
The Evidentiary Value of Electronic Documents: A Comparative Study

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Abstract

Due to the newness and spread of electronic transactions and documents, it is necessary to develop a legal legislation that governs these electronic transactions and gives them legal protection. Therefore, the Palestinian legislator issued Decree Law No. (15), of 2017 on electronic transactions and referred the issue of verification to Law No. (4), of 2001. Since the issue of verification for these electronic transactions is the most controversial and is considered the most prominent legal problem in this regard, this research aimed to investigate the verification of electronic documents according to the Palestinian Evidence Law, and comparing it with the texts of the Jordanian law.

This research dealt with the concept of electronic documents in terms of their definition, since the Palestinian and Jordanian legislators did not define electronic documents explicitly and directly. It also dealt with the elements of the electronic editor; writing and electronic signature. The researcher also touched on the conditions that must be met by the electronic document in order for it to have an authority in the evidence. These conditions are represented in the ability to keep the information contained in the electronic document, no matter how long the period of time, and that the information be kept in the same form in which it was created, sent and received, and that the information recorded on the document is understandable and readable, and contains the date and time of sending and time of delivery, and indicates the person who wrote it.

It also includes that the electronic document is authenticated by the approved certification authority, such as the Ministry of Communications that the Palestinian legislator specified in the Electronic Transactions Law. In the event that none of these conditions is available in the electronic document, it is not valid in proof according to Palestinian and Jordanian law, since the Palestinian and Jordanian legislators gave the electronic document the same authenticity in the proof that the legislator gave to the customary bond. The provisions that apply to the ordinary bond apply to it. This research also dealt with the second element of the electronic document, which is the electronic signature in terms of its nature, and its definition, as the Palestinian legislator defines it clearly and explicitly. The images of the electronic signature were identified because the electronic signature has several images that differ according to the method of signature and the tool used.

The conditions that must be met by the electronic signature were identified in order for it to have legal authenticity. These conditions include that the signature must be associated with and identify the owner of the electronic document. The signatory must be the only person who controls the signature tool on the electronic document, and the electronic document must also be closely linked to the signature, and the signature must be authenticated by a competent and accredited authority. In the absence of one of the conditions, it loses its force as a bond that has the proof power of a customary bond. The job of the electronic editor was identified, which is similar to the job of the traditional editor, as it determines the identity of the electronic editor's job and is considered the tool that expresses his satisfaction and commitment under what is stated in the electronic document. The Palestinian and Jordanian legislations acknowledged that the electronic signature is as authoritative in evidence as the signature of traditional customary bonds in proof. In spite of acknowledging this legal validity of the electronic signature, on the ground it is not given the scope of absolute application, legal protection and trust, as was granted to traditional bonds.

Keywords: Electronic documents, Palestinian law, Jordanian law, legislation, evidence, proof.

Introduction:

The world has recently witnessed successive developments in the field of information technology and electronic fields, which resulted in the remarkable development of means of communication between people and the development of their relationships, transactions and electronic correspondence. Therefore, humans are no longer captives of geography. That is, cyberspace has become occupying every place on Earth¹. This led to the use of electronic means of communication in the field of electronic contracts, commerce and electronic transactions, and the offer and acceptance process is made through electronic correspondence between the parties. This development that we are currently experiencing has led to the emergence of new methods and means through which contracts, electronic documents and electronic signatures are concluded in order to prove transactions and electronic documents².

The development of electronic means of communication and the emergence of electronic transactions has led to the development of legal legislation in this regard in order to suit these developments and the development of legal texts that may ensure the benefit of these electronic means in a safe and legally protected manner. As a result, many countries have put in place legal legislation in order to codify the evidentiary power of electronic documents. In this context, the UNCITRAL Law on Electronic Signatures was promulgated in 1996³.

Some Arab countries have taken the initiative to issue legislation regarding electronic transactions. For example, in 2001 the Jordanian legislator issued the Electronic Transactions Law No. (58) for the year 2001⁴. The Palestinian legislator also issued Decree Law No. (15) of 2017⁵. Hence, the importance of the Electronic Transactions Law and the signing of electronic documents become obvious as it regulates trade, correspondence and electronic documents and responds to developments and emerging needs at the international level. Therefore, all electronic transactions must be authenticated as it is the key to solving the problems that are raised in concluding electronic contracts and the legal rules regulating electronic transactions, and the search for the adequacy of those texts to accommodate the many and intertwined electronic transactions at the global level, which may result in disputes, and these disputes are diverse as they are the result of new type of transactions and different from traditional disputes. Here the questions arise: How can these electronic transactions be proven? Are traditional methods sufficient to prove it? Or is it necessary to develop the current legislation in order to achieve justice within certain limits?

