the writing:

In order to be authentic, the written editor is required to be characterized by its continuity, so that it is recorded on a medium that allows the stability of writing on it and refer to it when needed whenever necessary to review the terms of the contract or to present it to the judiciary when a dispute occurs between its parties.

The property of continuity of writing may not be available in electronic bonds used in contracting via the Internet, due to the physical and chemical composition of magnetic chips, and recording discs that are characterized by a high degree of sensitivity that leads to their damage, if the strength of the electric current changes, or the degree of storage of these media changes, which loses the ability to retain and continue such electronically written information. This has been overcome by the presence of advanced devices with the ability to save information, and its continuity to a large degree, and this leads to the fulfillment of this requirement in electronic documents (Momani, Bashar Talal, 2004, p. 103).

However, this condition faced some criticism, including with regard to the features of electronic media from having a high sensitivity with which it can change its programming or damage those media if the intensity of the electric current differs or there is a

severe difference in the storage temperature, and despite what this criticism from the point of view, there are advanced electronic media in which the element of stability and continuity is achieved in relation to what is below them, Where this information can be kept and referred to even after a long period that may exceed the ability of ordinary papers that may be affected by time factors such as burning, moisture or insects, so the features of this editor change (Al-Jamal, 2006, p. 200). Thus, the condition of continuity has been fulfilled by the electronic editor, like the customary document.

2.3. Stability and non-adjustability of the writing:

In order to be authenticated on the written editor, it must be unmodifiable, and to achieve this condition, in the case of editable editors, this addition must be visible on those documents, so that this amendment is only done by destroying the editor or by leaving a clear impact on it that is easy to detect by debate or by referring to those with experience in that. Thus, the element of trust can be achieved on what is recorded in these documents (Hijazi, 2009, p. 335).

Where the writing is required in order to become evidence in the proof to be free from any defect that affects its validity, and the presence of any filler or erasure in the content of the editor, this undermines its strength in proof.

Since we are dealing with electronic editors, this technology must be able to detect any modification or change in its content, and to accurately determine the modified data and the time of its modification (Said, 2010, p. 129).

The process of storing writing on discs or tapes ensures their preservation and longevity, and electronic documents are saved in their final form without the possibility of any modifications, and they are kept in boxes under the supervision of trusted bodies from the State. Confidence in electronic editors is enhanced if we add to the above that modern science has created information codification programs, the entered information is not amendable in any way, and this is called a system and the bottom line is that electronic writing can replace traditional writing as long as . (Acrobat) shall be included in writing within the meaning of the law, by being legible and clear indicating the content of the legal act. The traditional paper editor, which the law considered an argument, does not mind launching it on both the written and electronic editor (Abu Haiba, Dr. Najwa, 2002, p. 29).

It should be noted that the character of permanence and non-adjustability depends mainly on the support on which the information and data are installed, where the electronic supports are divided into two parts, permanent supports and non-permanent supports. The non-permanent supports are those that accept change in their content, modification and rewriting without leaving any trace on them that can be observed, while the permanent supports are those that do not accept multiple use, so that it is for one time without the possibility of changing their content, and that any attempt to manipulate them results in the execution of this pillar or losing its validity to retrieve the writing.

One of the proposed solutions to avoid the possibility of amendment to these documents, especially if we are dealing with the documents installed on non-permanent supports, the parties may resort to the introduction of a neutral intermediary between them whose task is to verify the exchange of messages and ensure their integrity and save the data circulating through them for a certain period, including resorting to one of the certification service providers. This would provide a high degree of security (Suleiman, op. cit., p. 196).

2.4. The possibility of retrieving saved electronic documents:

The requirement of referencing electronically edited data can be included in the condition of stability, continuity and non-modifiability, so that what is the benefit of preserving and fixing these data without the possibility of referring to them when needed.

This is confirmed by Article (1/10/a) of the UNCITRAL Model Law, which states: "When the information is required to be in writing, the data message meets that condition if the information contained therein is accessible in a manner that allows it to be used for subsequent reference (UNCITRAL Model Law on Electronic Commerce, 1996).

Article 9/a of the Jordanian Electronic Transactions Law stipulates that "if the parties agree to conduct a transaction by means of Electronic The legislation on this transaction requires the submission, transmission or delivery of information related to it to third parties by written means, for this purpose it may be considered conducted by electronic means in accordance with the requirements of such legislation if the addressee is able to print, store and refer to such information at a later time by the means available to him" (Jordanian Temporary Electronic Transactions Law No. 85 of 2001).

