

## The authority of the electronic document in case of conflict with the paper document according to the Jordanian legislation and the comparative legislation "Comparative Analytical Study"

Dr. Ihab Fahmi Rayyan<sup>1</sup>, Dr. Noor Akief Al-Dabbas<sup>2</sup>, Dr. Jalal M. Alqhaiwi<sup>3</sup>

<sup>1</sup>Assistant Professor of Civil Procedure and Arbitration Law - Faculty of Law, Al-Ahliyya Amman University-Jordan, e.rayyan@ammanu.edu.jo

<sup>2</sup>Associate Professor of Civil Law - Faculty of Law, Al-Ahliyya Amman University-Jordan, n.aldabbas@ammanu.edu.jo

<sup>3</sup>Assistant Professor of Arbitration Law - Faculty of Law, Al-Ahliyya Amman University-Jordan, j.alqhaiwi@ammanu.edu.jo

### *Abstract*

*The technical development in modern means of communication and the proliferation of social networking sites made it possible to conclude contracts via the Internet. This led to the emergence of a new type of writing and signature that is electronic in nature, in addition to the existence of paper contracts, where data messages are exchanged via the Internet and uploaded to electronic supports, in addition to sending them on paper to the contractor. Which may lead to a dispute between an electronic editor and a paper editor, whether formal or regular, and both of them contain the same contract, but there is a conflict between them? Which one will the judge prefer?*

*In order to answer the problematic of this research, this study followed the comparative analytical approach, and it came to the conclusion that the Jordanian legislator called for adding a text to the Electronic Transactions Law that gives the judge the wide discretionary power in the event of denying the document or the electronic signature or its conflict with the paper document to return to the electronic certification authority as the owner of the role The largest in proving electronic contracting.*

*key words: Authentic, Ordinary Editor, Electronic Editor, Electronic Contract, Proof, Jordanian Law.*

## 1. INTRODUCTION

Typical for the European Union countries, inspired by the previous United Nations study, and many internal initiatives followed, until these legal frameworks for electronic transactions became a reality and a Western legislative reality in which jurisprudence and the judiciary abounded in their jurisprudence. As for the Arab level, especially the Jordanian one; The legislation approved by many countries was nothing but a translation that was preceded by little diligence and analysis.

On the other hand, the massive development and spread of social networking sites, which have become a fertile environment as online stores, along with electronic stores that are already widespread such as Amazon, Alibaba, and others, led to the conclusion of thousands of contracts daily via the Internet as traditional contracts that are done by electronic means. There is a difference between the electronic contract and the electronic contract. Whereas, the electronic contract is the one that takes place automatically without human intervention in the acceptance. The offer is made by offer and acceptance with a click. As for the electronic contract, it is a traditional contract that takes place through electronic means.

And there is no place for difficulty in whether there is an electronic contract, so there is no entry for humans as we indicated, and therefore there is no paper document signed by a human being. As for the difficulty lies in the case of the contract that is concluded by electronic means, there is a paper document signed by its source in addition to the existence of an electronic editor? In the event of their contradiction, that is, their difference, who possesses the evidential or authoritative force? And the balance of any editor will prevail when weighing evidence from the judge?

In order to answer these questions, it is necessary to indicate the extent to which the electronic editor absorbs the idea of writing, and the extent to which electronic writing is considered in the Latin and Common systems, and this is on the one hand.

The importance of this study stems from the importance of its topic being related to the issue of electronic contracts and electronic contracts, and its authority and probative force must be stated in case of disagreement, because any right is stripped of protection as long as its plaintiff fails to prove it, and proof means establishing evidence before the judiciary, the evidence that the opponent could not refute? Here, the importance of this study appears to show the evidentiary strength of those paper and electronic documents, if they conflict. To ensure that rights are not lost, which serves justice, with both substantive justice and procedural justice.

In order to achieve the desired goal of this study, the researchers followed the comparative analytical approach by analyzing the texts of the relevant laws in Jordan that regulate the issue of electronic proof, such as the Jordanian Evidence Law and the Electronic Transactions Law, and compared them with the relevant legislation in the Latin systems, especially the French, Egyptian and Common legislation, especially the English law and the American law. However, this does not prevent us from referring to some texts contained in the legislation of other countries.

1. The electronic editor's comprehension of the idea of writing in the Latin system:

The system of proof by writing makes the acceptance of the electronic document in the proof a sensitive process, or in other words, the recognition of the electronic document as written evidence in the proof faces the difficulties of collision with the physical limitations of the "proof by writing" system according to its traditional concept. (Demyadi, T, 2009, p.238).

A part of jurisprudence went to an attempt to interpret the traditional legal rules and provisions related to the written evidence in a way that allows the electronic document to be relied upon as written evidence, and the starting point of the supporters of this trend comes from saying that it does not require a specific form of writing, whether regarding the material on which it is written or on which it is written. This trend is based on several arguments. (Al-Ahwani, H., 1999, P.435).