Significance Of the Research:

The importance of studying the topic of the present research lies in the importance of proving electronic documents as they achieve two benefits; practical and theoretical benefits.

Practical Benefit:

The practical benefit lies in the fact that this study deals with a real issue that imposes itself on all national and international legislation. The most prominent evidence of this is the State of Palestine, as despite the occupation, siege and isolation from the world, the Palestinian legislator knows the importance of electronic transactions. Therefore, the Palestinian legislator has put in place a law regulating electronic transactions so that this legislation does not contradict with the framework of international legislation in this regard. This step comes in order to keep

¹ Khaled, Ibrahim, Conclusion of the Electronic Contract, 1st Edition, Dar Al-Fikr Al-Jami'I, Alexandria, 2011, p. 7. .

² Asmaa, Al-Dabali, "Consensus in Electronic Contracts", a master's thesis, unpublished, Al-Azhar University, Faculty of Law, Gaza, 2019, p.1.

³ United Nations, UNCITRAL Model Law on Electronic Commerce, 1996, website, visit date 14/2022, at 10:26, '<https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/ar/ml-elecsig-a.pdf>

⁴ Jordan, Electronic Transactions Law, No. (58), for the year 2001.

⁵ Palestine, Electronic Transactions Law, No. (15) of 2017, Al-Muqtafi, website: <http://muqtafi.birzeit.edu/Legislation/PDFPre.aspx?Y=2017&ID=16935>

pace with developments in electronic commerce and transactions and to achieve confidence and security for those dealing with electronic commerce and transactions through the Electronic Transactions Law.

Theoretical Benefit:

The theoretical benefit is achieved by bringing about a study that deals with all the rules of the electronic transactions law related to the subject of the study and the law of evidence that deals with the issue of proof for these transactions and the interpretation of the new terms it contains, in order to transfer them from stagnation to flexibility to unravel their ambiguity, which contributes to raising awareness of dealers. .

Research Objectives:

This study aims to compare the Palestinian Electronic Transactions Law No. (15) for the year 2017 and the Jordanian Transactions Law No. 58 for the year 2001 and to try to identify all the legal aspects related to the topic of research for both laws and compare them to the extent that the researcher may reach a conclusion to address the topic of the research. The research also aims to identify the points that the Palestinian legislator has overlooked and mentioned by the Jordanian legislator. It is also an attempt to identify the authenticity of the electronic document and electronic signature in the Palestinian Evidence Law and the way to address them.

Concepts And Terms Used In This Study:

- 1- Data message: "Information that is generated, sent, received or stored by electronic, optical or similar means."
- 2- Electronic signature: "A set of electronic data, whether letters, numbers, symbols, or any other similar form associated with an electronic transaction in a way that allows the identification of the person who signed it and distinguishes him from others for the purpose of approving the content of the electronic transaction."

Limits of the Research:

Time: This research was conducted in the summer semester of 2022.

Place: The State of Palestine as a comparative study between Jordanian and Palestinian law.

Research Methodology:

This study followed the comparative analytical method by analyzing the Palestinian and Jordanian legal texts related to the subject of the research and comparing between the Palestinian and Jordanian laws.

Scope of the Research:

This study will depend on the following:

- 1- Laws related to the research topic, which include Palestinian Electronic Transactions Law No. 15 of 2017, Palestinian Evidence Law No. 14 of 2001, Jordanian Electronic Transactions Law No. 58 of 2001, Jordanian Evidence Law No. 30 of 1952 and the amended law According to the law amending the Evidence Law No. (37), of 2001.
- 2- Books of jurisprudence and jurisprudence in this regard.
- 3- Previous research and studies related to the research topic.

