

Authenticity of Electronic Bond in Evidence: A Comparative Study between Jordanian and Egyptian laws

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Abstract

Nowadays, it is impossible to complete transactions, or most transactions, without using modern technological means, among these means the electronic document and electronic signature to prove electronic transactions that take place through modern means of communication in various forms. The Jordanian legislator took the initiative in 2001 and issued Electronic Transactions Law No. 58 of 2001, followed by the Egyptian as Egyptian Electronic Signature Regulation Law No. (15) of 2004. This paper compares Electronic Transactions Law in both Countries to identify the legal aspects of both and explore the depths of each of them to the extent that leads me to the way each of them deals with the issue. The study conclude with explaining the differences and similarities between the two countries and offers recommendations for policy makers and future researchers.

Keywords: Authenticity, Electronic Bond, Electronic Transactions, Evidence

Introduction

The world is currently witnessing successive developments in the field of information systems, and this has been accompanied by other developments in the field of correspondence. Human beings are no longer spatially bound on Earth, as cyberspace today exists wherever you are, If you are not connected to the Internet, there is no place for you, and if you are connected, you are exist (Abu Alhaija' and Mohammad, 2005). Although the traditional bond remained, over a long period of time, at the top of the pyramid among all the evidence of proof, and legislation used the traditional bond on the basis that it was the strongest evidence that could be presented to the judge to prove the source of right represented by incident, and when written evidence is available, the judge issues his ruling without having any doubt about the ruling he pronounces. However, this approach did not last in light of the emergence of modern technology and in light of the information and communications revolution and the emergence of the electronic computer, which entered all parts of daily life in various countries of over the world, this revolution led to changes in different levels as everyone can clearly realize that international commercial domains and fields in particular are the most responsive domains for the great technical developments due to the speed, confidence and reliability characterize this domain and distinguish it from others. It can be said that such a response wasn't limited to specific commercial projects or facilities, rather, the development that spread to include all domains even though at various levels including large commercial facilities, banks and factories to small individual projects and regular consumers (Alsunbati, 2003).

It became impossible to achieve or accomplish transactions or most transactions without using technological methods, and with this development of modern technological methods, electronic bond and electronic signature have emerged as tools for proving electronic transactions with their various forms in new communication methods. electronic commerce inevitably leads to saving time and effort, and to encouraging investment and pushing forward the wheel of economy in line with the case at other countries as the contractor doesn't need to move and travel to conclude a contract, rather, he can from home and via the internet conclude such a contraction and this includes selecting the seller, and type, quantity, quality and price of goods, and where to ship goods.

The Jordanian legislator has initiated in 2001 and issued the Electronic Transactions Law No. 58 of 2001, as well as the Egyptian legislator, which issued the Egyptian Electronic Signature Regulation Law No. (15) of 2004. Thus, comes the importance of electronic transactions and electronic signature law in commerce as it regulates its processes and combines its aspects according to meet legitimate aspirations in addition to responding to the emerged and increased needs at the international level to give authorize all electronic transactions, as it is the real key to solving the problems raised and concluding electronic deals. Therefore, it is necessary in this regard to shed light on it, find out the legal rules regulating its items, and examine the extent to which general principles can be adapted to accommodate these items and statements as these vast and interrelated transactions at both the internal and external levels at the international level, so, there is various conflicts in this regard and due to the nature of such conflicts as resulted from new transactions, it is necessary taking into account that the nature of these conflicts is also new and differs from other traditional conflicts. The question then is: how such modern electronic transactions are proved, are traditional methods enough to prove them, or we should improve and develop ourselves to achieve justice within specific controls' limits?

Statement of the Problem

The great technological development in this era – the internet era- and the accompanied transactions that are as modern as this development have brought a great advantage for the world. To achieve the greatest level of benefit for humanity, it was necessary to establish legal rules and foundations that regulate these transactions among people. This resulted in the attempts by some states to regulate such transactions with special laws and items and international agreements and indeed they succeed in this but the problem is that these electronic transactions are new and there are many stated that lack for the appropriate legal regulations for such transactions especially in the third world states as these electronic transactions have emerged and developed in developed states.

The study significance lies in that it investigates the followings:

- Conditions of electronic bonds and comparing regular and electronic writing and documentation and how comparative legislations addressed them with electronic writing and documentation.
- The extent of conformity and harmony between the texts of the traditional Evidence Law and the texts of the Electronic Transactions Law and the extent to which do traditional texts comprehend the texts of 'electronic transactions and signatures' law in addition to investigate the lack for explicit and strict legal texts that give electronic bonds a strong and clear authority that keeps pace with technological developments and situating them in the right position and this represents a problem faced by the legislator and is also a legislative deficiency.
- The extent to which electronic bonds and signature are authentic, and what are the conditions for granting this authenticity.

Study Objectives

The study aims at:

- Comparing the provisions of the Jordanian Electronic Transactions Law No. (85) of 2001 AD and the Egyptian Electronic Signature Regulation Law No. (15) of 2004 AD.
- Identifying the legal aspects in both laws and in depth investigating each law to determine the method of each law in addressing electronic transactions and which points are dropped in a law and stated in the other.
- Determining the research in electronic verification and the salient points included in addition to explaining the renewed electronic transactions' forms and how a law that is less rapidly developing than technology keeps pace with the times and how can it contain practical solutions.
- Identifying the extent of the document or electronic bond authenticity in evidence.
- Offering detailed legal and technical explanations that are obtained through jurists and commentators on international and electronic commerce laws, and linking them to the topic of this study which ultimately benefits scholars and future research. This is because few have offered comprehensive explanations of the tools and mechanisms of e-commerce.
- Comparing and determining the most important legal problems and gaps may emerge in future in addition to in-depth examining each of the two laws (Jordanian and Egyptian) and suggesting appropriate legal mechanisms at a minimum level to address these problems.

Significance of the Study

It is apparent for all the great importance of technological means of communication and electronic means of contracting between individuals. Despite this great importance of instant means of communication and contracting, these means raise a major problem in the process of proof. What is known about e-commerce and e-commerce contracts is that they are carried out remotely without the presence and face-to-face meeting of the two parties. Contracting may often take place via the Internet and websites, this is due to the fact that dealing via the Internet is not controlled or monitored and neither party is able to see the other party or his\her eligibility or even inspect the goods which call for and require legal consumer protection. Based on observations of the texts of the Jordanian Electronic Transactions Law No. (85) of 2001, there are legislative shortcomings compared to other Arab laws, especially with regard to consumer protection, and the governmental use of the electronic record, which requires looking for appropriate solutions to this issue, and because proof is of great importance in protecting rights, the topic of proving electronic bonds or informational proof is addressed, and it is noticed through the study that there are differences between Arab laws, especially the Jordanian Electronic Transactions Law No. (85) of 2001 AD, and the Egyptian Electronic Signature Regulation Law No. (15) of 2004 AD.

The study is divided into an introductory to explain the nature of the electronic bond, its conditions, and its distinction from other traditional bonds, then in the first section: the authenticity of the electronic bond, and in the second section: the legal impact resulting from the authenticity of the electronic bond in evidence.

Methodology

The study adopted the following methods in addressing electronic bond's authenticity:

1st: The Inductive Approach: the work on studying and extrapolating the material for the electronic

bond, and collecting it from its original sources.

2nd:The Analytical Approach: analyzing the material collected and classified based on the topic.

3rd: The Deductive Approach: After analyzing and comparing the legal texts, results were obtained with comments on each of them.

4th: The Comparative Approach: It was necessary to refer to the legal provisions related to the electronic bond, which were contained in the various legislations at the level of the two countries compared in this research.

Introductory Materials:

Nature of Electronic Bond, its Conditions and Distinction from Traditional Bonds

Introduction

There is no legal objection of releasing a bond that is considered as authoritative by law on both written and electronic bonds alike since the law does not require a specific form in the material on which it is written or documented. It is possible to write on paper, leather, wood, or anything else, and all of these writings are taken into account. Likewise, there is nothing in the law that requires writing to be counted on known paper, so it is permissible to write on paper, leather, or wood. What is important is proving the attribution of the writing to its owner (Alsunbati, 2003)). Many international agreements have adopted this view, including:

1-The Rome Convention, where Article (11/2) stipulates that the arbitration clause may be contained in a signed contract or agreement or in an exchange of letters or telegrams.

2- According to the United Nations Vienna Convention Concerning the International Carriage of Goods (1981), Article (13) of this Convention stipulates that for the purposes of this Convention, the term writing also applies to correspondence addressed in the form of a telegram or telex, and this modern concept of writing opens the way for the acceptance of all supports, regardless of the material of their manufacture, as evidence.