- The first argument It came from an analysis of the texts of the law, as the law, in its organization of official documents, required only three conditions regarding them in accordance with the provisions of Article (6) of the Jordanian Evidence Law, corresponding to Article (10) of the Egyptian Evidence Law, and Article (1317) of the French Civil Code.

- The second argumenta is based on the texts of some international conventions such as the New York Convention on Limitations in 1972 and the United Nations Convention on Contracts for the International Sale of Goods signed in Vienna in 1980, as this trend concludes that there is no connection between the idea of writing and the necessity of writing it down on a paper backing, which allows writing to be counted whatever it is. its shape regardless of the bracket on which it is installed.

In application of this, a judicial direction of the French Court of Cassation, prior to the entry into force of the law issued on March 13, 2000, went to the possibility of accepting electronic documents as complete written evidence of proof, when certain guarantees were available in them. Through a message sent by fax, and the court went further, as it tackled setting a modern definition of written evidence

independent of the paper backing, consistent with the requirements of electronic commerce, by saying that "The writing may be represented on any support as long as its integrity and attribution to the sender have been established without dispute".

#### 1.1 Using the principle of freedom of proof to rely on the electronic document:

We have seen through our extrapolation that some of the legislations adopt the principle of freedom of proof in the field of material works, commercial materials and civil dispositions, and the principle of freedom of proof means that the plaintiff is not restricted in proving what he claims by a specific method of proof, but he has to prove what he claims in all ways, including Witnesses and judicial evidence. (Yehya, Y., 1990, P.41).

a. Commercial legal actions: The field of adopting the electronic document in proof through the principle of freedom of proof in commercial materials is not only A field of limited scope, but also of limited power, and this leads to the attempt to resort to the principle of freedom of proof as an outlet for relying on the electronic document as evidence in the proof, which came as a disappointment to the hopes held on bringing it to the rank of complete written evidence. (Abu Zaid, M., 2002, P.94).

b. Civil legal actions that do not exceed the quorum of evidence: We saw that the attempt to use the principle of freedom of proof in the scope of transactions Commercial and civil actions that do not exceed the quorum of proof by evidence did not achieve the hoped-for goal of accepting the electronic document in the proof in the rank of complete written evidence; Therefore, we see that the Jordanian legislator did a better job when the electronic document acknowledged this status and granted it an authority of proof equal to the authenticity of the paper document, and this is clearly stated in Paragraph (b) of Article 13 of the Evidence Law, according to the amendment made by the Jordanian legislator to the Evidence Law No. (30) of the year 1952 according to the amended Law No. (22) of 2017, and saying otherwise leads to standing as a stumbling block to the prosperity of electronic transactions. (Demyadi, T., 2009, P.246).

#### 1.2 Reliance on the electronic document in light of the exceptions to the rule that proof must be made in writing:

The project preferred writing over evidence and made proof of it obligatory in actions whose value exceeds a specific value or in what contradicts or exceeds what is established in writing. As the legislator permitted proving these behaviors with the testimony of witnesses and presumptions in exceptional hypotheses represented in the case of the availability of the principle of proof in writing and in the case of

the impossibility of obtaining written evidence for a material or moral impediment, as stated in Article (29) of the Jordanian Law of Evidence and corresponding to Article (1348) Civil French, and finally The case of losing the written document due to a foreigner, as stated in Article (30) of the Jordanian Evidence Law, and corresponding to Article (1348) of a French civil case. In this regard, it is mentioned that a part of jurisprudence went to the possibility of relying on the electronic document under the traditional rules of evidence, by making use of exceptions, and below we will present the impact of these exceptions on the possibility of proof by electronic documents with an indication of the difficulties that may arise from that. (Chamoun, F., 1980, P.11).

a. Principle of proof in writing:

Article (30) of the Jordanian Law of Evidence and corresponding to Article (62) of the Egyptian Law of Evidence and corresponding to Article (1347) of the French Civil Code refer to the principle of evidence in writing as one of the exceptions to the rule of evidence in writing by stating that: "Proof may be evidenced by testimony in contractual obligations Even if the required value exceeds one hundred dinars, if the principle of proof is found in writing...".

The principle of proving by writing means: "Every writing issued by the opponent and that would make the disposal of the plaintiff close to possibility" (Article 30 of the Jordanian Evidence Law, and paragraph (2) of Article (62) Egyptian evidence, and paragraph (2) of Article (1348) French civil).