Problem Statement:

The tremendous development that the world has witnessed recently in the field of communications and information technology has led to a development in electronic transactions. Therefore, it was necessary to find legal rules regulating electronic transactions between individuals. As a result, the state established a legal regulation to regulate these transactions, and it succeeded in doing so. But the problem here lies in the recent emergence of electronic

transactions and the lack of appropriate legal regulation in this regard, especially in developing countries. We can summarize the research problem as follows:

- 1- Did the Palestinian legislator recognize electronic documents? And if yes, what are the elements that must be provided in electronic documents? How do the Palestinian and Jordanian legislation deal with electronic writing? Are they accepted as a proof?
- 2- Does the law require specific conditions in electronic documents in order to gain legal validity in proof or not? If yes, what are the conditions?
- 3- How compatible is the traditional signature with the electronic signature? Does it perform the same functions or not? Are there types of the e-signature? And how authoritative is the electronic signature on electronic documents?

Previous Studies:

Saddah (2009): This study was titled "The extent of the authenticity of electronic documents in evidence", An-Najah National University, Palestine. The researcher dealt with the issue of the authenticity of electronic documents in proof and how to prove it. It differs from the subject of the current study as it was conducted before the issuance of a law on Palestinian electronic transactions and before the introduction of the new amendment to the Evidence Law. The study also compared a number of Arab and foreign laws, while the current study is limited to the comparison between the Palestinian and Jordanian laws and included the new amendments.

Amarneh (2021): This study was entitled "Means of Evidence in Electronic Transactions in the Palestinian Legislation". The researcher dealt with the issue of means of proof in electronic contracts; writing and electronic signature, without expanding the topic of research. Therefore, the current study is considered broader and more comprehensive as it touched upon all the conditions that must be provided in the electronic document and the electronic signature and the extent of the authenticity of each of them.

Al-Tawil (2016): This study was entitled "The Authenticity of the Electronic Signature in the Palestinian Law and the Aistral Law". The researcher dealt with the issue of proof and the authenticity of the electronic signature in accordance with the Transactions Law of (2013) applied in Gaza and the Austral Law of (2001). As for the current study, it dealt with the subject differently in terms of comparative laws, as it compared between Jordanian law and Palestinian law.

Electronic Documents and Their Authenticity in Proof:

The conclusion of the electronic contract is based on the principle of freedom of contract and the exchange of offer and acceptance between the parties. However, what raises the problem in the subject of electronic contract is the issue of proving it and how to determine its content in the event of a dispute between the parties to the contract as it is done by electronic means and data entered in writing that may be valid for evidence in the event of a dispute between the electronically contracting parties to the contract and one of the parties adheres to the electronic documents as a complete evidence of proof.

The Concept of Electronic Documents:

E-mail documents and electronic documents have recently entered legal legislation. Therefore, electronic documents are relatively new. In Palestine, Decree Law No. (15) of 2017 was issued regarding electronic transactions, and this law talked about the conclusion of the electronic contract and the establishment of electronic documents. However, this law did not talk about the issue of proof, but rather referred the issue of proof to the Palestinian Evidence Law No. 4 of 2001 ⁶, which talked about the issue of e-mail correspondence and its role in proof. Accordingly, it has become our duty to study the legal aspect of these documents and to indicate the legal authenticity that these electronic documents enjoy in the matter of proving electronic documents. The Palestinian Evidence Law considered

⁶Palestine, Evidence Law No. (4) of 2001, published on the Palestinian Gazette, No. 38, dated September 5, 2001..

it a customary document. However, in the amended Jordanian Evidence Law No. (37), of 2001⁷, it was considered an ordinary document.

The Palestinian legislator defined customary bonds in Article (15) of the Evidence Law: “The document that includes the signature, seal or fingerprint of the person from whom it was issued, and does not meet the conditions stipulated in Article (9) of the same law.” Article (9) defines the official bond as “the bonds organized by public officials and the like, who have the competence to organize them according to the legal conditions. As for the bonds organized by their owners and ratified by public officials and the like, who are in charge of ratifying them according to the law, it is considered official in terms of date and signature only.” The Jordanian legislator also defined customary bonds in Article No. (10) of the Evidence Law⁸. The customary bond that has been written and signed has legal authority if the person attributed to it does not deny it and the bond is free from material defects such as abrasion or erasure and has not been forged. If the person to whom the signature is attributed denies, the argument for him will be temporarily removed until the court looks into that. Whoever adheres to the bond must prove that the signature was issued by whomever is attributed to him by referring it for investigation. If the authenticity of the signature is proven, the authenticity of the bond will return⁹.