Because of the current ability of electronic editors to retain stored data for long periods that allow them to be referred to at any time, the retrieval requirement for electronic editors has been fulfilled, as is the customary document.

2.5. Signature: _

Signature is a word derived from the triple verb signed, and signed the contract, or the instrument with its name written at the bottom of it, signing it, or acknowledging it. Signature is a language that means: "What the president comments on a book or a request for his opinion on it, and the signing of the contract or instrument that the writer writes his name in the tail of his signature or acknowledgment of it, and the signature has forms, either by signing by handwriting, or by writing the person's name as Cam La, or by fingerprint, or by seal.

As for the electronic signature, the UNCITRAL Model Law of 2001 defined it in article 2 as "means data in electronic form incorporated, added to, or logically linked to, a data message that may be used to identify the signatory in relation to the data message and to indicate the signatory's consent to the information contained in the data message".

Article 1 of the Palestinian Electronic Signatures Law defines an electronic signature as: "What is placed on an electronic document, in the form of letters, numbers, symbols, signs or otherwise, and which has a single character, allowing the identification of the signatory's personality and his approval of the information contained in the electronic editor."

An electronic signature is also defined as "letters, numbers, symbols, or signs thereof. (A single character, which allows identifying the person of the signatory, and distinguishes him from others (Al-Sanad, Dr. Abdul Rahman bin Abdullah, 2004, p. 146).

When studying the signature, we find that it is linked to the written evidence, so in order to give the legal argument for the signature, the letter or document to be authenticated by signature must meet the conditions of written evidence, in addition to the conditions of the signature itself necessary to perform its function in determining the personality of the signatory and his acknowledgment of the content of the document, and its attribution to the signatory. (Abu al-Lail, Ibrahim al-Desouki, 2003, p. 129)

Jurisprudence sought to find authenticity for the electronic signature, and the result of those attempts was that some jurists gave authenticity to the electronic signature in proof, but others did not give authenticity to the electronic signature, due to the lack of sufficient legal security for such type of signature. With the issuance of laws on electronic commerce, authenticity was given to this type of signature, and the necessary procedures were developed to achieve security, confidence and legal protection for this type of signature through the issuance of authentication certificates from accredited bodies, and these bodies issue authentication certificates from accredited bodies, to authenticate and deposit it with them, and this led to giving the electronic signature authenticity. (Obeidat, Dr. Lawrence Mohamed, 2005, p. 156), and granting legal authority to an electronic signature is closely related to the degree of security available in this signature, and this is what makes it rise to the degree that the law can grant it confidence and legal authority (Abu Haiba, Dr. Najwa, 2002, p. 88)

Returning to the law of evidence, we find that the majority of them are complementary rules, not peremptory, so individuals may agree to violate them, i.e. proof by any means the parties deem appropriate, regardless of the value of the disposition, even if it exceeds two hundred dinars, as long as there is an agreement on the method of proof, and this agreement is binding on all its parties (Abdel Hamid, Raed, 2005, p. 29).

This is confirmed by Article 68 of the Palestinian Evidence Law: "In non-commercial matters, if the value of the obligation exceeds two hundred Jordanian dinars, or its equivalent in the currency of legal circulation or is of unspecified value, witnesses may not testify to prove its existence or expiry, unless there is an express agreement. (or implicit or legal text to the contrary (Palestinian Evidence Law No. 4 of 2001 published in issue No. (38) of the Palestinian Gazette on (5/9/2001 on page No. (226) of Palestinian Facts Journal)

Despite the freedom of the parties to agree on a means of proof and the resulting lack of embarrassment in adopting electronic signature methods as a means of proof by agreement of the parties, some actions required by law have doubt, not meaning, and are only done by fulfilling this form, such as contracts that need to be certified by a notary public, or signed in front of a public official officially, otherwise there is nothing wrong with taking electronic signatures as a means of proof (Abdel Hamid: 2005, p. 30)

The condition of signature is an obvious condition that meets this condition if it meets what is required by law as one of the conditions for the authenticity of bonds, whether ordinary or electronic, because the signature means the proportion of what is stated in the document to its parties, and this is fixed in the text of Article (13/c) in the Jordanian Evidence Law, as the legislator stipulated that in order for the computer outputs to be authentic, the customary document in proof must be signed or certified by its source. Thus, the direction of the Palestinian legislator when giving these electronic documents the authority of customary documents in the Palestinian Evidence Law (Article 19).