It is clear from this that the existence of the principle of proof in writing is linked to the availability of three conditions:the first There must be writing, and it must be in the opponent's handwriting or signed by him.And the secondThis writing must have been issued by the opponent against whom it is invokedAnd the thirdThat this writing would make the alleged behavior close to bearable, which is subject to the discretion of the judge, but the matter must not be limited to a mere assumption. He may be permitted to prove by evidence or presumptions even if proof by writing is conditioned by a text of a law or by agreement of the parties, or what is required is to prove something that contradicts or exceeds what was included in the written evidence. Full written evidence. (Hmood, A., 2010, P.75).

b. Obstacle to obtaining written evidence:

Article (30) of the Jordanian Law of Evidence and corresponding to Article (23) of the Egyptian Law of Evidence and Article (1348) of the French Civil Code amended by Law No. 525-80 issued on 07/12/1980. However, one of them is distinguished from the other as follows:

- The objection to obtaining written evidence: Based on this idea, the plaintiff, according to this impossibility, proves the contract in all ways, including the presumption derived from the existence of the electronic document on the magnetic media or the copy extracted from it by the printer. The contract or the links that bind the contracting parties at the time of the conclusion of the contract, provided that this connection or circumstances would create a literary embarrassment that prevents the person from requesting written evidence to prove it, and here the moral impossibility is represented in what is required by the custom of dealing in force on the Internet from concluding contracts on electronic supports without That its content be written down in written papers, while there is often no literary embarrassment or personal relationship between the contracting parties via the Internet that prevents obtaining a written support for the existence and content of the contract. (Hmood, A., 2010, P.83).

The Jordanian Court of Cassation, in its human rights capacity, clarified the material and moral impediments in its Decision No. (5446) of 2018, with phrases from which we quote: 'The impediment to obtaining written evidence is a relative and incidental matter necessitated by the nature of the circumstances in which the disposal takes place, and the impediment may be material or moral. As for the material impediment, it assumes the material impossibility and that the legal disposal arises in circumstances in which the concerned parties did not have a space of time or means to obtain written evidence. For example, what arises from dispositions in the event of disasters, sudden accidents, fire, or drowning accidents. As for the moral impediment, which is an embarrassment that occurs in the same creditor that prevents him from linking his debt to a written bond, in this case the impossibility is not due to material circumstances, but rather due to psychological considerations and circumstances. At the time of the disposition, it prevents the person from obtaining written evidence such as marital and kinship ties".

- Preventing submission of written evidence due to a foreigner: Article (30) of the Jordanian Law of Evidence and corresponding to Article (63/b) of the Egyptian Law of Evidence and Article (1348) of the French Civil Code (amended by Law No. 525 of 1980) permitted the creditor who lost his written document due to a foreign reason, in which he must prove it through the testimony of witnesses. The availability of two conditions, the first: the existence of written evidence of the existence and content of the act that is to be proven, and the second: the existence of a foreign reason beyond the control of the creditor that led to the loss of this written evidence, such as force majeure or a state of necessity... In all cases, the creditor's insistence on any reason due to Do it even if it was just negligence or indolence. The epitome of saying We have to resort to the system of exceptions to the

principle of proof in writing as a means of acknowledging the electronic document with its authority in proof. It is no longer acceptable in light of the growing spread of electronic transactions that take place via the Internet, and resorting to these exceptions is nothing more than an evasion of facing the reality of dealing with electronic documents, which does not constitute a sound basis upon which recognition and equality between electronic documents and paper documents are based in terms of their acceptance and validity. In the proof. (Jamea'e, H.1998, P.67).

## **2. ASSIMILATION OF THE ELECTRONIC EDITOR IN THE COMMON SYSTEM:**

In countries that adopt unwritten law, which is known as ordinary law (Common law), there are two rules that constitute an obstacle to proof through informational documents and are considered two serious obstacles to accepting digital documents to support the information that it contains. Which we will discuss in some detail.

### **2.1 Obstacles to Electronic Evidence in Common law:**

First: The Rule of Auditory Testimony:

According to this rule, the testimony has a major role in the proof, and it is required for its acceptance to be issued by the person whose knowledge was directly related to the incident to be proven, meaning that the document is not accepted as proof unless its originator (i.e., its editor) testifies to its content before the court.

By applying this rule to electronic documents, the Common jurists said that when information is entered into a computer, it is displayed in the form of documents issued by the computer, which concludes that the original information is transmitted between several people, and this leads to the non-acceptance of electronic documents according to that rule. (Demyadi, T., 2009, P.204).

The informational document cannot but be accepted as proof of the impossibility of the testimony of its actor who was aware of its content personally, that is, the rule of auditory testimony is followed if proof is prevented through informational documents. (Suleiman, I., 2008, P.229).

Second: The base of the original or better evidence:

According to this rule, the document is not accepted unless it is presented in its original form the original document, and this results in the non-acceptance of evidence through the outputs of modern technologies, which are mostly copies of documents and then recording them on the computer.

The existence of these rules in common law with the increasing use of electronic documents, obligated countries in the Common system to amend their legal systems of evidence to introduce information evidence.

## 2.2 Exceptions and their application to electronic documents:

The content of the above two rules has been amended to permit evidence of informational documents, as

follows:

First: The exceptions to the hearing certificate:

- English law:

The English Law of Evidence, as a model for the Common law (the rule of audio testimony), governs that the testimony be issued by someone who has direct knowledge of the incident in question. On informational documents, this rule means that the informational document is acceptable if the person who enters its data is present and it is proved that he has personal knowledge of it or that, due to the nature of his work, he obtained it from a person who has this personal knowledge or from people whose work is imposed on them with the extracted data, provided that their contact is through a person who has personal knowledge of it, in the sense that if the document does not find its origin in an editor who has contacted the knowledge of any person directly, then these general rules of audio testimony are not applied to it. (Shawqi, O., 2000, P.41)

This law stipulates four conditions that must be met in the document, namely:

- The document must be issued from a computer that is used regularly in the activities of the computer user.
- That the computer is regularly fed with data of the same type as the document provided.
- The computer should operate normally at the time of data recording.
- That the information contained in the submitted document has been copied or taken from information provided to the computer.