Based on what has been observed from the texts of the Evidence Law, it is clear that customary documents must contain two elements; signature and writing. Writing was defined as: “writing prepared by a person with the intention of preparing written evidence of a specific legal fact, and the public official does not interfere in its editing, and no formal conditions are required unless this writing is blank on paper, handwritten, or on a printer.n order ”¹⁰ for these papers to be a complete guide, only two conditions were required: the writing and the signature of the person from whom the writing was issued, and this we will discuss in detail in the following.

Definition of electronic documents:

E-commerce laws consider data messages that may carry the will of the electronic contract parties as the basis for proving electronic legal actions. Most of the legislations defined the electronic document through electronic exchanges and through data messages. Thus, they followed the UNCITRAL law¹¹. In this respect, the Palestinian electronic transactions law defined the electronic document by defining the information, the electronic record, and the data message. This definition was identical to the definition provided by the UNCITRAL Law. The Palestinian legislator defined in Article (1) a data message as: “Information that is generated, sent, received or stored by electronic, optical or similar means.” It defined electronic data as: “data represented or encoded electronically, whether in the form of text, symbol, sound, images, or others.” It also defined electronic data exchange as: “the transfer of information by electronic means from one person to another.” As for an electronic record, it is: “a set of information that is generated, sent, delivered or stored by electronic means, and which together constitute a description of the condition of a person or a thing.” In the same context, it defined electronic transactions as: “A procedure or a set of procedures that take place between two or more people to create obligations on a person or exchanged obligations between more than one person.” This approach was also followed by the Jordanian Electronic Transactions Law¹². Scholars of law define an electronic document as “electronic information that is sent and received by electronic means, whatever the means of extracting it in the place where it is received (Hijazi, 2003).

⁷ Jordan, Evidence Law No. (30) of 1952 published in the Official Gazette, No. 1108, on May 17, 1952, as amended by Law No. (37) of 2001 amending the Evidence Law.

⁸ The previous reference, Article No. (10), defined customary bonds and stipulated: “The ordinary document is the one that includes the signature of the person from whom it was issued, on his ring or fingerprint, and does not have the status of an official document.”

⁹ Ahmed, Al-Mahdi, Evidence in Electronic Commerce, 1st Edition, Dar Al-Kutub Al-Qanunieh, Egypt, Al-Mahalla Al-Kubra, 2004, p. 44..

¹⁰ Ahmed, Al-Mahdi, previous reference, p. 44..

¹¹ UNCITRAL Law, Article (2) defines the data message as “information that is generated, transmitted or stored by electronic, optical or similar means”.

¹² Jordanian Transactions Law, Article No. (2) Information “data, text, images, shapes, sounds, symbols, databases, computer programs and the like. As for data exchange” it is the electronic transfer of information from one person to another using an information processing system. “Information message” is information that is generated, sent, received or stored by electronic or similar means. As for the

Thus, the definitions provided by e-commerce laws have expanded in terms of defining electronic documents which, according to such laws, include the data message and records that are stored on the Internet or in the computer or any technical means that may appear in the future as information technologies and means of communication are constantly developing rapidly. Therefore, these legal legislations have left the door open to any new development that may occur in the future.¹³

Terms of electronic documents:

The UNCITRAL Act and the electronic commerce laws have equated all electronic documents with customary documents, and in order to achieve this, it is stipulated that the electronic documents meet some conditions for these documents to have a complete proof of evidence. For example, Palestinian law considers the electronic record equivalent to the original if certain conditions are met. In this context, Article (13) of the Palestinian Electronic Transactions Law and Article (8) of the Jordanian Transactions Law stipulate that “the electronic record derives its legal effect and has the status of a written copy if it fulfills the following conditions:

- A. That the information contained in the record can be retained, stored, and referenced at any time.
- B. The ability to keep the electronic record in the form in which it was done so that it is easy to prove the accuracy of the information contained therein when it is created, sent or received.
- C. The information in the record shall indicate the person who created it or received it, along with the date and time it was sent and received.
- D. Through these texts, it becomes clear that the Electronic Transactions Law and the Evidence Laws consider that if the conditions are met in electronic documents, they will have the authority of the traditional customary document. The conditions are as follows:

First: The writing condition:

Writing is considered one of the most important evidence for proof as it is distinguished from other types of evidence in terms of the possibility of preparing it since the stipulation of the right and before the dispute or dispute arose. The written evidence may provide the parties with several guarantees. One of the most important of these guarantees is that it is based on controlling the existing rights between the parties, whether before or after the dispute. The writing is less exposed to the influences of time factors. In view of these reasons, it seems logical that the secular legislations have been interested in writing since ancient times, and made the writing absolutely authoritative in proving many legal facts and events.¹⁴

The Palestinian legislator and the Jordanian legislator did not stipulate in the Evidence Law a specific form of writing or the tool in which customary documents are written. Every word or phrase indicates the intended meaning and is signed and may serve as evidence. All that the legislator requires from the electronic document is to prove that electronic document to its owner¹⁵.