According the above stated, and with the increased scientific developments and the emergence of computers and the Internet, correspondence and contracts are mostly carried out through this network, and one of the most important characteristics of the legal rule is that it be flexible so that it keeps pace with and includes technical and technological development in the style and method of concluding contracts and legal transactions. This requires finding new legal rules and developing the traditional legal rules that regulate these matters in order to accommodate electronic commercial transactions in their organization and legislation, and also by giving these rules the legal weight as a means of proof, as is the case in the traditional method of concluding contracts and written transactions. Also, the comprehensiveness of the legal rule requires, in addition to recognizing the validity of electronic bonds and the impact of electronic extracts and bonds in proof, for the legislator to regulate the methods and means of electronic commerce, and to create a legislative environment. Appropriateness, which is concerned with the basics as well as the legal details that may arise in cases of dispute and raise a wide jurisprudential and judicial debate about them (Almomani, 2003), and when examining the details and procedures of the electronic transaction, we find that the Jordanian legislator is unique in the data law in dealing with modern means of communication, through which data is exchanged, whether through fax, telex, the Internet, or any modern electronic means. The Jordanian legislator considered electronic bonds such as unofficial bonds, and thus he gave them a kind of authority by considering them as customary bonds (Article (6) of the Law Amending the Jordanian Data Law No. (37) of 2001).

In this section, the nature of the electronic bond that is circulated between the two parties to the relationship is clarified by studying the position of the Jordanian legislator and the Egyptian legislator, and the study of this topic is highlighted in the following two requirements:

1st Requirement: The Concept of Electronic Bonds

According to the Egyptian Electronic Signature Regulatory Law No. (15) published in the Official Gazette, Issue (17) on 4/22/2004, Article (1/b) of the Egyptian Electronic Signature Regulation Law stipulates that: (An electronic bond is: a data message that includes information that is generated, merged, stored, sent or received, in whole or in part, by electronic, optical, or any other similar means.), and the Jordanian Temporary Electronic Transactions Law No. (85) of 2001 published in Official Gazette on 12/31/2001, Article (2) of the Jordanian Interim Electronic Transactions Law defines the electronic bond by defining the information message as: (information that is created, sent, received, or stored by electronic or similar means, including electronic data exchange, e-mail, telegram, etc, telex or telegraphic transcription. Article (2) of the UNCITRAL Model Law on Electronic Signatures of 2001 also defines data message as meaning: (information created, sent, received or stored by electronic, optical or similar means, including, but not limited to, electronic exchange data, e-mail, telegraph, telex or telegraphic transcription.

It is noted that the definition of data message in the draft Egyptian Electronic Transactions Law is the same as the definition of electronic bond, which was stated in the UNCITRAL Model Law. What we notice is that there is a deficiency in terms of the expression of the data message regarding familiarity with the images of the electronic bond, as in the legislator's expression that the electronic bond is a "data message," it is to indicate the identity of the signatory to the bond and satisfaction with its content as a result of the correspondence exchanged between the two parties to the relationship (Hmoud, 2004), such as including an offer from one party that is accepted by another party, or include a request from one person that is accepted by another. However, this concept in the scope of an electronic bond is unjustifiably narrow, as this bond may be a bond stored in electronic records such as birth and death certificates, marriage, health records, data of graduates from schools, universities, etc. In this case, this data does not include any message addressed to anyone, and adopting the legislator's expression leads to narrowing the meaning of the electronic bond by including these images, and therefore it does not guarantee the protection of the interest that the legislator wanted to protect (Shams Addin, 2006).

This definition is incomplete, as it closely approximates the definition of electronic writing, which from the Egyptian legislator perspective means all letters, numbers, symbols, or any other signs affixed to an electronic, digital, or optical support, or any other similar means, and giving a perceptible meaning. The source of the inadequacy of the electronic bond's definition stems from the fact that it does not contain an important and necessary condition, which is that the electronic bond must contain an electronic signature, thus, if the electronic bond is devoid of an electronic signature, in this case it is not considered an electronic bond, but rather it is considered an electronic writing or an electronic message, as it is called in some Arab legislation electronic transactions. The evidence for this is the text of the electronic signature law itself, where the electronic signature is defined as: what is placed on an electronic bond and takes the form of letters, numbers, symbols, signs, etc, it has a unique character that allows the site to be identified and distinguishes it from others as stated in Article (1/c) of the Egyptian Electronic Signature Regulation Law No. (15) Of 2004.

It is also noted that the electronic bond or bond is not required to include a copy of any contract that may be concluded electronically. The electronic bond may include a copy of the acknowledgment or any other legal act issued by the unilateral will of the party concerned (Alroumi, 2006). What is important is that the data of the sent bond match the image in which it was issued from its source until it reaches the addressee.

According to the above stated, Electronic bond can be defined as: data and information that are exchanged through correspondence that takes place between the two parties to the relationship by electronic means, whether through the Internet, hard disks, computer screens, or any other electronic means, to communicate information between them, or prove a right. Or doing work, it is the means through which people meeting on the Internet can express their wills (Almatalqah, 2006).

2nd Requirement: Conditions for Electronic Bond

For the electronic bond to have the full authenticity in proof and the possibility of being equal to official and customary bonds, it must meet conditions, including those explicitly stipulated in the Jordanian Electronic Transactions Law and the Egyptian Electronic Signature Regulation Law. This is in addition to the possibility of analogy to the conditions specified by the legislator in the Egyptian Evidence Law, and this is in order for attempt to reach the basic conditions that must be met in the electronic bond to have legal authority in proof, as follows:

1st Provision: Writing

The concept of the word “documents” is no longer limited to paper documents only, but rather this concept has developed towards expansion to include electronic documents as well. Article (1/A) of the Egyptian Electronic Signature Regulation Law defines electronic writing as: “all letters, numbers, symbols, or any signs.” Others are fixed on an electronic, digital, optical support or any other similar means and give a perceptible meaning.” Article Two of the Jordanian Electronic Transactions Law stipulates that: “Information: data, texts, images, shapes, sounds, symbols, databases, computer programs, and the like”.

From the above stated definition, it is clear that electronic writing may occur via letters or numbers or symbols or others, it is also noted that the Egyptian legislator is unique in defining electronic writing from the rest of the Arab legislations. The writing in the electronic bond is in the form of algorithmic equations that are implemented through data entry and output operations through a computer screen or any other electronic means, so that it is done by providing the device this information via Input units using the keyboard or any other means that can read data and retrieve information stored in the central processing unit or any floppy disk used. After processing the data, it is written to the output devices, which are the computer screen, or printing these documents on the printer, magnetic disks, or any other means. It is a means of storing data, and this was confirmed by some jurists when they presented the definition of computer programs, as some pointed out that computer programs are a set of instructions and commands that are entered into the computer in a specific form, whether by writing or verbally, and then they are recognized by the device (Almatalqah, 2006).

It is noted that the Jordanian legislator in Article (19/A) of the Electronic Transactions Law, which stipulates that "the electronic bond is transferable if the conditions of a negotiable instrument are applied to it in accordance with the provisions of the Trade Law, with the exception of the requirement of writing, provided that the withdrawal has approved its negotiability" has given transferable electronic

bond the validity of a regular bond even if it does not meet the requirements for writing, because as long as it is possible to convert the symbols into an electronic document there is nothing preventing this document from being given the validity of a regular bond in evidence. As long as the bond is transferable, electronic writing is available (Alnawafleh, 2005), therefore, it can be measured and applied to all documents, whether official or customary, because bonds are a form of bonds that can be issued by official bodies or authenticated by them, and in return they are issued by the ordinary person.

2nd Provision: Signature

In order for the electronic document to have full authenticity in proof, it must include the signature of the person who issued it. In the field of contracts and electronic documents, the law may require the signature of the electronic document in order for it to produce its legal effects. Consequently, most laws considered that the electronic signature fulfills this condition if it fulfills what the law requires (Obeedat, 2005), and the signature provision is an obvious condition as one of the conditions for the authenticity of bonds, whether regular or electronic, because the signature means attributing what is stated in the instrument to its parties, and this is established in the text of Article (13/C) in the Jordanian Evidence Law, as the Jordanian legislator stipulates that computer outputs be authentic. The customary document of proof must be signed or certified by its source.

3rd Provision: Documentation.