3. Evidence exceptions in writing

The Palestinian Evidence Law has dealt with modern means of proof within the scope of exceptions, that is, there is no need for complete written evidence to give these modern means legal authority, so the law took freedom of evidence in commercial materials, and the rules of the Evidence Law are complementary, not peremptory, and as a result, it may be agreed that the parties violate them, the rules of evidence are not of public order, and therefore the parties have the right to waive deaf or explicit them and establish evidence by means other than writing regardless of the limit set out. In the Palestinian Evidence Law.

Therefore, it is necessary to discuss the legal authority of modern means of communication in commercial matters, and then present the legal opinion with regard to civil matters in addition to raising some things with regard to the exceptions contained in the need to prove in writing under electronic means in the following sections.

3.0. The authoritativeness of electronics in commercial conduct

With reference to Article (68) of the Palestinian Evidence Law (Palestinian Evidence Law No. 4 of 2001, Article 68), we find that it stipulates the following: "In non-commercial matters, if the value of the obligation exceeds two hundred Jordanian dinars or its equivalent in the currency of legal circulation or is of unspecified value, the testimony of witnesses may not prove its existence or expiry, unless there is an express or implicit agreement or a legal provision to the contrary."

In the concept of violation, we find that the law gave commercial transactions freedom of proof in commercial materials and did not restrict them in a certain form, based on the principle that commercial transactions need the element of speed and guarantee, and by restricting commercial obligations to any of these formalities may affect those principles. As a result of giving commercial documents the principle of freedom of proof, it follows that evidence and authenticity of the validity of all contracts concluded through modern electronic means can be established freely, without the need to resort to specific evidence in a particular way.

The principle of freedom of proof in commercial matters is in the face of the merchant, while the non-merchant is confronted with proof using civil rules of evidence, and it follows that non-traders have no fear of the risks of using modern means of communication to prove the actions that occur through them, as well as traders have to bear the risks of using modern means of communication because they are traders and conclude their actions through electronic contracts (Abdul Hamid, Raed, 2005, p. 40).

In order to uphold the freedom of proof in business, these acts must acquire the status of commercial activities carried out by the merchant for a commercial interest, and if the work carried out by the merchant is for other than the interests of his trade, he does not benefit from the freedom of proof, even if he is a trader. Palestinian Evidence Law No. 4 of 2001, Article 23).

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The disposition may also be mixed, that is, one of the parties to the act is a merchant who contracts for the purposes of his trade and the other party is not a merchant who contracts for his personal or family purposes, such as banking operations between the customer and the bank in this case, the proof is free against the merchant, so that the party other than the merchant can prove his claim by any method of proof, regardless of the value of the disposition. He may use electronic documents in evidence (Ibrahim, 2010, p. 177).

So that most in the field of contracting via the Internet to take the character of mixed contracting. Thus, the buyer via the Internet enjoys freedom of proof against the merchant, and on the contrary, if the proof will be made by the merchant against an individual other than the traders, the proof must be made in accordance with the requirements of the rules of evidence in the civil rules (Suleiman, previous reference, p. 202).

3.1. The authoritativeness of electronics in civil conduct

They are transactions concluded between parties that are not traders, or between traders or traders and non-dealers, but related to non-commercial transactions.

Thus, the Palestinian legislator allowed proving non-commercial legal actions whose value is less than the amount of two hundred dinars by all means, which is stipulated in Article (68) of the Palestinian Evidence Law and referred to earlier. As a result, it is possible to prove civil legal actions by all means of proof, including evidence and presumptions, which extends to include electronic means if they do not exceed the limit stipulated by law.

It is noted that the freedom of proof in this case by all means of proof, including electronic documents, is guaranteed to both parties, the merchant and the consumer, without regard to the nature of the commercial or civil transaction, as this exception has a general and comprehensive scope (Suleiman, previous reference, p. 207).

The researcher believes that the goal of the legislator is to alleviate the parties to the contract in such obligations of low material value, the requirement of writing to prove them leads to prolonging the dispute and occupying the judiciary with unimportant matters other than unnecessary expenses. The requirement to write for legal actions of limited value would overwhelm citizens and undermine confidence in transactions.