Some jurists have defined electronic writing as “symbols that express thought and saying, regardless of the medium on which they are based, and whether the writing is on paper, wood, stone, or an electronic support, as long as this medium or support is capable of transmitting symbols and writing, it is valid for use”¹⁶. Other jurists defined it as “a document that is produced and saved through a computer, such as a letter, contract, or photo. The electronic document may be sent over the Internet or saved on discs, or by telex or fax¹⁷”.

electronic record, “it is the entry, contract, or information message that is created, sent, received or stored by electronic means.”

¹³ Abdulfattah, Hijazi, Introduction to Arab Trade, 2nd Edition, Dar Al-Fikr Al-Jamii, Alexandria, 2003.

¹⁴ Ehab, Saleh, “Evidence by Electronic Editing”, Master’s Thesis, unpublished, Al-Azhar University, Faculty of Law, Gaza, 2015, p. 25..

¹⁵ The text of Article (19) of the Palestinian Evidence Law, and the text of Article (13) of the Jordanian Evidence Law..

¹⁶ Abdul-Aali, Al-Asri, The Authenticity of Electronic Messages in Civil Evidence, 1st Edition, Al-Halabi Human Rights Publications, 2013, p. 18..

¹⁷ Abdul-Aali, the family, the previous reference, the same page..

Neither the Palestinian nor the Jordanian legislator defined the writing of an electronic document. However, the Palestinian legislator defined the electronic data message in Article (1) of the Electronic Transactions Law as: "Data represented or electronically encoded, whether in the form of text, symbol, sound, images, or others." The Jordanian legislator defined it in the Jordanian Transactions Law in Article (2), which states that electronic documents are: "data, text, images, shapes, sounds, symbols, databases, computer programs and the like."

The UNCITRAL law clarifies when an electronic data message is considered to fulfill the requirements of writing in order to have an argument in evidence. This is evident in Article (8) which states that "as the law requires the recording of information in writing, the transferable electronic record satisfies this condition if access to the information contained in it is readily available in a manner that allows reference to it at a later time".

Thus, the legislator did not show interest in the type of device that carries the electronic data, or the symbols that were used in it or in the form of writing. But what is important for the legislator is the ability of that electronic device to keep the data that was written on it and that those data are readable and interpretable so that the contents of the electronic document can be used as evidence against others.

However, the Palestinian legislator and the Jordanian legislator failed because they did not set a definition for electronic writing and did not set specific conditions for it, despite the fact that it included definitions of other terms that may seem less important than writing. Therefore, our reliance on the data message sometimes in the definition of writing and sometimes in the definition of the electronic document may expose us to confusion between such terms and fall into a misinterpretation of legal texts. Hence, it is better to formulate a definition for each of them independently to avoid confusion.

Second: The Signature Condition:

The signature condition is one of the essential conditions that must be met by the customary document in order for the customary document to be fully authentic in evidence, as the signee of the customary document acknowledges the validity of what has been recorded in the document¹⁸. This is evidence of the will of the bond site to abide by what was stated in it. The Palestinian Evidence Law has clarified several types of traditional customary documents: signature, fingerprint, and stamp. But it did not talk about the electronic signature.¹⁹

The signature that was written on the document indicates the commitment of the person who signed it to what was stated in it, and no specific form or place was specified in the signature on the electronic document. But it is customary that the signature is done below the writing and is in the handwriting of the editor and includes the name and surname of the writer. Thus the signature has two functions; Expressing the will of the signatory to the electronic document to abide by this act, and to determine the identity of the signatory²⁰

After the emergence of electronic commerce and electronic contracting over the Internet, which depends on the exchange of data in an electronic way and does not depend on paper as a means of transferring information between contractors, a new form of signatures appeared, and this signature is called an electronic signature. International organizations have made great efforts and international trade laws have defined this signature as well as national laws. It also developed a definition of the electronic signature and specified the conditions that must be met in order for it to be authentic in proof.²¹

¹⁸ Omar, Al-Arishi, Authenticity of Electronic Bonds in Evidence, 1st Edition, Al-Hamid Library for Publishing and Distribution, Amman, 2015, p. 107. .