In addition to these four conditions, this law requires the submission of a certificate that includes a description of the manner in which the document was issued and the device from which it was issued.

In 1995, the Civil Evidence Act was passed in England, which facilitated proof through informational documents, as it defined the document as: "Anything that no information is recorded on. Thus, the English legislator expanded the scope of documents to accommodate other



than written documents, and accordingly, every e-mail or informational registration on the web page is in the form of an informational copy that is located on the Internet and is part of the commercial records or was issued by a public authority and its acceptance was acknowledged in evidence without the need For more evidence.

- American law:

The US federal legislator adopts the rule of the auditory certificate, but to a limited extent, and the auditory certificate is defined as: Statement - different from that issued by the same person during testimony or hearing before the court, presented for evidence as evidence of the truth of the matter in question". And it is required There are several things to implement this exception:

- That it is related to a commercial editor.
- The document must be extracted according to the normal course of the data recording process it contains to ensure the integrity of this data.
- That the editor is extracted at a time contemporaneous to the registration process.

As such, in US law, a document transmitted via the Internet that was prepared during the normal course of project activity is accepted as a tool of proof, provided that it is supported by a certificate from a person who is familiar with the system of recording or storing electronic data in order to determine the accuracy and integrity of the registration system.

Second: The exceptions to the rule of evidence in the original:

- English law:

English law governs the rule of evidence that is best for admissibility of evidence before the court, which requires the presence of the original document to establish the truth. The Civil Evidence Act of 1968, in its chapter 5, mentioned an exception to the rule of necessity to submit the original, which is that copies of documents issued from a computer are acceptable if they can be proven to be identical to The assets are before the court, and after this law, the 1995 law was issued, which in its chapters (8-9) mentioned the possibility of being satisfied with the official image or that which is part of the commercial register or the oral testimony to prove the original.

- American law:

Federal rules of evidence require that the original evidence be presented, but the copy can be relied upon as evidence of proof, by

way of exception, in specific cases of that. The damage to the original is due to the plaintiff.

According to the foregoing, any copies of the e-mail or of the web page are considered as the original evidence whenever it is identical, and according to that, the federal rules of evidence allow proof through informational documents.

### **3. THE AUTHENTICITY OF ELECTRONIC WRITING:**

The paper editor is now competing with another type of editor, the electronic editor. What led to its emergence is the increase in contracts that are made through modern means of communication, especially social networking sites. The question here arises if a dispute occurred between an electronic editor and a paper editor, and both included the same contract. But there was a conflict between them, which one will the judge prefer?

#### **3.1 Evidence of the electronic document:**

The electronic document is divided into an official electronic document and a customary electronic document such as the paper document, and each of them has authority of proof that differs in strength from the other. The evidentiary power of the official document is greater than the evidentiary power of the regular document.

##### **3.1.1 The evidentiary strength of the official electronic document:**

According to the text of Article (6) of the Jordanian Evidence Law and corresponding to a text according to Article (10) of the Egyptian Law of Evidence, the official document is that document in which a public employee or a person entrusted with a public service record what was done by him or what he received from the concerned parties according to the circumstances legal and within the limits of his authority and competence.

With regard to the position of the French Civil Code after its amendment by Law 230 of 2000, authoritative granting of proof to the official electronic document, in two places:

- Article 2 It stipulates that Article (1317) related to the official editor, a second paragraph is added to it stating: "It is to be created on an electronic support if it is created and preserved in accordance with the conditions that will be issued by the decree of the State Council."
- Text in the article 4, which added to Paragraph 4 of Article (1316) of the Civil Code, stating that if the electronic signature is placed by a public official, it gives officiality to the document.

The official document can be issued by an employee who is not specialized in documentation, just like any document issued by an administrative authority and signed by the competent employee. Public servant it acquires official status.

This is what the Electronic Transactions Law No. 15 of 2015 has tended to, as well as the Egyptian Electronic Signature Law in Article 15 thereof.

In Jordan, according to Law No. 22 of 2017 amending the Evidence Law, the legislator introduced a new amendment that includes giving authenticity to faxes, telex messages, e-mails, and similar modern means of communication, the strength of ordinary bonds in proof under certain conditions.

- Firstly: If the electronic messages are accompanied by the testimony of the person who sent them to confirm their issuance on his behalf, or the testimony of the person they reached to confirm his receipt of them, unless otherwise proven. In accordance with the provisions of the first clause of Paragraph (3) of Article (13) of the Evidence Law.

- secondly: E-mail messages have the strength of ordinary bonds of proof without being associated with the certificate, which we mentioned in the first item, if it is verified in it The conditions required by the applicable electronic transactions law.