The Jordanian legislator has defined the authentication certificate in Article (2) of the Jordanian Temporary Electronic Transactions Law as: "The certificate issued by a competent, licensed or accredited authority to prove the attribution of an electronic signature to a specific person based on approved authentication procedures". According to this text, it is inferred that some electronic information may be transmitted through closed networks through which dealing is limited to a limited number of individuals and bodies, such as private networks for companies, government institutions, and bodies that provide various services, such as health care, insurance, and others. The innovation of new communications systems has contributed to increasing efficiency and speed of Electronic transactions. This has resulted in the entry of the electronic document into all aspects of life. This document may be represented in electronic records about the person's data and his civil and family status, this may be a contract concluded between two parties and the subject matter of a civil or commercial transaction. The electronic bond in the field of transactions has multiple forms. Judgments issued by the courts are stored in electronic records, and lists of those convicted and those interested in various cases are placed in information banks. In the field of nationality and travel, counting the foreign nationals and residents of the country and knowing the person's travel history and invitation, and whether he is prohibited from traveling or listed on the lists of those awaiting arrival are done through electronic records, and also in the field of education, the idea of the electronic document is of great importance for the names of students, their data, and their academic status through electronic records (Shams Addin, 2006). Otherwise, the electronic document does not have any authority, and this is confirmed by Article (32/B) of the Jordanian Electronic Transactions Law, which says: "If the electronic record or electronic signature is not authenticated, it has no authority.

4th Provision: The Possibility of Keeping the Electronic Bond in its Original, Agreed-upon Form.

For the electronic bond to be complete evidence, it must be able to be preserved in its original form in

which it was created and agreed upon between the two parties of the relationship, This condition was stipulated in Article (8/a) of the Jordanian Electronic Transactions Law No. 85 of 2001 which stipulates that: A - The electronic record derives its legal effect and has the status of an original copy if the following conditions are met in it: 1 - The information contained in that record must be capable of being preserved. And store it so that it can be referred to at any time. 2- The possibility of keeping the electronic record in the form in which it was created, sent, or received, or in any form that facilitates proving the accuracy of the information contained in it when it was created, sent, or received . Article 8/a of the UNCITRAL Model Law states: “ When the law requires that information be provided or retained in its original form, a data message satisfies this requirement if there has been reliable evidence to confirm the integrity of the information from the time it was created.” "The first time in its final form, as a data message or otherwise." And Article (12) of the Palestinian Electronic Exchanges and Commerce Draft Law (Bundoq, 2007). These texts confirm the integrity of the information contained in the electronic document without causing any change to its original form in which it originated. The information in the electronic document is preserved by entering the information or terms of the agreement between the two parties and storing it as it is, with the texts and signatures it contains automatically in the electronic computer. This is after this document is previewed via the computer screen, and is stored on a magnetic cylinder. The document can be retrieved and copies of it can be extracted that are identical to the original (Obeedat, 2005).

There must be a possibility to keep the electronic record in the same form and specifications in which the bond was created, sent, or received when it was created, so that if we return to the bond, it is the same bond that was created, sent, or received without any distortion, alteration, or change, and this depends greatly on the authentication authority. And its procedures, despite the modern technology used to preserve electronic documents. However, assessing the extent of the ability of this technology to secure the data of the document, and the possibility of accepting the electronic document in evidence, is subject to the authority of the trial judge, and leaving the assessment of the value of the electronic document in evidence to the judge would weaken the strength and value of this document compared to documents written on paper, which the judge is obligated to accept. The latter is a complete piece of proof as long as it is signed by its parties. To avoid weakening confidence in electronic documents, it is necessary for the legislator to intervene. The French legislator considered that written evidence is valid in relation to every support on which writing can be printed, saved and read, even if the writing is not visible or noticeable when it falls on the support, as long as it can be read by processing the support with special devices, such as placing a cylinder in a computer so that it appears legible on the screen, but this is on the condition that The use of such a support is accompanied by mechanisms responsible for securing the message and verifying the identity and attribution of its sender (Musharraf, 2004) and which according to Kameel (2004) explicitly stipulating the technology adopted to secure electronic document data, which makes it meet the condition of non-amendability without the judge's intervention in assessing the extent to which this condition is met. There are also several methods has emerged to keep electronic documents whether by magnetic tape, the Internet, floppy disks, magnetic disks, or others (Obeedat, 2005).

5th Provision: Possibility to Retrieve Saved Electronic Bonds

In order for it to be possible to invoke the electronic bond, we must refer to it at any time, so that it is referred to in the form in which this bond was created or issued without distortion, increase or decrease,

whether it was saved on the Internet or via floppy or compressed disks, and this is what the Jordanian legislator emphasized in its texts as Article (8/A/2) of the Jordanian Electronic Transactions Law stipulates this condition by saying: “The electronic record derives its legal effect and has the status of an original copy if the following conditions are met in it: The possibility of keeping the electronic record in the form in which it was created, sent, or received.” Or in any way that facilitates proof of the accuracy of the information contained therein when it was created, sent or received.

The adoption of technology in the field of preserving and retrieving documents and records has become extremely important, many banks, insurance companies, factories, government institutions, universities, news agencies, courts, and real estate houses have already begun to use film thumbnails and computers in the field of preserving, organizing and retrieving. Documents and documents, due to the good, fast and effective performance achieved by this technology in the field of preserving, retrieving and circulating documents and information, which makes an effective contribution to the development of systems for preserving documents in the forms in which they are issued and achieving optimal use, ensuring that all available resources are invested to achieve current and future goals. The importance of this is highlighted in preserving the original documents from circulation, misuse, damage, or changing recorded data. In addition, it saves the financial and cadastral costs resulting from preserving, retrieving and storing documents and documents, and the possibility of storing a huge amount of documents and documents and retrieving any information within a few seconds. Then all the stored information becomes accessible to the beneficiary at any time, whether by reading it on the device screen or obtaining a paper copy of it (Abdulfattah, 1999).

1ST Topic: Electronic Bond

The electronic signature is considered an important requirement that must be met for the authenticity of proof of the electronic bond, which must be accompanied by the signature, whether electronic or a regular signature. In addition to the possibility of using the electronic signature in all transactions that require a signature, such as: purchase and sale orders, signing inventory lists of goods and merchandise, and signing receipt invoices, purchasing travel tickets, etc., which offers the ability to perform the same tasks related to a written signature as long as the same function is performed, and thus possesses legal authority in proof. Accordingly, in this section, we will discuss electronic proof in the first requirement and Proof by electronic documents in a second requirement.

1st Requirement: Electronic Proof

Proof represents a significant necessity of the necessities of working and interacting with judiciary. If one of the parties to the dispute is unable to prove his right and present his evidence, he will lose the case. All legislation stipulates that writing is considered one of the strongest pieces of evidence, and that it has authority in proof, returning to Article (68) of the Palestinian Evidence Law, it stipulates: “In non-commercial matters, if the value of the obligation exceeds two hundred Jordanian dinars or its equivalent in the legally circulated currency, or if the value is indefinite, then witness testimony is not permissible to prove its existence or expiration unless there is an explicit or implicit agreement or legal text stipulating otherwise,” taking into account the impediments that prevent writing, as well as the existence of some writing. This is what is known as the principle of proof by writing in the event that a moral or physical impediment prevents from obtaining written evidence or in the event of loss of the document. In writing and other cases stipulated in Article (71) of the Evidence Law, as well as what is stipulated in

Article (27) of the same law relating to computer system documents, which is addressed in details in this requirement within the following sections:

1st Section: Electronic Bonds' Authority in Proving Commercial Transactions and Civil Actions with less than two hundred JODs.