In the concept of violation, we see that proof of civil legal actions whose value exceeds two hundred Jordanian dinars is in writing, unless the parties agree otherwise, such as agreeing on the principle of freedom of evidence for these actions as well, regardless of the value of the act.

Referring to the above, we see that the legislator adopted the principle of freedom of evidence for commercial matters, whatever their value, and civil actions whose value does not exceed two hundred dinars, and as a result, the actions whose value exceeds the amount mentioned are subject to the principle of the obligation to prove in writing, however, the legislator has returned to the principle of freedom of evidence and allowed evidence of what was permissible to prove in writing legally, In exceptional cases.

3.2. Reliance on the electronic editor as a principle established by writing

Article (71) of the Palestinian Evidence Law stipulates that it is permissible to prove by the testimony of witnesses what should have been proved in writing in the following case: (If there is a principle of proof in writing, and any writing issued by the opponent that would make the existence of the alleged act close to the likelihood shall be considered as such).

It is clear from this text that in order for there to be a principle of proof in writing, there must first be writing, and it must be issued by the opponent, and this writing would make the alleged conduct close to probability.

As for the first condition, the writing in question here does not amount to full evidence because it does not include the conditions required by the legislator in writing customary papers, as if the evidence were devoid of signature. Also, the writing requirement goes to each editor without requiring a specific form and regardless of the purpose for which it was written.

As for the second condition, it is the issuance of the paper by the opponent to be evidenced, provided that it is possible to determine the source of this writing accurately, as if it bears a mark indicating its attribution to him or bears his incomplete signature.

The judgment of the opponent shall be considered to represent him legally before the judiciary, so that the writing issued by the guardian, guardian or agent shall be considered as if it were issued by the opponent when it was issued within the limits of the agency or state. Whether the litigant is a plaintiff or a defendant.

As for the third condition, it is that the paper in dispute makes the alleged behavior close to the probability, so that the legislator put it to approximate the preponderance of the alleged right, and the wisdom of this condition is that we are about incomplete evidence that is supplemented by the testimony of witnesses so that the matter is finally subject to the discretion of the trial judge, if the court is convinced of the evidence presented, the principle of proving writing was the strength of writing in proof (Ibrahim, *Ibid.*, p. 181).

But since we are dealing with the electronic contract, the question that arises is the extent to which information fixed on electronic supports can be considered as the principle of proof of writing, can be supplemented by the testimony of witnesses? There is no doubt that this question does not arise except in countries where there are no legislative texts specifying the authenticity of these electronic means.

In this regard, some opinions emerged that opposed the consideration of electronic writing as a principle of proof in writing and was based on the inadmissibility of describing the electronic editor as a written editor, and that the electronic editor cannot be attributed to the opponent (Qandil, 2004, p. 32), while another opinion went to consider electronic editors as the principle of proving writing, but it differentiated between two things:

A: _ In the case of the issuance of the electronic editor of an information system for the company does not have guarantees of confidence and safety, the company may not adhere to this editor against others, and on the contrary, third parties may adhere to this editor against the company as a principle of proof of writing.

B: _ If the editor is signed by both parties and followed in its creation, preservation and retrieval, a trustworthy technique is worthy of preserving it, then the parties may adhere to this editor as the principle of proof of writing can be supplemented by evidence, evidence or experience (Suleiman, previous reference, p. 211)

3.3. The authenticity of the electronic editor if it is not possible to obtain written evidence due to a material or literary impediment

Article (2/71) of the Palestinian Evidence Law stipulates that it is permissible to prove by testimony what should have been proved in writing in the following cases: "2. If there is a material or moral impediment that prevents obtaining written evidence, or if custom and custom do not require linking the obligation to a written document, and it is considered a material impediment that there is no one who can write, or that the applicant is a third person who was not a party to the contract, and it is considered a moral impediment to kinship between spouses or what between ascendants and descendants, or between footnotes to the third degree, or between one of the spouses and the parents of the other spouse, or between the fiancé and his fiancée."

First of all, it should be noted that the testimony of witnesses in this case is not complementary to the written evidence, but rather replaces it when it is lost or impossible to obtain as if there were an obstacle to obtaining it (Suleiman, previous reference, p. 212). It is also clear from the text that the law has clarified what is meant by both the material impediment and the moral impediment.