And based on the provisions of Article (17) of the Electronic Transactions Law No. 15 of 2015, the electronic record associated with the signature shall have the same authenticity prescribed for the ordinary document, and the parties to the electronic transaction may invoke it, and the protected signature in accordance with the contents of the Electronic Transactions Law, as stipulated in Article 15 of the same law if:

- The owner of the signature was singled out to distinguish him from others.
- It was identifying the owner of the signature.
- The private key was under the control of the signer and under the signing procedure.
- It is associated with the electronic record in a way that does not allow an amendment to be made to that electronic record after signing it without making a change to that the signature.

And the electronic signature is authenticated if all the conditions mentioned in Article 15 of the aforementioned are met in it, in addition to what was stipulated in Article 16 of the Electronic Transactions Law, which required, in addition to the conditions mentioned in Article 15, that the electronic signature be linked to an

electronic authentication certificate issued in accordance with the provisions of the Electronic Transactions Law, And the regulations issued pursuant thereto and the instructions as well, at the time of creating the electronic signature on behalf of any of the following entities:

- a. A licensed electronic authentication entity in the Kingdom.
- b. An accredited electronic authentication authority.
- c. Any government entity, whether it is a ministry or an institution approved by the Council of Ministers, provided that the requirements of the Telecommunications Sector Authority are fulfilled.
- d. Ministry of Communications and Information Technology.
- e. The Central Bank of Jordan in relation to electronic banking or financial activities.

In cases other than those stipulated in Article 17 a and b thereof of the Electronic Transactions Law, the electronic record that bears an electronic signature shall have the same argument prescribed for the regular document against the parties to the electronic transaction. In the event of denial, the burden of proof falls on those who invoke the electronic record.

In addition, the electronic record that is not linked to an electronic signature has the authority of the unsigned papers in evidence according to the text of Paragraph (d) of Article (17) of the Electronic Transactions Law.

- Third: The agreement of the two parties on the existence of a secret number agreed upon between them, which includes saving and using data using modern technologies through this number. The confidentiality agreed upon between them, so the extracted and preserved evidence will be evidence against each of them to prove the transactions that took place according to that data according to the provisions of Paragraph (c) of Article (13) of the Evidence Law.

On the other hand, the legislator in the Evidence Law in Paragraph (3/d) of Article (13) of certified or signed computer outputs has given the normal attribution power of proof, unless the one to whom it is attributed proves that he did not extract it, did not ratify it, sign it, or did not cost anyone to do so.

The situation is not much different in France; The French legislator issued Decree No. 973 of 2005 in order to allow the authentication of the electronic document, and the first thing stipulated in the decree in Article 16 is the need for the documenter to establish a system for processing and transferring data. This system must meet three conditions:

- To be approved by the Supreme Council of Notaries.
- It must include the integrity and confidentiality of the contents of the documents that are transmitted through it.
- To be connected with other systems that are created by notaries, others in France.

It is worth noting that notaries in France have established an internal network called "real" that allows the circulation of any documents or documents between notaries within this network, and the existence of this network is what encouraged the legislator to issue Decree No. 973 of 2005. (Herbert, V., 1989, P.44).

In a related context, the notary is obliged to create an electronic index that records all the data of the official electronic documents that he creates. And the names of the parties to the contract. In the event that more than one notary intervenes, the official notary is the one who is responsible for registering the document in this index, all of this in accordance with Articles 23-25 of the decree.

As for the Egyptian legislature, it did not stipulate such rules as those stipulated in the French decree and Jordanian law. The matter needs to be amended in Law No. 68 of 1947.

And as long as the official electronic document was created according to the conditions stipulated by the law, it enjoys the same authority as the official document in the Evidence Law. As for the difference, the authoritative data contained in the official document differs in relation to the data that the notary verified by himself, and it includes the date, place, presence of the concerned parties and their signatures, and the signature of The notary and the evidence related to the completion of the procedures required by the law and what was issued by the concerned parties and perceived by the notary by hearing or sight, these previous data enjoy authority over all, as for the second type of data related to the content of what the parties stated before the notary, these data do not enjoy the previous authority, as it is permissible to appeal This authority is limited to the parties and their public and private successors. As for others, what the concerned person reported is not evidence against them if he denies it.

Regarding the authenticity of the image of the official electronic document, the French decree stipulated that in order to establish the authenticity of the electronic image from the official document, the electronic image of this document should be delivered electronically and from the notary according to the same conditions.

### 3.1.2 The evidentiary power of the ordinary electronic document:

Normal editor ( ) It is the document that is issued by individuals and a public official does not enter into its editing. The UNCITRAL Model Law on Electronic Commerce addressed the issue of the evidentiary power of the ordinary electronic document, in Article 9 thereof, which included two provisions that were stipulated in paragraphs (1 and 2); Paragraph (1) included the issue of accepting the electronic document as proof, and that it is not permissible to prevent any provision of the Evidence Law from accepting the electronic document as evidence, then Paragraph (2) dealt with the issue of the authoritative nature of the electronic document in evidence, and therefore the purpose of Article (9) It is the approval of accepting the electronic document and giving it authoritative evidence.