¹⁹ Palestinian Evidence Law, Article (15): "A customary document that includes the signature, seal or fingerprint of the person from whom it was issued, and does not meet the conditions stipulated in Article (9) of this law."

²⁰ Omar, Al-Arishi, previous reference, p. 107..

²¹ Anwar, Al-Tawil, "The Authenticity of the Electronic Signature in Palestinian Law and the Law of Anstral", Al-Azhar University Journal, Volume 19, Special Issue of the Fifth Arbitrator of the Faculty of Law Conference, p. 141..

Third: Documentation:

The Palestinian legislator has made it obligatory for those who conclude deals via the Internet to document these actions with a body that has been approved by the government in order to verify the authenticity of those documents and the party that issued them, in order to give the document a legal value. This procedure is carried out after the owner of the document is given a certificate of authentication²², confirming the authenticity of the document in order to have an argument against those who question the authenticity of the document. After the electronic document is authenticated, its owner is given a personal identification code to distinguish this document from others²³.

It is noted that the Palestinian legislator has specified an electronic authentication body, and the Ministry of Communications is the ministry that certifies electronic signatures and issues electronic authentication certificates and is based on verification of electronic signature and electronic record²⁴. As for the Jordanian legislator, the issue of determining the authentication authority has left the electronic signature or electronic record to the Council of Ministers, not established in the But these texts are not applied on the ground in Palestine, and this unit was²⁵ Ministry of Communications, and electronic signatures were not authenticated. This is considered problematic in the implementation of the electronic transactions law in Palestine due to the pretext that there is a shortage in the electronic transactions law in addition to the fact that the Palestinian legislation does not include electronic commerce law as it deals with trade issues in particular, as the Electronic Transactions Law concerns all electronic transactions in general and does not address electronic commercial transactions.

Thus, if the electronic signature or electronic document is not authenticated through procedures approved by one of the parties to the relationship, this does not give the electronic document or signature legal authenticity when making a proof statement.²⁶

Fourth: The Possibility of Keeping Electronic Documents in Their Original Form:

This requirement has been stipulated in the UNCITRAL Law and the Electronic Commerce Laws. In order for the electronic document to be considered as complete evidence in the proof, it must have the feature of preserving its original agreed form in which it was created between the parties. In this context, the Palestinian Transactions Law stipulates in Article (A/13) that “the information contained in the register shall be capable of being retained, stored, and may be referenced at any time”. This condition is matched by the condition that the writing is proven and that the document cannot be modified except by destroying it, or leaving a material impact on it. Here the integrity of the document is represented by not making any modifications to it, such as insertion or erasure, as they affect the power

²² Electronic Transactions Law No. (15), of 2017, defines electronic authentication in Article (1): “A secure technical means to verify the authenticity of the electronic signature or record.” Article (5) states: “A unit in the Ministry is established by virtue of the provisions of this Law by Decree, a unit called” The Electronic Authentication and Electronic Signature Unit reports to the Minister and undertakes all work and activities related to electronic authentication and electronic signature services.

Lawrence, Obeidat, Proof of the Electronic Editor, 1st Edition, House of Culture for Publishing and Distribution, Amman, 2005, p. 82.²³

²⁴ Palestinian Electronic Transactions Law, Article No. (8) stipulates: “1. The Ministry is the electronic authentication authority for ministries and public institutions, and it issues electronic authentication certificates for use in their transactions. 2. The Ministry works to verify that the electronic signature or electronic record has been implemented by Through a specific person, to track changes or errors that occurred in the electronic signature or electronic record after its creation, including the use of means of analysis to identify symbols, words, numbers, decryption, and any means, or any other procedures that achieve the desired purpose 3. The Minister shall issue instructions regulating the procedures Electronic documentation.

²⁵ Jordanian Electronic Transactions Law, Article (40)..