From the above stated Articles (68 and 71) of the Palestinian Evidence Law, the Palestinian legislator adopted the principle of freedom of proof in commercial transactions. Therefore, commercial legal transactions may be proven by all methods of proof, such as writing, testimony, evidence, etc. The same applies to civil contractual obligations with value that does not exceed two hundred Jordanian dinars, then they may be proven by all methods of proof, and if we return to the means of modern technology and bond and documents issued by the computer, as We previously mentioned that the Palestinian legislator treated these documents as unsigned documents by appending them to Chapter Three of Chapter Two related to written evidence, through the text of Article (27) of the Palestinian Evidence Law as follows: ((The provisions of this chapter apply to computer system documents)). This chapter has addressed unsigned documents, such as commercial books, letters, telegrams, household papers, and annotation on the bond indicating the debtor's release from liability. Therefore, as is clear, the Palestinian legislator granted the data issued on computers a probative value like traditional means, due to the availability of the principle of proof by writing on these documents. The most important of which is the issuance of the document by the defendant's opponent. The legislator permitted proof by all means of proof when there is an impediment to obtaining written evidence, whether physical or moral, or what is customary and usual is not to obtain written evidence. The Jordanian legislator had precedence in this over Egyptian legislation, as it considered Electronic documents have authority in proving actions that take place through electronic means and granting certified computer outputs the normal power of attribution in proof through the amendment he mentioned to the Evidence Law ((Article (13/2-c) of the Jordanian Evidence Law No. 37 of 2001 stipulates that: The certified or signed computer outputs shall have the normal force of attribution in terms of proof unless the person to whom they are attributed proves that he did not extract them or did not assign anyone to extract them)). The Jordanian legislator also included texts related to freedom of proof in some private laws, including the Securities Law and the Banking Law ((Article (72/b) of the Jordanian Securities Law No. (23) of 1997 stipulates that: "Notwithstanding what is stated in any other legislation, proof in securities cases may be proven by all methods of proof, including electronic evidence, computer-generated evidence, and recordings. Telephone, correspondence, telex and facsimile machines. This law was published in the Official Gazette, page (2185) of issue (4204) dated 5/15/1997)). The Egyptian legislator has also granted electronic bonds issued by fax, telex, microfilm, and any similar electronic means the same legal force as traditional bonds, whether they are the original bond or its copy, but on the condition that a decision is issued by the Minister of Justice specifying the rules and controls for such bonds, and that there is a condition of urgency to be given authenticity ((Article (26/2) of the Egyptian Trade Law No. (17) of 1999 stipulates that: They must also keep copies of correspondence, telegrams, etc. for a period of five years from the date of sending or receiving them, and they may keep for the aforementioned period the thumbnail copies (microfilm) instead of the original. These copies shall be authentic in evidence if the rules and regulations issued by a decision of the Minister of Justice are taken into account in their preparation, preservation and retrieval.) This law was published in the Official Gazette, No. (19) dated May 17, 1999)).

Proving Commercial Transactions with Electronic Bonds

The general principle of proof is the necessity of proof in writing due to its ability to document transactions between relevant parties. However, the legislator, as we will be seen, departed from that in the Law of Evidence and did not require proof in writing in certain cases, but rather allowed it to be proven by all methods of proof, as legislator adopted the principle of proof. Free proof in commercial transactions, given the speed required by the nature of commercial transactions, and in confirmation of this, Article (51) of the Jordanian Trade Law, which is in force in the West Bank, stipulates that: Proof of commercial contracts is not subject in principle to the exclusive rules established for civil contracts. It is permissible to prove the contracts referred to by all methods of proof, while keeping the exceptions mentioned in the special legal provisions (Jordanian Trade Law No. (12) Of 1966, Issue (1910) of the Official Gazette issued on 3/30/1966). Likewise, Article (28/1/B) of the amended Jordanian Evidence Law stipulates that: ((Taking into account the provisions of any special law, commercial obligations may be proven by testimony, regardless of their amount)). Therefore, what we notice from the texts of these articles is that it is permissible to prove commercial obligations by all means of proof, and this is also followed in both Egypt and France (Yahia,1984,). However, this principle only applies to commercial transactions that take place between merchants only (Alqdhah, 2008) and this was confirmed by the Jordanian Court of Cassation when it ruled that “what can be learned from the text of item (1) of Article (28) of the Evidence Law is that it is a condition for the acceptance of testimony in articles Commercial: The business must be commercial and at the same time be between two merchants (Journal of the Jordanian Bar Association,1976). However, the principle of freedom of proof does not apply to all commercial businesses as there are some commercial acts that the legislator necessities to be written for their special importance such as sales contracts and the establishment of real rights on the ship in accordance with what was stipulated in Article (22) of the Jordanian Maritime Trade Law, which required the contractors to register any right in rem granted to a ship registered in the registration book ((Article (22) of the Jordanian Maritime Trade Law No. (12) of 1972 stipulates: “Every agreement, every contract with or without compensation, every ruling that has the force of a res judicata, and in general every action for the purpose of creating, voiding, announcing, amending, or extinguishing a right.” In kind attached to a registered ship, it has no effect even between the contracting parties unless it is registered in the registration book)) (August (www.jma.gov.jo/law-ba-htm.2008)).

In order for freedom of proof to be adhered to in commercial business, these actions must acquire the character of commercial business carried out by a merchant for a commercial interest. If the business carried out by the merchant is not for the benefit of his trade, then he does not benefit from freedom of proof even if he is a merchant (Yahia,1984,). In confirmation of this condition, the Jordanian Court of Cassation ruled: “The transaction of purchasing goods and benefiting from their profits, but if the purchase is for the purpose of use and consumption, the transaction is considered a normal transaction (Journal of the Jordanian Bar Association,1990).

The transaction may be mixed, meaning that one party to the transaction is a merchant contracting for the purposes of his trade and the other party is a non-trader, such as banking transactions between the customer and the bank. In this case, proof is free to confront the merchant, and the non-trader party has the right to prove his claim by any method of proof, regardless of the value of the transaction. He may use electronic documents for proof (Hmoud, 2004). From the above stated, it is inferred that Proof of transactions and commercial issues with electronic bonds, regardless of their value, is acceptable on the basis of the law permitting such a matter, meaning the freedom of proof in such transactions. It is not

fair to reject such means in commercial matters via electronic bonds, regardless of their value, is acceptable on the basis of the law permitting such a matter. That is, the freedom of proof in such transactions. It is not fair to reject such means in other commercial matters. This reflects negatively on electronic commerce and threatens its growth and prosperity, because merchants will refrain from using the Internet to contract with civil persons because they can only prove against them according to general rules.

Proof of Civil Transactions of Value Less than Two Hundred JODs in Electronic Bonds

The Palestinian legislator permitted non-commercial legal transactions of value less than two hundred dinars to be proven by all means, which is what was stipulated in Article (68) of the Palestinian Evidence Law referred to previously. Therefore, and as is clear from the text of the article, it is permissible to prove by testimony in civil obligations if Not more than two hundred Jordanian dinars, with the exception of cases in which the parties agree on the necessity of proof in writing, regardless of the value of the transaction, as well as cases in which the law requires proof in writing in particular, as is the case in the sponsorship contract, the settlement contract, and the employment contract only for the employer (Article (13/2-c) of the Jordanian Evidence Law No. 37 of 2001).

The legislator's goal behind this is to facilitate contracting parties and not hinder their daily transactions, because requiring writing for legal transactions of limited value would exhaust citizens and undermine confidence in transactions. As for the Jordanian legislator, Article (28/B) of the Evidence Law stipulates that: ((Taking into account the provisions of any special law, it is permissible to prove by testimony in commercial obligations, regardless of their amount, and in civil obligations if they do not exceed one hundred dinars)). It is clear from this text that civil obligations with a value that does not exceed one hundred dinars may be proven by testimony. It is more appropriate for all other means of proof, and this is due to the fact that such obligations have little material value, so requiring writing to prove them leads to prolonging the dispute and preoccupying the judiciary with unimportant matters, in addition to unnecessary expenses (Nseerat, 2005). Therefore, it is permissible to prove the legal transaction through electronic means by all means of proof if it does not exceed a certain amount (two hundred Jordanian dinars) in the Palestinian data law, and one hundred Jordanian dinars in the Jordanian data law, as previously stated, and (500) pounds according to the Egyptian law, which is (800).) Euro in the French system (Article (760) of the Egyptian Evidence Law No. (18) of 1999, amended in 1968, stipulates: "In matters other than commercial matters, if the value of the legal transaction exceeds five hundred pounds or if the value is not specified, it is not permissible to testify witnesses to prove its existence or Its expiry unless there is an agreement or text stipulating otherwise. The obligation is estimated taking into account its value at the time the disposition was issued. It is permissible to prove it with the testimony of witnesses if the increase in the obligation over five hundred pounds came only from adding the interest and attachments to the original) (Jomay'e, 1998). Therefore, as is clear from the texts of the previous articles, the buyer via the Internet can prove the contract he concluded and its content by all means of proof, including witnesses, evidence, and experience. This creates a degree of balance in the relations between merchants and buyers because there is a large percentage of transactions that take place via the Internet. It relates to the purchase of goods of limited value, such as household appliances, Internet subscriptions, spare parts for devices, and other services of limited value (Yahia,1984,), and as long as determining the probative value of the electronic document in this case is subject to the discretion of the judge of the matter, like other methods of proof, the parties to electronic transactions can submit bond to

prove their actions and the content of these transactions, such as cash withdrawals via credit cards, electronic sales and purchases, etc (Hijazi, 2003), Therefore, the judge may give electronic documents authority in proof, make them evidence, or waste their value in proof, which threatens the stability of electronic transactions that take place over the Internet.