And the Jordanian legislator defined it in Article (10) of the Law of Evidence by saying that it is the document that includes the signature of the one who issued it, his seal or his fingerprint, and it does not have the status of an official document, and regarding its authority, Article (11) of the same law and its first paragraph came by saying: "1. Whoever argues against him with an ordinary document and does not want to admit it, he must explicitly deny what is attributed to him in terms of handwriting, signature, ring or fingerprint, otherwise it is an argument against him with what is in it". As for the heir or any other successor, it is sufficient for him to declare that he does not know that the handwriting, signature, seal or fingerprint belongs to the one from whom he received the right. The meaning of this text is that the regular document has a temporary authority over the one who signed it until he explicitly denies what is attributed to him in terms of handwriting or signature. The difference between the ordinary electronic document and the ordinary paper document appears in a point if it is not possible to demand that whoever clings to a customary electronic document from The court may order the verification of the handwriting, because the electronic document is not written in the handwriting of the debtor. So, what is the solution in denial The debtor's electronic signature on the electronic document? Here the solution differs according to two cases:

- The first case: For the debtor to deny that the electronic signature on this electronic document belongs to him. In this case, the matter will be easy, as it is the responsibility of whoever clings to this document to present the electronic certification certificate of the signatory.
- The second case: The debtor admits that this electronic signature belongs to him, but denies that the signature was obtained from him. Here, this case is similar to the case of signing with a stamp without

the consent of its owner, where the owner of the seal admits that the stamp on the document is his seal, but he

denies that he has stamped his seal on the document, and therefore This is sufficient to prove the authenticity of the document, and whoever argues against him with the document if he denies signing with his seal, must establish evidence for what he claims by providing evidence of how his seal arrived on this document, and this is considered a forgery case that must be proceeded in accordance with legal procedures.

And according to the text of Article (12) of the Jordanian Law of Evidence, which corresponds to the text of Article (15) of the Egyptian Law of Evidence, the ordinary document is not evidence against others in terms of date except since it has a fixed date, and the document has a fixed date in cases specified by the law, namely:

- a. From the day it is approved by the notary public.
- b. From the day that its content is proven in another paper, the date is officially fixed.
- c. From the day a judge or a competent employee indicates it.
- d. From the day of the death of one of those who had an established or recognized effect on the bond, such as a handwriting, signature, seal, or fingerprint, or from the day it became impossible for one of them to write or fingerprint due to a disease in his body.

The Egyptian legislator added a fifth case, which is that from the day of any other incident, it is conclusive that the document was issued before its occurrence.

The first and second cases are inconceivable with regard to the electronic document, while the rest of the cases can be imagined. The issue of proving the date for the electronic document can be easily resolved through the party that saves the document, as it is obligated according to the law to specify the date of creation of the electronic document, considering that this is considered a condition of granting Authenticity of the electronic editor in the proof.

It must be noted here that the French legislator, desiring to solve the problems resulting from the denial of the ordinary electronic document, granted the judge wide discretionary power to ascertain the attribution of this electronic document to the debtor, and the availability of the conditions required by the law in the electronic document and the electronic signature, so he issued Decree 1436 of 2002, a paragraph to Article 287 of the Civil Procedure Code states: "If the denial if he responds to an electronic document or signature, the judge must verify whether the conditions stipulated in Paragraph (4)

of Article (1316) of the Civil Code regarding the validity of the document and electronic signature have been met”.

In turn, we call on the Jordanian legislator to add a text to the Electronic Transactions Law that gives the judge the wide discretionary power in the event of denying the document or the electronic signature by returning to the electronic certification authority as it has the largest role in proving the electronic contract.

As for the copies of ordinary documents, they have no authority in proof except to the extent that they guide to the original by applying these rules to the electronic image of the ordinary electronic document, which is a copy that does not bear an “electronic” signature of the debtor, as this photo does not have any authority in proof, as for the paper copy of the electronic document it is the paper resulting from printing the electronic document on a paper backing, as it does not have any authoritative evidence, because it does not bear an electronic or written signature. And in the event that the electronic document was copied electronically, and this electronic copy was electronically signed, then this copy is considered an original in this case as long as it was electronically signed and enjoys the same authenticity as the original.

### 3.2 Conflict between the paper document and the electronic document:

This type of conflict is a new form of conflict between written documents that did not exist before, and this is due to the fact that the law gave the electronic document that meets all the conditions stipulated by an authoritative document equal to the paper document. Paragraph (2) of Article (1316) of the French Civil Code, after its addition to Law (230) of 2000, provided a solution to this problem, as it stipulated that: “The judge shall decide in the dispute between written evidence by all possible means by giving preference to the evidence closest to The possibility, whatever the support used in its codification, unless there is a text or agreement between the parties”.

The first case: the existence of a text or agreement regulating the conflict of documents: If there is a conflict or conflict between an electronic document and a paper document regarding the same contract, the judge will first refer to the law and act according to the text, but if there is an agreement between the two parties in this case, this agreement is bound if it is valid.