The material impediment is the one that prevents obtaining the written document, so that this impediment is available whenever there are external circumstances that prompted the person to conclude a certain legal act and prevent him from obtaining written evidence, for example, such as those who had to deposit their money with another person to pay a risk due to exceptional circumstances or sudden accidents such as fire or flood, so that he cannot obtain a receipt from the depositor to acknowledge his receipt of the deposit, Or the existence of circumstances that led to the damage of the electronic support on which the written evidence is installed, such as if they were exposed to a viral attack.

As for the literary impediment, it is achieved whenever there are some moral considerations that prevent obtaining written evidence, such as kinship, affinity or marital relationship between the parties to the act, and this link would create a moral embarrassment that prevents the request to prove the legal disposition in a written document (Ibrahim, previous reference, p. 182).

Noting that the existence of these reasons does not in itself mean the existence of the literary impediment automatically, this case may arise and does not prevent from obtaining written evidence, so that we must look at each case separately according to its circumstances, and it is obvious that this matter is up to the trial judge. For example, as if there were previous dealings between the father and his son that took the written form, it is not acceptable for either of them to claim that this kinship was a moral impediment that prevented him from obtaining written evidence from the other party (Qandi, previous reference, p. 25).

When dropping these factors on electronic editors, part of the jurisprudence believes that the lack of conditions necessary to create the complete written evidence in the electronic editor due to the physical nature of electronic media represents a kind of physical impossibility of obtaining paper evidence, the contractors via the Internet, for example, are located in distant places, where data is exchanged between them in writing via the computer, It is kept on electronic supports that are not visible to the naked eye, except through the screen of the device, and then the contracting parties are in front of a material impossibility that prevents obtaining a paper document.

While another aspect of jurisprudence considered that the difficulty of obtaining written evidence does not mean the impossibility of obtaining it, and contracting via the Internet is also not a resort, so a person can do without it and resort to the traditional way of contracting. (Solomon, op. cit., p. 213).

The researcher believes that there is a possibility of an obstacle that prevents obtaining the electronic editor, and as a result the adoption of the certificate as evidence of proof instead of written evidence, for example, the existence of a relationship of affinity or kinship, such as the debtor being the plaintiff's brother, here it may be considered a moral impediment that prevents one of the parties from requesting an electronic editor from the other because of the link between them, and therefore proof of commitment between them is impossible, as well as the inability to obtain an electronic editor may be due to custom and custom, As a person enters a hotel dealing with an electronic computer, according to the custom and common in such places that the person is not provided with a copy with regard to his accommodation allowance and others, and therefore in such cases, the impediment to obtaining the electronic document is available and this rule can be implemented.

While we wanted to represent the fact of literary impossibility in the case of contracting via the Internet, it is possible to consider this impossibility unrealized, because the moral impediment is due to psychological considerations that prevent the contracting person from obtaining the written evidence of the contract, and since the Internet contracting is characterized by the absence of a direct physical meeting between the parties to the contractual relationship, which cannot imagine the existence of psychological conditions that prevent proving the legal behavior between the parties to the relationship. Therefore, each case must be considered separately according to its circumstances and circumstances.

3.4. Case of Loss of the Written Document for Foreign Reason

Article (71/3) of the Palestinian Evidence Law stipulates that: It is permissible to prove by the testimony of witnesses what should have been proven in the following cases (if the creditor loses his written document for a reason that has no control over him).

This case assumes that a person has previously obtained complete written evidence in accordance with the decision in the Evidence Law, and then lost this evidence because of his irrelevant to it, such as force majeure or the state of necessity or the act of others, and here as long as the person did not fall short of what is imposed on him, there is no doubt that the protection of the legislator extends to him.

Thus, it is clear that the establishment of this exception and the use of witness testimony instead of written evidence requires the fulfillment of several conditions, including:

The first condition: the presence of the full written document.

The second condition: and that the bond has been lost due to a foreigner who has no hand of the plaintiff.

When talking about electronic documents, we see that jurisprudence was divided into several directions, including what went to the inability to prove legal actions by printed copies of electronic means, and their evidence in this was based on the fact that the first condition was not achieved as the computer's memory is not a complete written evidence for not completing the necessary conditions for the full written document. This is because resorting to the image requires the availability of the two conditions, and therefore cannot resort to this exception to overcome the lack of conditions of the written editor full editor printed from the electronic media, because if there is a printed copy must exist the original, and we do not have in this case the original (Suleiman, previous reference, p. 217).