The Extent of Technical Development Influence on the Principles of Proof

Article (2) of the Palestinian Evidence Law stipulates that: (The creditor must comply and the debtor must dispose of it). It is also clear from the text of the original article that a person is not bound by any obligation towards any other person, and whoever claims otherwise, that is, that he is a creditor to others, must provide evidence for what he claims. The plaintiff can prove the existence of the obligation if he proves the source from which the obligation arose, whether This source is a legal act, such as a sales contract, or a material fact, such as an illegal act or unjust enrichment (Tanague, 1994) as every opponent has the right to prove his claim by providing evidence for what he claims, but it is not permissible for him to fabricate proof for himself, taking into account that commercial books are an exception to this principle. This principle has also been shaken in the face of the use of modern technological means of proof, as is the case. Regarding automatic withdrawal receipts from banks, the bank is the one that issues the receipt and maintains it in the face of the customer when any dispute occurs between them in the withdrawal process, the bank here is the one who prepares evidence for itself by providing evidence of the transactions that took place with its client, as it prepares a list of the services it provided to the customer through its use of computers, and in general this is in charge of working on at banks and its basis is the implicit acceptance of the client when the worker starts (Mansour,). This is what was confirmed by the Jordanian Court of Cassation in determining the burden of proof, as it stated in its decision the following: (The customer's agreement with the bank in the current credit contract is debit that the bank's books and accounts are considered conclusive evidence in proving the amounts due or due from the customer, a valid condition, and we take into account the rights of both parties and do not It is directed to be annulled by unilateral action, as the means of proof are the right of the opponents and not the public order (Jordanian Bar Association Journal, 1997). Here, as is clear, the existing agreement between the client and the bank may entail great risk, because the bank's position is stronger than the client's position, and this may lead to electronic bonds being given more authority than the authority that the legislator has decided for electronic bonds, more authority than the authority that the legislator has decided for customary documents in proof (Yahia,1984 ,).

This in fact is due to that the nature of banks work regarding their readiness and following special computerized systems, hence, there has been a shift for the burden of proof as the person accused of a website bond cannot deny it. Rather, he must prove the opposite of what has been alleged against him. This means giving such bonds absolute authority due to the difficulty of proving what is stated in them (Yahia,1984 ,), especially if the agreement includes that. Accordingly, this agreement gives electronic documents an authority close to that established for official documents, which cannot be challenged except by forgery (Yahia,1984,). This is clear and noticed when the bank issues magnetic cards according to an agreement between it and the customer, and the accompanying acknowledgment of the full authenticity of the bank's automated extracts in which the customer's banking transactions are proven. The matter may even reach absolute authenticity, meaning depriving the customer of proving the opposite of what was stated in those extracts (Mansour, 2001). So, such thing may gives an opportunity to the strong party represented by the bank to tampering with customer account documents, while being

confident that its documents are conclusively authoritative. Some have considered that the bank's inclusion of a condition in the subscription contract for the ATM service through issuance of the credit card, which requires the customer dealing with the bank to waive some of the rights granted to him by the Evidence Law, explicitly or implicitly. Invalid because it leads to depriving one of the parties, namely the card holder, of his right to proof in general, and according to the prevailing opinion in jurisprudence, it has been considered that the condition that banks include with customers is considered a valid condition and does not entail any compliance, even if individuals waive their rights with regard to the rules of proof. In addition, individuals are not obligated when opening accounts with banks to issue credit cards. When they carry out such actions, they agree to the conditions contained in the agreement to issue these cards (Obeedat, 2005). This is what the Egyptian legislator supported, as he permitted the freedom of proof by all means in commercial transactions, in addition to giving the parties to civil transactions the freedom to prove, even if its value exceeds the quorum in the event of agreement, but he did not make an amendment to this law by introducing modern means of communication in proof (Obeedat, 2005), contrary to the Jordanian legislator when issued an amendment to the Jordanian Evidence Law in Article (13), in which authority was given to modern means of communication such as fax, telex, e-mail, and any modern means of extracting data, and the authority of traditional bonds as evidence in the event of any dispute ((Article (13/3) of the amended Jordanian Evidence Law of 2001 stipulates that: (a) Fax, telex, and e-mail messages shall have the normal force of attribution in evidence unless the person to whom they are attributed to sending them proves that he did not do so or did not assign anyone to send them. B - Telex messages with the secret number agreed upon between the sender and the addressee shall be evidence against both of them. C- The certified or signed computer outputs shall have the normal force of attribution in terms of proof, unless the person to whom they are attributed proves that he did not extract them or did not assign anyone to extract them)). Therefore, it can be said that the condition that gives a certain authority to the electronic bonds through bank records and thus prevents the other party from proving the opposite of what is stated therein includes legal restrictions on the freedom of proof, and it is a matter related to public order and it is not permissible to agree otherwise, because such an agreement restricts the client's freedom to prove is an individual's right, and it is not permissible to deprive one of the parties of it, even if it is by agreement, as this weak party may be in a difficult position that forces him to accept such conditions, so the judiciary must intervene to protect him, so the signed electronic bond is acceptable for proof. If the parties agree to this, provided that this agreement does not include arbitrary conditions that deprive the other party of the right to judicial review or prove the opposite of what the other party claims (Nseerat, 2005).

2nd Section: Proof with Electronic Bonds

The general rule states that proof of legal transactions must be written, and this is what the law assumed as possible from a practical standpoint, despite the fact that the Palestinian legislator, through the text of Article (68) of the Palestinian Evidence Law referred to previously, obligated the proof of some civil transactions, which exceed two hundred dinars. Jordanian in writing, except for several cases in which proof by testimony is permitted. We will discuss these cases in detail and the extent to which the electronic document can be accepted.

Relying on the Electronic Bond as a Principle of Written Proof

Article (71) of the Palestinian Evidence Law stipulates that it is permissible to prove by the testimony of witnesses what should have been proven in writing in the following cases: (1- If there is a principle of proof by writing, and every writing issued by the opponent that would make the existence of the alleged disposition is considered as such is very likely (It is also stated in Article (62) of the Egyptian Evidence Law that: “It is permissible to prove by the testimony of witnesses what should have been proven in writing if there is a principle of proof by writing. Any writing issued by the opponent that would make the existence of the alleged conduct likely is considered a principle of proof by writing). It is clear from this text that in order for the principle of proof by writing to exist, there must first be a writing, and it must come from the opponent, and this writing would make the alleged behavior likely. Jurisprudence has adopted this text in terms of considering electronic bonds as a principle of proof by writing. Some jurisprudence has justified it by stating that even if the electronic bonds were not issued by the opponent in the narrow sense, the presence of them on the electronic medium, or extracting a written copy of it on the printer, is considered strong evidence of Writing by the defendant. Some jurisprudence believes the opposite, meaning that it is not valid to rely on it as a principle of proof by writing, given the impossibility of attributing this document to the opponent (Yahya , 1984). As for the Jordanian legislator, as previously stated, he considered electronic bonds as complete evidence of proof that has the authority of an ordinary document, and therefore it is not the issue arises as to whether the electronic is written or not. Therefore, if the electronic document is not signed by the opponent, it is suitable to be the principle of proof by writing. Emails sent via the Internet are considered the beginning of proof by writing. Therefore, they can be invoked against their sender, and they can be strengthened by means of proof such as witnesses and others (Jomay'e, 1998) . However, the electronic bond, as the certificate, is not acceptable to complete the principle of proof by writing, in the case where writing is a condition for the conclusion (such as insurance mortgages and real estate sales), because in such a case it leads to a lack of legal action itself, and it cannot be proven even if the principle of proof by writing exists (Alqdhah, 2008 2008) as the principle of proof in writing is considered the largest part of proof, and the electronically signed bond is only a continuation of the evidence, especially if the opponent does not criticize the electronic bond until reaching the level of complete evidence. An electronically signed bond achieves trust and security in dealing in its various forms, and with the existence of the principle of written proof, this trust exceeds testimony and other methods of proof. It is easy to have a false witness, but electronic documents are difficult to forge unless there is negligence on the part of their bond (Nseerat, 2005).