- First: the existence of a text regulating the conflict of editors: The legal text gives preference to one of the editors over the other. In this case, the judge must: It works according to the text. For example, if one of the editors is an official editor and the other is an ordinary editor, there is a conflict between them. According to the law, the



official editor is stronger than the regular editor in authenticity. Therefore, the judge must take what is fixed in the official editor, and if there is an electronic official editor and an editor. If the content of the two editors is in conflict with the customary paper, the judge takes what is contained in the official electronic document.

- Second: Existence of an agreement regulating conflict of documents: We find that the French Court of Cassation has indicated in many of its rulings that the rule of inadmissibility of proof evidence in cases where proof is required in writing is not from the public order and it is permissible to agree explicitly or implicitly on its violation, and with regard to French law, Paragraph (2) of Article (1316) of the Civil Code after it was added to Law (230) of 2000 has explicitly recognized the validity of the agreements related to regulating issues of objective evidence, just as jurisprudence and judiciary recognized the validity of such agreements before adding this article.

Thus, according to French law, two contracts have the right to organize the objective rules of evidence by agreement. If such an agreement exists, the judge has wide discretion in ruling the validity of this agreement or not. The condition of proof contained in a contract between the two parties can be considered an arbitrary condition according to paragraph (1) of Article (132) of the French Consumer Code this clause is void according to the provisions of French law; The judge rules invalid because the condition is arbitrary, and therefore the evidentiary agreement is subject to the discretionary power of the judge, so he may rule that the condition contained in this agreement is arbitrary and therefore rule that it is invalid in accordance with French law. For one of the editors over the other, if this agreement stipulates that the evidence is only in the electronic document and that it excludes the paper document, then in this case preference must be given to the electronic document and what is stated in it should be taken into account. If the agreement.

The second case: the absence of a text or agreement regulating the conflict of documents. Suppose that the judge has before him an electronic document submitted by one of the parties to the dispute and a paper document submitted by the other party, both of which are related to the same contract and it is concluded via the Internet, and there is a difference in the content of the editors, and the problem. Here, there is no text or any agreement between the parties to the dispute regulating this issue. Here, it is the judge's responsibility to determine the editor closest to the possibility, that is, the one who takes its content.

But if the documents are equal in terms of strength, and each document fulfills conditions that they consider to be complete written evidence, and the content of one of them is inconsistent with taking,

then the dispute arises, and the judge must have wide discretionary power to determine what is the closest evidence to the truth and to use all means in that to form his belief. He uses an expert, and he uses the history of the editor.

#### **4. METHODS OF APPEAL AGAINST ELECTRONIC DOCUMENTS:**

The Jordanian and Egyptian legislators were not exposed to how to challenge normal and official electronic documents, but the Egyptian legislator contented himself with the text of Article 17 of the Electronic Signature Law, according to which he referred to the texts of the Evidence Law. The validity of the electronic document, explicitly or implicitly, as for the official documents, may not be challenged except by forgery.

##### **4.1 Allegation of forgery of official and electronic electronic documents:**

The allegation of forgery is a set of procedures required by law to prove the forgery of official or ordinary documents, and the allegation of forgery on official documents, specifically on the data that the public employee has proven within the limits of his mission, or signed by the concerned parties in his presence, according to what is stated in Article (7) of the law The Jordanian data and in Article (10) are Egyptian evidence, and the data proven by the public employee is authoritative over the writing. Therefore, whoever wants not to recognize it must challenge it with forgery, as is the case with regard to the date of the official document, whether ordinary or electronic, as well as proof of the presence of the parties with a clerk. Justice and the signature of the parties. These facts cannot be challenged except for forgery, whether they are contained in a traditional or electronic official document.

The Jordanian legislator defined forgery in the Penal Code as: “a fabricated distortion of the truth in reality and the data that is intended to be proven by an instrument or manuscript as evidence of what resulted or could result in material, acceptable or social harm.” And forgery is done either by adding data that did not originally exist, or by deleting necessary data that did exist, or changing and altering some data by deleting one statement and adding another instead of it. In the law of electronic transactions, and the electronic signature for the crime of forgery of electronic documents, but neither legislators organized the procedures for appealing for forgery, and therefore it is necessary to resort to the methods contained in the Egyptian Evidence Law and the Jordanian evidence and harmonize them with the nature of electronic documents, i.e. applying these texts in accordance with the nature of electronic documents What we care about in this regard

is the possibility of the person protesting against him with an electronic document, i.e. claiming to forge this document or signature, and then the court must verify the validity of this claim by the methods specified by the law, whether by resorting to experience and comparison and the use of technical and technical means in this regard, orThe burden of proof is transferred to the other party. It is indicated here that the Penal Code punishes forgery in official and private documents in which the bond is prepared electronically.