While the other view was that the case of loss of written evidence due to the unrelated will of the parties to it should lead us to accept what results from modern communication extracts in proof. For example, microfilm "film thumbnails", which is the copying of data from computer memory on magnetic strips kept by the concerned party instead of traditional paper supports, and these thumbnails are characterized by the possibility of viewing the images recorded on them by sight, by printing them magnified on paper supports. (Qandil, previous reference, p. 29 + Dr. Al-Jamal, previous reference, p. 270)

For example, as if a person loses an account statement from his bank, here the problem is not raised in the cases of the customary deed, as the matter is very simple because the bank keeps computers and floppy or hard disks. With the origin of these statements, and therefore the customer only has to go to the bank and request an alternative statement for the previous one in exchange for paying a commission, and this applies to all electronic computer outputs, and therefore it can be said simply that the rule of freedom of proof in the event of the loss of the electronic bond cannot be applied to the possibility of issuing an alternative bond to the missing bond (Saddah, 2009, p. 109).

X. Results and Recommendations

1. RESULTS: How to prove the electronic contract was identified, and the extent of the authenticity of electronic documents in proof, as well as we talked about the electronic signature in terms of its definition and the extent of its authenticity in proof, and in this research the researcher reached the following results:

Electronic documents have the same authority as ordinary documents in proof because they meet the conditions of traditional documents to rely on them in proof, and these conditions are: that the written evidence be legible and continuous, and that it is stable and unmodifiable.

The permanence and non-modifiability of electronic editors depends mainly on the pillar on which the information and data are installed, so that the supports are not equal to the same degree of strength in their ability to save information without change, or at least without revealing the location of the change if it occurs.

The testimony of witnesses in the event that it is not possible to obtain written evidence for material or moral reasons does not make it complementary to the written evidence, but rather replaces it when it is lost or impossible to obtain it as if there were an impediment to obtaining it.

When concluding an electronic contract, the contracting parties exchange messages and information and agree on the contract in an encrypted form, by each party encrypting the message before sending it to the second party through the authentication body, which in turn decrypts it according to the instructions of the sending party. The task of encryption is to keep the transaction confidential for fear of hackers and fraudsters. As there are private bodies called publicity or certification bodies, whose task is to grant a signature certificate to the person, as they are a third party witness to the commercial transaction, and give the other party the necessary information about the dealing, and verify its authenticity for fear of being a fraudster, or a pirate.

The granting of authenticity to an electronic signature is closely related to the degree of security enjoyed by this signature, and for this reason many legislations seek to find the necessary means to grant the electronic signature the element of security, and to grant licenses to publicity authorities, to give the necessary key pair to encrypt the message, the electronic signature, and to preserve the confidentiality of the electronic message, and this is the role of publicity authorities in granting encryption keys.

2. Recommendations:

1. The need to develop various national legislations to provide the contracting party with the necessary means of protection in various electronic operations, by clearly stating the legal system for consumer protection, without ambiguity, or ambiguity, which achieves a balance between the interest of the contracting parties, especially when considering the presence of a strong party in the contractual relationship.

Electronic documents must also be given the authority of evidence before courts and government agencies, and given the authenticity of paper documents in proof.

2. The need to take care and caution when contracting electronically, with regard to methods of proof due to the risks that may be caused to the contracting party as a result of not following the controls of electronic contracting.

3. Guarantees must also be put in place that guarantee freedom of proof in electronic contracting, in line with the developments of the current era, and find the necessary means to achieve confidence and security between contractors by finding the necessary guarantees for the implementation of electronic contracts.

4. The Palestinian legislator grants licenses to certain certification and authentication bodies to enable them to authenticate and verify the authenticity of electronic signatures, which provides confidence, security and guarantee for the Palestinian merchant and consumer dealing in e-commerce.

5. Work on finding specialized courts in the field of e-commerce, and holding training courses for judges in this field in Palestine, to graduate judges specialized in this type of cases in light of the fact that e-commerce has become a social necessity, to keep pace with global development and the era of technology

6. Creating unified international legislation on electronic commerce, comparable to unified international legislation on international trade, and the need for the state to harmonize in its legislation these laws and international agreements to facilitate electronic commerce between countries

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