Electronic Bond Authority when it is not Possible to Obtain Written Evidence Due to A Material or Moral Impediment

Article (71/2) of the Palestinian Evidence Law stipulates that it is permissible to prove by testimony what should be proven in writing in the following cases: If there is a material or moral impediment that prevents obtaining written evidence or if custom and custom do not require binding the obligation with a written bond. It is considered a physical impediment if there is no one who can write, or that the person requesting the proof is a third person who was not a party to the contract. It is considered a moral impediment if there is closeness between the spouses, or between origins and descendants, or between footnotes to the third degree, or between one of the spouses and the husband’s parents or between the fiancé and his fiancée. It is clear from the previous text that the legislator permitted proof by testimony if

there is an impediment to obtaining written evidence, whether physical or moral, even if the value of the transaction exceeds two hundred Jordanian dinars. Therefore, testimony can be accepted in all cases where the law requires writing for proof, and this The text agrees with the text of the Egyptian legislator and the Jordanian legislator ((Article (63) of the Egyptian Evidence Law stipulates that: It is permissible to prove by the testimony of witnesses what should have been proven by written evidence: (a) If there is a material or moral impediment that prevents obtaining written evidence, (b) If the creditor loses his written bond due to an unforeseen reason out of his control)). By physical impossibility, according to what was stated in the previous texts, it is meant the situation in which obtaining the written bond is prevented due to exceptional circumstances or sudden accidents such as fire or flood. This includes, for example, the forced deposit that is made in circumstances in which the person fears an imminent danger to the thing without He shall have sufficient time or means to obtain a written instrument from his depositary (Abdelwadoud,). For the third person pr party (the other), what is meant by this person through the texts of the articles is that he was not a party to the contract whose validity is being challenged, and he did not have a representative in it, so his failure to participate in concluding the transaction prevents him from obtaining a writing proving it, as this matter is considered a physical impediment that prevents him from obtaining the writing, and it is permissible The law has proof by testimony, as for the moral impediment, its existence is due to circumstances specific to the relations of the adversaries. At the time of concluding this legal action, one of the contracting parties was not able, due to these circumstances, to obtain written evidence (Alqdhah, 2008).

Therefore, the law exempted contracting parties from the obligation of proof in writing, and allowed them to prove the legal transactions they concluded with testimony, noting that the presence of these reasons does not in itself mean the existence of a moral impediment. This situation may arise and it does not prevent obtaining written evidence, and this is what the Court of Cassation decided: Although Article (30) of the Evidence Law permits the acceptance of testimony to prove a debt transaction occurring between second-degree relatives, since the plaintiff acknowledged that the transaction between him and his brother, the defendant, was linked to writing, this means the absence of trust. Mutual exchange between the two parties and thus the absence of a moral impediment that permits reliance on it to hear testimony in transactions between relatives (Journal of the Jordanian Bar Association, 1976). Also, there may be an obstacle to prevent dealing in writing in a certain type of transaction as a result of liens or customs, which means that the parties to the legal transaction do not have to prove it in writing, and here the legislator allowed them to prove these transactions by all means of proof in addition to testimony, and this is what the Jordanian Court of Cassation states in that personal evidence is accepted to prove the debt arising from the price of suits if it is proven that custom do not require linking the transaction between the tailor and his client with a document (Journal of the Jordanian Bar Association, 1966). But the question that arises in this area is whether creating an electronic bond on an electronic support is considered an obstacle that prevents obtaining a complete written guide? A side of jurisprudence believes that contracting via electronic means represents a kind of physical impossibility that prevents obtaining paper evidence. The contracting parties via the Internet, for example, are located in distant places, where data is exchanged between them in writing via a computer, and is stored on electronic supports that are not visible to the eye. Abstract, except through the device screen, and then the two contracting parties are faced with a physical impossibility that prevents them from obtaining a paper document (Hmoud, 2004), while another side believes that in the case of contracting via the Internet on the basis that there is no material obstacle to obtaining written evidence,

and therefore electronic bonds are accepted on the basis that the difficulty of creating evidence does not mean the impossibility of obtaining it, and contracting via the Internet is also not a matter of recourse, so the person can do without it. Likewise, there is no moral impediment due to considerations and psychological circumstances between the contracting parties, as well as to the absence of a custom that prevents obtaining written evidence when contracting via the Internet (Nseerat, 2005).

As for the opinion of the Jordanian or Egyptian legislator, as we have previously seen, in giving full authority in proving electronic bonds, but with regard to the case of the inability to obtain evidence of proof in the case of contracting via the Internet, and therefore is it considered an obstacle? is there jurisprudential or judicial jurisprudence in this regard? However, in these cases, as the researcher believes, it is necessary to differentiate between cases where it is not possible to obtain written evidence. The inability to obtain an electronic bond may be due to a relationship between in-laws, such as the debtor being the brother of the plaintiff's wife. Here, it is considered a moral impediment that makes proving the obligation (debt) between them impossible. Likewise, the inability to obtain an electronic bond may be due to custom, and I know, such as when a person enters a hotel that uses an electronic computer, according to what custom dictates, and it is common in such places that the person is not provided with a copy regarding his accommodation allowance and other things, and for this reason it is In such cases, there is an obstacle to obtaining the electronic bond, and this rule can be applied.

Case of Losing the Written Bond due to an Out of Control 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 if the creditor loses his written support for a reason beyond his control. From the text of this article, it is clear that it assumed that the creditor had a written document, whether customary or official, when establishing the legal disposition, but this document was lost due to a reason in which he had no hand, i.e. due to a foreign reason outside his control, and this exception benefits both contracting parties (Alqdhah, 2008 2008). The term (foreign cause) is broad and includes many incidents, the extent to which they are considered foreign causes depends on the judge, and the foreign cause must be compelling. However, if the loss of the bond is due to the negligence of its owner, it will not be taken into account, and this is what the Jordanian Court of Cassation supported by stating, "It is one of the established principles that the loss of the bond due to negligence on the part of its owner does not justify proof by witnesses, as it is permissible to except personal evidence in accordance with Article (30). From the law of evidence, it is not enough to prove the loss of the bond. Rather, it must be proven that it was lost by force majeure and not by the action or negligence of the owner of the bond (Journal of the Jordanian Bar Association, 1958) but, can such a case accepted in electronic bond? Some French jurisprudence has allowed the possibility of relying on the exception of loss of a document to use printed bonds copied from electronic media on a printer in proving legal actions, justifying this in cases where information disappears from the electronic medium due to the inability of the mediator to retain the information for a long time, or due to exceptional incidents, and therefore it can be said that the written document was lost due to a reason that is necessary for the creditor, and therefore the existence of the contract and its content can be proven by all means of proof (Yahia,1984,). Some indicated that the judge is not obligated to accept proof in electronic bonds, but rather he has discretionary authority to accept it or not, and some went to the permissibility of proof with signed electronic bonds if the written document is lost due to a reason beyond the control of its owner.

As for the Jordanian legislator, Article (92) of the Banking Law stipulates that it is permissible for a bank to keep film thumbnails and the like as a substitute for commercial books (Lutfi,2002) ((Article (92) of the Jordanian Banking Law No. (28) of 2000 stipulates that: Banks may retain for the period specified in the law a miniature copy -microfilm or other modern technology devices- instead of the original books, records, statements, documents and correspondence. Telegrams, notices and other papers related to its financial operations, and these miniature copies shall be authentic in evidence)). Therefore, if a person loses an account statement from the bank he deals with, then the problem mentioned in the conditions of a customary document does not arise here. The matter is very simple because the bank keeps it on computers and on floppy or hard disks. The original of these statements, and therefore the customer only has to go to the bank and request a replacement 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 an electronic bond cannot be applied to the possibility of issuing alternative bond instead of the missing (Nawafleh, 2005).

Probative Power of Some Modern Methods

Previously, it was explained that based on the text of Article (19) of the Palestinian Evidence Law is that the legislator gave full authority in proving letters to serve as a customary bonds, provided that they are signed by their sender until the opposite is proven in writing or it is proven that their signer did not send them and did not assign anyone to send them, and we saw that the legislator kept pace with technological development. The text took into account the presence of electronic mail, as it gave the messages sent through it the authority of telegrams, telex, and fax. Therefore, we will work to clarify that in this requirement by monitoring the position of both the Jordanian and Egyptian electronic law, and the draft Palestinian electronic commerce law, in dealing with these issues. This is within the following branches:

Telex Bonds Authenticity in evidence

Telex is considered one of the modern means of communication, and its use has expanded in people's transactions, especially commercial ones, as a means of proof - through which data and information are obtained and business is accomplished. Its use has become commonplace among merchants, like their use of the telephone in concluding and executing contracts. It has been known Some say that it is an electronic telegraphic printing device connected to a switch that prints the data issued by the sender in red, and the data issued by the addressee in black. Through it, the subscriber can communicate with any other subscriber who owns the same device, send an answer and receive his response, whether inside or outside the country, by providing the number assigned to the requested subscriber and the written data appears at high speed within seconds on both devices. Each subscriber has a number and call code from the device to which it is sent (Abdulfattah, 1999). In this form of communication, the two contracting parties are not in the same contract session, so it is a sale between two absent persons in time and place. However, it is considered an unfair sale by analogy to the method of selling by correspondence. Accordingly, a sale by telex is considered to be a contract between two people present in terms of time and place, and it is the time when acceptance is accompanied by an offer (Ala'boudi, 2002). The Jordanian legislator has given telex messages full authority in proof through what he stated in the text of Article (13/3) of the Evidence Law ((Article (13/3) of the Jordanian Evidence Law No. (37) of 2001 stipulates that: "Fax, telex, and e-mail messages shall have the normal force of attribution in evidence

unless the person to whom they are attributed to sending them proves that he did not do so or did not assign anyone to send them, and the Telex messages with the secret number agreed upon between the sender and the addressee are valid for both of them)) after telex has been a subject of controversy between jurisprudence between supporters and opponents, where most laws of evidence did not give it any authority except as an exception.