It must be emphasized that the allegation of forgery may take a criminal form and that the opponent may file a criminal case before the Public Prosecutor or the Public Prosecution to challenge it. It may also take the form of a civil claim of forgery and follow the aforementioned procedures contained in the Evidence Law, as the Egyptian legislator regulated the procedures for appealing for forgery. The criminal in Article (23) of the Electronic Signature Law, and mentioned some forms of this forgery, such as forgery by fabrication, modification, or modification. However, the Egyptian legislator did not regulate the methods of appealing civil electronic forgery and referred it to the Evidence Law. It was more appropriate for him to regulate these methods due to the different nature of the electronic document from the paper document.

#### 4.2 The power of the court to assess the validity of electronic documents:

The Jordanian legislator did not indicate in the data or electronic transactions law the authority of the judge to estimate the value of the electronic document that was subjected to erasure, scraping or addition, as the Egyptian and Iraqi legislator did in this regard, which gave the judge the freedom to estimate the value of the document that was subjected to forgery, whether by dropping its value in evidence with the obligation The reasoning for this is in the decision. Paragraph (2) of Article (35) of the Iraqi Data Law states that: "The court may assess the consequences of scraping, erasing, annotating, and other material defects in the bond such as dropping its value in evidence or decreasing this value, provided that it indicates on the validity of the defect in its decision clearly"; Article (28) of the Egyptian Law of Evidence stipulates that: "The court may assess the consequences of scraping, erasing, annotating, and other material defects in the document in terms of forfeiting or decreasing its evidentiary value."

It is clear from the previous texts that the court has wide authority to assess the validity of the electronic document allegedly forged, but that must be a justified decision and the court should clarify the defects that afflicted the document and called for dropping or

decreasing its value, not that its opinion in that is absolute without justification or reason.

## 5. CONCLUSION

In conclusion, after we referred to the issue of electronic proof in the Latin and Common systems, and the statement of official and regular electronic documents, it became clear to us that there is no difficulty with regard to the official electronic or regular document. As for the source of difficulty, it lies in the regular document. Noting that it is possible for the litigants to submit to the court an ordinary electronic document and an ordinary paper document, and in case of conflict, it was found through the study that the task is entrusted to the judge of the subject matter with his authority to weigh the evidence to decide on this matter, and we noticed that the legislation, whether Jordanian, Egyptian or comparative, has equalized Between the authoritativeness of the electronic and paper regular editor, despite the presumption of reliability alongside the electronic editor; However, both editors are equal in legal value before the judge, and no legislation gives preference to the regular electronic document despite the presumption of validity on its side.

## Bibliography

- [1] Al- Demyadi, T (2009), Evidence of electronic contracting via the Internet First edition, without publishing house.
- [2] Al-Ahwani, H (2000), The general theory of obligations, volitional sources Arab Renaissance House, Egypt.
- [3] Al- Jamea'e, H (1998), computer software contracts, Dar alnahda al-Arabiya, Egypt.
- [4] Suleiman, E (2008). Signing and substantiating the electronic contract New University House, Egypt.
- [5] Shawqi, A (2000). The use of extracts of modern scientific techniques and its impact on the rules of civil evidence, Dar alnahda al-Arabiya, Egypt.
- [6] Abu Zaid, M. (2002). Updating the Evidence Law, the status of electronic documents among written evidence Dar Al-Fikr, Egypt.
- [7] Tarawneh, M. (2001). International trade law. Dar Rand, Jordan.
- [8] Hammoud, A (2005).), special civil protection for buyer satisfaction in distance sales contracts, Dar Wael, Jordan.
- [9] Yahya, Y (1990). Legal evidence and its authoritative evidence, Dar alnahda al-Arabiya, Egypt.
- [10] Al-Sanhour, P (2007), Mediator in explaining civil law, Aalamal, Lebanon.
- [11] Marks, S. (1991), Absolute Evidence, Dar Al-Kutub Al-Qanuni, Lebanon.

- [12] Chamoun, F (2002), One recent edition of the previous editions. Christian feras hu hl, cyber droit, dallez, durand.
- [13] Ehaas, C (2001), L'omnipotence du juge français de la propriété intellectuelle face a l'internet oul' history d'une incompetence largamente ignore. Petites affiches, n226.
- [14] Huet J., Hebert M. (1989), Droit de l'informatique et des telecommunications, litée, (53) Paris.
- [15] Kahn Ph. (1981), the convention of vienne of april 11, 1980 sur les contracts de vente international de merchandises, international revue of droit comparé, n° 04 paris.
- [16] Aitken H. (1992), The principles low of goods, (Edinburgh: Livingstone, 1992) at p96, with reference to the low society of Scotland, the lows of Scotland, v01.20.
- [17] Schultz, TH. Kaufman-kohler, G. (2001), On line display resolution, The state of the Art. and the Issues, cui, university of Geneva.
- [18] French Civil Code <https://www.trans-lex.org/601101>.
- [19] Jordanian Electronic Transactions Law No. (15) of 2015 and its amendments.
- [20] Egyptian Evidence Law No. 25 of 1968.
- [21] Jordanian Evidence Law No. (30) of 1952 and its amendments.
- [22] <https://www.aspdkw.com>
- [23] <https://qarark.com/court>
- [24] <https://www.usj.edu.lb>