According to the Jordanian legislator, telex messages now have the normal power of attribution in proof between its parties and third parties, and in order for it to have the validity of an ordinary document, it must be signed, and this signature is the electronic signature via the secret number agreed upon between the parties using the telex (Nseerat, 2005), contrary to what was adopted by the Lebanese judiciary, where the Lebanese Civil Court of Cassation ruled that: a telex cannot be considered a document with a special signature and does not in any case constitute a judicial acknowledgment, even if its copy is shown in court as long as it does not occur in the court of the judge examining the dispute related to its subject, then a telex As a messaging tool it lacks the sender's signature (Aljammal, 1999). The Egyptian legislator has recognized telex and other modern means of communication, with the intention of simplifying procedures in some cases, as according to the text of Article (58) of the Egyptian Trade Law, in the event of urgency, it is permissible to use the new means to warn the debtor in commercial matters by virtue of an official warning. Or by a registered letter accompanied by a receipt, as the article stipulates: ((The debtor's warning or notification in commercial matters shall be by an official warning or by a registered letter accompanied by a receipt. In cases of urgency, the warning or notification may be by telegram, telex, fax, or otherwise. A fast means of communication, and the French judiciary recognized the telex messages and granted them legal authority in proof (Aljammal, 1999).

Fax Bonds Authenticity in evidence

Fax is known as a device for transferring documents and images, and it is called remote copying by telephone, so that letters and handwritten documents can be transferred by hand or by printing with all their contents identical to their original, so the documents and messages appear on another fax machine in the possession of the recipient. It is noted that there is a time interval for the sender to respond. The Palestinian legislator has referred to documents sent by fax in terms of proof, considering them to be a customary document provided that their signatory, the person issuing them, acknowledges them, and this is confirmed by Article (19/2) of the Palestinian Evidence Law, which stipulates that telegrams, telex correspondence, faxes, and mail shall have Electronic mail also has this power if the original deposited in the export office is signed by its sender, and telegrams are considered identical to their original until there is evidence to the contrary. Also, the United Nations Model Law on Electronic Commerce issued in 1996 referred in Article (2/A) to fax as one of the means that can be used to conclude contracts remotely, as the aforementioned article stipulated that for the purposes of the law: ((A- The term data message means Information created, transmitted, received or stored by electronic or optical means or similar means, including but not limited to electronic data interchange, electronic mail, telegraph, telex, or telegraphic transcription). This method also gained the confidence of the judiciary in the United Arab Emirates, where the Dubai Court of Cassation ruled that: "The original principle of a fax message is that it is considered, when it is proven to have been issued by the person who sent it, a copy of its original, and not just a scanned copy (Aljammal, 1999).

For the Jordanian legislator, in any other legislation, proof in securities cases is permissible by all means of proof, including electronic or computer data, telephone recordings, telex correspondence, and

facsimile communications. What is observed from this text is that it is permissible to prove securities transactions by all means of proof, and that this law stipulates that transactions may be proven through modern means, including computer outputs and records, in addition to the possibility of proof through fax machine correspondence and other modern means, and then after that The Banking Law was issued, as stated in Article (92/B) of the permissibility of proof in the field of banking transactions by all means, including electronic data, computer outputs, and correspondence conducted through fax and telex machines ((Article (92/b) of the Jordanian Banking Law No. (28) of 2000 stipulates that: Notwithstanding what is stated in any other legislation, proof in banking cases may be proven by all methods of proof, including electronic data or data issued by computers. Or telex correspondents)).

In order to give these texts authority in proof, the Jordanian legislator introduced into the Evidence Law in Article 13/3, in its amended form as following: (A - Fax, telex, and e-mail messages shall have the normal force of attribution in proof unless the person to whom they were attributed proves that he did not do so or did not assign anyone to send it.) In line with this, the Jordanian Court of Cassation decided in its decision that: “The copy of the fax and its duly signed document is considered acceptable evidence in proof. It also considered the fax issued by the owner of the ship to be an acknowledgment by the owner of the claimant’s right to the value of the damage it sustained, and that this is an acknowledgment, which is a fax copy of the acknowledgment, interrupts the statute of limitations (Discrimination Rights No. 1878, 2003, stated in Nawafleh, 2005).

The Moroccan judiciary also recognized the validity of fax documents and granted them legal authority in proof, through what was decided by the Court of Appeal in Fez, which states: ((If the two parties to the dispute bring together a contractor’s contract, then the documents or bonds presented in its framework and the fax that evidences the performance are evidence in proving the commercial and contractual relationship, as well as the debt is the subject of the order to be paid (Jurisprudence Jurisdiction issues, 2000).

The Egyptian legislator, through the text of Article (58) of the Trade Law, as previously mentioned, gave electronic documents resulting from fax, telex, or any similar electronic means the same probative force as traditional documents, provided that there is a condition of urgency in order to give them authenticity (Obeadat, 2005). Item 3 of Article (14) of the United Nations Convention on the Carriage of Goods by Sea also stipulates that: “The signature on the bill of lading may be in handwriting, an exact copy of the original (fax messages), a stamp, symbols, or any other electronic means.” If this does not conflict with the laws of the country in which the bill of lading is issued (United Nations Convention on the Carriage of Goods by Sea of 1978). In addition, the Syrian Court of Cassation also states that: (The acceptance of written evidence in a legal transaction may occur or be proven and preserved on any basis, including a fax, as long as its integrity and attribution to its sender have been verified or it is not the subject of dispute (Yaseen, 2004).

From the above stated, it is obvious that the fax has full legal authority in proof in all cases in which the law does not require a specific form for the legal act to be concluded, as well as in cases in which the contracting parties enjoy freedom of proof, meaning that they are able to prove by all methods of proof without being restricted by a specific method. Such as writing, and therefore all commercial transactions that take place between merchants with each other and for the benefit of their trade, and since they are subject to a fundamental rule, which is freedom of proof, can be done by fax. Contracting in this way is considered complete evidence against the parties and without the need to provide written evidence in the traditional sense. This means that the current situation of modern methods of communication, including

fax, in the face of traditional rules of evidence is not as serious a matter as some imagine, so any evidence, whatever it may be, can be presented to the judge. He may adopt it when he is convinced of it and form his belief in governance on its basis. Otherwise, he may abandon it and not adopt it in his ruling. It must be pointed out here that the means of technical security provided by modern means of communication have provided a kind of legal security that inspires a kind of confidence in dealing with communication devices, of which fax is the most common pillar in our society.

2nd Topic: Legal Impact of Electronic Bonds on Evidence in Comparative Legislation

The problem with the electronic bond or document lies in its imbuing trust in it, and this is in fact due to the extent of the authority of this electronic bond and the amount of power that the legislator gives it in proof if the legislator approves this power for the document as a tool to prove rights and duties or as a means of preserving data which has its authority. In proving the facts, the result is that violating this document constitutes a criminal act, whether this was violating the content of the document or its signature. This, in turn, leads to supporting and strengthening the judge's positive role in proving through his examination and study of the evidence. The new means makes the judge faces as an enormous amount of information in the form of letters or telegrams via telex, or documents via fax, or contracts stored on the computer, so that the judge can choose from it what is related to the circumstances of the case and the facts presented to him. Accordingly, the role of the new means of information becomes clear in strengthening the role of the judge in proof and facilitating his task with the aim of Reaching the truth with conviction and reassurance, which is why many countries have resorted to recognizing these modern means by stipulating them in their laws, and giving them full authority in proof, and this is what we will address through the following followings:

1st Requirement: The position of some laws of Arab countries

Considering that modern means of communication have created ways for modern commercial and civil transactions that were not previously known, it was necessary to find legal texts that would guarantee the benefit of modern technical means in concluding commercial transactions and protecting the rights of its parties. As a result, most countries issued legislation to codify the evidentiary power of these modern means. Therefore, the principle of recognizing the legal authority of electronic writing associated with an electronic signature, and making it probative is recognized if the conditions stipulated in the law are met in a way that allows the electronic document to be accepted as evidence before the court. We give examples of this in some countries' laws within the following two sub-sections:

1st: Jordanian Legislation

The Jordanian legislator has granted legal protection to computer outputs, regardless of their type - by granting them the legal authority granted to traditional documents in evidence, as long as these outputs are attributed to their owner, and have been certified, or secured by a technical means that prevents their penetration, and this is what Article (13/2/c) of the Jordanian Evidence Law and Article (72/c) of the Securities Law as previously indicated.

Likewise, what is stipulated in Article (32/B) of the Jordanian Electronic Transactions Law, which gives the electronic signature full authority in proof, provided that it is authenticated according to specific procedures and conditions, so that if this is achieved, the electronic signature will have full legal effect in proof, equal to the authority of a regular signature in terms of Its obligation on its owner and its

authority to prove ((Article (32/b) of the Jordanian Electronic Transactions Law No. (85) of 2001 stipulates that: “If the electronic record or electronic signature is not authenticated, it has no authority)). Also, the presence or absence of an electronic signature on the electronic record has the same effects that any applicable legislation has on the presence or absence of a signature on any instrument (Nseerat,2005). Therefore, in order for a legal work in electronic form to have the value of a written document itself in proof, it requires the existence of rights and obligations for the parties, and for it to be signed by them in a proper manner, as long as the necessary security and protection conditions are met for these electronic supports in a way that guarantees their safety from tampering, the signature becomes continuous with the bond in a way that prevents it from being separated from it (Aljammal, 2006).

Accordingly, there is a full authority to prove all legal transactions, except for those where completion the law requires certain formalities or specific procedures, as stipulated in Article (6) of the aforementioned Jordanian Electronic Transactions Law. Therefore, the electronic signature has full authority in proof of all transactions conducted by electronic means, regardless of the nature of this transaction and whatever its value, provided that the electronic signature is consistent with the provisions of the law which is explained in Article (7) of the Jordanian Electronic Transactions Law, which states: It stipulates the following: A-The record, electronic contract, electronic message, and electronic signature are considered to produce the same legal effects resulting from documents, written documents, and written signatures in accordance with the provisions of the legislation in force in terms of its binding on its parties or its validity in proof, B- It is not permissible to ignore the legal effect of any of the following: It is mentioned in item (A) of this Article because it was conducted by electronic means, provided that it is consistent with the provisions of this law). This text came to categorize all controversy, as it prevented ignoring the legal effect of the electronic signature because it was received by electronic means, preventing the distinction between the electronic signature and the regular one in terms of their validity in proof if they fulfill the legal conditions in implementation of the principle of functional counterpart, which most laws sought to achieve (). But a question may arise about the extent of the court’s authority in assessing the authenticity of the electronic document or document (Nseerat, 2005). However, a question may arise about the extent of the court’s authority in assessing the authenticity of the electronic bond or document.

In fact, the Jordanian legislator did not specify in the Evidence Law the judge’s authority to estimate the value of an electronic bond that has been erased, scratched, or added, as the Iraqi legislator did in this regard, which gave wide discretionary power to the court to estimate the value of regular written and electronic evidence in proof, through the text of Article (35/2) of the Iraqi Evidence Law, which states: The court may assess the consequences of scratching, erasure, stuffing, and other significant defects in the bond, such as omitting its evidential value or reducing this value, provided that it clearly indicates the validity of the necessity of the defect in its decision (Ala'boudi,2002).

In addition to the above stated, if the court has doubts about the validity of the electronic bond, the Jordanian legislator permits it in Article (25) of the Evidence Law to oblige a third party to submit the original paper or bond in his possession if that is necessary to decide the case, as if the electronic bond was a document. Here, the court may, on its own initiative, send a letter to the government department asking it to provide it with the original electronic document or a copy of what is kept with it in order to be certain of the authenticity of the document or copy submitted to it in the case. The court may also refer the document to the investigating judge to determine whether it is forged or not. This is what is stipulated in Article (25/3) of the Jordanian Evidence Law, and therefore the proceeding of the case

stops until the result is received from the criminal court ((Article (25) of the Jordanian Evidence Law stipulates that: 1- The court may, during the course of the case, invite a third party to compel him to submit a paper or document in his possession, in the circumstances and circumstances stipulated in the previous articles, taking into account their provisions. 2- The court may, on its own initiative, or based on the request of the opponents, you may decide to bring support or papers from official departments if this becomes known to the opponents. 3- It is permissible for anyone who fears that a forged paper will be protested against him to file an original lawsuit against the person in possession of this paper or whoever benefits from it to issue a ruling on its forgery)). It is noted from the previous texts that the court has broad authority to assess the authenticity of the electronic bond allegedly forged, but this must be by a reasoned and reasoned decision and the court must explain the defects that befell the bond and called for its value to be dropped or reduced.

2nd: Egyptian Legislation

The Egyptian Electronic Signature Law grants electronic writing and electronic bonds within the scope of civil, commercial and administrative transactions with the same treatment received by written signatures and writings prescribed for official and customary writing and documents in the Evidence Law, provided that they meet the conditions stipulated in this law. This is through the text of Article (15), which was previously referred to. Accordingly, if the signature on an official document that fulfills the legal conditions in terms of its issuance by an employee within the limits of his job and his spatial and temporal jurisdiction, it has absolute authority and cannot be challenged except by forgery. As for the signature on customary documents, they are binding on their parties, and they are subject to proof of the opposite and can be refuted by written evidence to the contrary. Like commercial books, their validity in evidence diminishes depending on the circumstances, as the legislator did not give them that strength of authority that it granted to contracts, and this is what Article (17) of the Egyptian Evidence Law stipulates, where it states that: ((Merchants' books are not evidence against non-merchants. However, the data recorded in it regarding what was received by the merchants serves as a basis that allows the judge to direct the complementary oath to either party, in what may be proven by evidence. There is no doubt that this recognition of the validity of electronic writing and electronic documents, whether official or customary, supports the use of these electronic means and encourages dealing. According to it, between individuals and all official government agencies, it is an important step towards achieving the idea of electronic government (Al-Momani, 2006).

It is noted that the Egyptian legislator does not exclude some transactions from the scope of electronic proof, as the Jordanian legislator did in Article (6) of the Law on Transactions with Special Forms, Wills, Establishing Endowments, Transactions of Disposal of Immovable Funds, and Transactions Related to Personal Status from the scope of Electronic Proof, due to their importance and impact on the national economy. But questions may arise about the role of the judge in weighing between traditional written evidence and electronic written evidence. If both are available, which one has authority over the other? In other words, what is the criterion of preference between the traditional editor and the electronic editor?

In fact, the Egyptian legislator did not regulate this situation, and its role was limited to adopting the validity of electronic writing as long as it is similar to traditional writing and fulfills its conditions, in accordance with what we previously indicated in Article (15) of the Egyptian Electronic Signature Law. Due to the absence of a legislative text in this regard, the legislator left it to assess the power of the

electronic editor. In proving the discretionary authority of the judge, the will of the parties to the dispute must be submitted. If the parties to the dispute have agreed that the relationship between them will be in accordance with traditional written evidence, or electronic written evidence, the legislator is bound by the will of the parties, and then submits to their will in this regard. If they have not They agreed on this. The legislator gives preference to the official document over the customary document, whether those documents are traditional or electronic, and then referring to the oldest documents based on history, then the most recent, unless the parties have agreed on the most recent. If the date of the emergence of the evidence is not proven, the judge's discretionary authority in the dispute is referred to. The researcher believes that it would be preferable for the Egyptian legislator to detail that and put in place a legislative amendment that would regulate the evidentiary evidence to balance it in the event of a dispute and not leave that to the judge's discretionary authority.

Conclusion

This paper addressed electronic bond and the extent of its authority in proof, given that electronic means, like other means created by man to serve him, have become effective and have clear effects in daily life, and these means have become an alternative to traditional means of proof in many sectors, and this does not change the fact that they have Some of the negatives that people constantly seek to overcome, which requires the legislator to intervene to fill the legislative vacuum in this regard and to keep pace with developments in this field.

Recommendations

In light of the comparison and the conclusions revealed, the paper concludes with the following recommendations:

- Giving electronic bonds and electronic signatures authority in evidence at courts of all types and formations, and giving them authority in paper documents in proof.
- Making necessary amendments to current laws, the labor law, laws regulating the financial market, and other relevant laws, as well as working to create specialized courts in the field of electronic commerce and electronic bonds.
- Offering training courses in this field, whether in Jordan or abroad, to keep pace with global developments in the field of e-bonds and its uses.
- The necessity of activating the role of the League of Arab States, in order to issue a unified law for e-bonds in the Arab world, as well as issuing periodic Arab legislation to confront developments in e-bonds.

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