²⁶The Jordanian Electronic Transactions Law, Article (B/32) states: “If the electronic record or electronic signature is not authenticated, it has no validity.”.

of the customary bond in proof. In the event that amendments that may affect the integrity of the document are made, this matter is left to the judge to assess the legal consequences that result from that.²⁷

The continuous development in communications technology has devised a way to preserve electronic documents by keeping them in an electronic box that is not under the control of the editor's hands to prevent tampering with it. This box can only be accessed through a private key that may be used by a government authorized body, and any attempt to modify the document leads to the destruction of the document.²⁸

Fifth: The Possibility of Retrieving The Saved Electronic Document:

The goal of retaining the electronic document is to refer to it as evidence at any time, as it is one of the pillars of the authenticity of the bonds by proof. Article (13) of the Palestinian Electronic Transactions Law stipulates: "The information contained in the record should have the feature to be retained, stored, and can be referenced at any time, and the electronic record can be kept in the form in which it was done, so that it is easy to prove the accuracy of the information contained in it when it is created, sent or received."

This data is easily retrieved by connecting a mobile phone or computer to the Internet and entering the designated site, and a personal identification code is entered, thus retrieving the data quickly and directly.²⁹

The Legal Authenticity of the Electronic Document:

Many countries have made amendments to laws and legislation in the field of evidence in order to remove legal obstacles to dealing with legal documents in evidence. The validity of the evidence was confirmed through electronic documents and these data were given power in proof. The question that arises here is to what extent are these electronic documents equivalent in proof with traditional documents according to the Palestinian Evidence Law and the Jordanian Evidence Law? Can these modern means be considered in concluding an electronic contract to prove what has been contracted through these means? This is what will be answered below.

The Authenticity of the Electronic Document in the Palestinian and Jordanian Evidence Law:

Article (19) of the Palestinian Evidence Law stipulates that "1- Signed letters shall have the value of a customary bond in terms of proof unless their signee proves that he did not send them and did not instruct anyone to send them. 2- Telegrams, telex offices, faxes and e-mails shall also have this power if its original copy, which was deposited in the export office, was signed by its sender, and the telegrams are considered identical to their originals until evidence proves otherwise 3- A. Fax messages, telexes, e-mails, and similar modern means of communication have the power of customary bonds if they are accompanied by the testimony of the one who sent them to support their issuance, or with the testimony of the person who received them, thus confirming its receipt unless proven otherwise. B- The e-mail messages have the power of customary bonds of proof without being accompanied by a certificate if the conditions required by the law of electronic transactions in force are fulfilled." In this context, Article (13) of the Jordanian Evidence Law stipulates that the Palestinian legislator made the authenticity of recent communications messages, including e-mail documents equal to the authenticity of customary bonds in terms of proof. It has been stipulated that the customary bond be signed by the sender and that the original be kept in an export office, and this condition can be applied to fax, telegrams and telex. However, it is difficult to apply it to postal and electronic mail documents. The point is that these documents are difficult to have an export office in which to keep their original copies. But the Jordanian legislator avoided making this mistake and differentiated between correspondences that take place via telex, fax, and e-mail documents. Therefore, it took into account the means of work for each of them and was limited only to telex and fax messages and kept them at the export office without the documents that are made via e-mail. The Jordanian legislator granted electronic correspondence and

²⁷Muhammad, Abu Al-Hija, Arbitration via the Internet, 1st Edition, International Scientific House for Publishing and Distribution, and Scientific Culture House for Publishing and Distribution, Amman, 2002, pg. 78. .

²⁸ Muhammad, Abu Al-Hija, previous reference, p. 79..

²⁹Ihab, Saleh, previous reference, p. 21.

³⁰ Iyad, Atta Sedeh, "The extent of the authenticity of electronic documents in proof (a comparative study)", a master's thesis, unpublished, An-Najah National University, Palestine, 2009, p. 96.

documents the authenticity of the ordinary document and required only that the sender of the message prove that he did not send it and that he did not instruct other people to send it. On the contrary, the Palestinian legislator granted it the power of the customary bond in the event that it is accompanied by the testimony of the one who sent it to support its issuance and the testimony of the one who received it in order to confirm his receipt of it. At the same time it granted emails the proof power of customary bonds without being associated with the testimony if the conditions required by the Electronic Transactions Law are met. There are many cases that have proven that the Palestinian legislator granted legal authority to the electronic document in proof according to the provisions of the Evidence Law. These cases are:

- 1- Evidence by commercial materials: The general rule in commercial matters stipulated freedom of proof. This is also stipulated by Palestinian and Jordanian legislators in the Evidence Law in civil and commercial matters. Article (68) of the Palestinian Law of Evidence states: "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 not specified. It is not permissible for witnesses to testify in proving its existence or its lapse unless there is an explicit or implicit agreement or a legal text to the contrary."³¹ And this article excluded commercial matters from its provisions. This means that it has freedom of proof, regardless of the value of the act. This is also confirmed by Article (51) of the Jordanian Trade Law No. (12), of 1966, which stipulates that: "Proof of commercial contracts is not subject in principle to the exclusive substantive rules of civil contracts, so the aforementioned contracts may be proven by all means of proof, while preserving the exceptions mentioned in the special legal provisions". Accordingly, the commercial business carried out by merchants³² for the benefit of their trade, whether concluding contracts in a traditional or electronic way, is subject to the principle of freedom of proof, so it may be proven by all means of proof. The judge has the power to weigh the evidence and assess its evidentiary power. In this context, the Jordanian Court of Cassation stipulated that "the transaction of purchasing goods is not considered a commercial business in the legal sense unless the purchase is for the purpose of trading in the goods and benefiting from its profits. But if the purchase is for the purpose of use, the transaction is considered an ordinary transaction"³⁴.
- 2- In the case of mixing more than one substance: This is considered among the exceptions with regard to the principle of freedom of proof in commercial materials, such as the mixed contract in which one of the parties to the contract is a merchant and the disposition for him is commercial, and the other party is a civil one. In this case, the civil party to the mixed contract has the right to benefit from the principle of freedom of evidence against the merchant in accordance with the text of Article (68) of the Palestinian Evidence Law. As for the merchant, when he wants to prove the validity of his claim, he must resort to the general rules, as he resorts to writing if the value of the disposal is more than two hundred dinars. Thus, the consumer has nothing to fear from concluding an electronic contract because he can prove his rights by all means of proof.³⁵
- 3- In civil law articles: These articles require the existence of written evidence to prove legal actions. There are five articles in which the Palestinian Evidence Law departs from the rule of proof in writing:
 - A. Legal actions that do not exceed the specified amount: The Palestinian Evidence Law excluded legal actions whose value does not exceed two hundred Jordanian dinars from the rule of evidence in writing, and this is in accordance with Jordanian law in the event that it does not exceed one hundred dinars, as each of them subjected this issue to the principle of freedom of proof³⁶.
 - B. The impossibility of obtaining or losing the written document: In the event of the loss of the contract, it is possible that the case can be proven like other legal cases by all means of proof, provided that the loss of the

³¹ Jordan, Trade Law No. (12), for the year 1966, the Official Gazette, issue (1910), issued on March 30 1966, on page 472..

This article corresponds to Article No. (28/1) of the Jordanian Evidence Law No. (73) for the year 2001, with a difference in the value of the amount of one hundred Jordanian dinars³²..

³³ Ayed, Al-Murri, "The extent of the authenticity of modern technological means in proving commercial contracts", PhD thesis, Cairo University, 1998, p. 8..

³⁴ Jordan, Court of Cassation, Rights, No. (349/87), published on Qistas, date of visit 19/8/2022, at 5:57, website: <https://qistas.com.ezproxy.aaup.edu/ar/decs/info/421891/2?vmode=1&fromquick=1>

³⁵ Ayed Al-Murri, previous reference, p..

³⁶ Muhammad, Abu Al-Hija, previous reference, 91.

contract is for a reason outside the will of the creditor, such as strong force, or due to the existence of a moral or material impediment. In this case, it is possible to prove by all means of proof. This is stipulated in the Palestinian Evidence Law³⁷. The Palestinian legislator expanded the concept when defining the moral and material impediment. Therefore, the user of the electronic document may be able to take advantage of that exception, and the matter is ultimately up to the judge.

- C. The principle of proof in writing: The Palestinian legislator stipulated that: "It is permissible to prove through the testimony of witnesses what should have been proven in writing in the following cases: If there is a principle of proof in writing, and every writing issued by the litigant is considered in this ruling and which would make the existence of the alleged act probable".³⁸ This is because every book issued by the opponent makes the defendant close to the possibility, such as the letter in which the debtor writes that he owes without specifying the amount of the debt. This makes indebtedness close to possible. This also includes ordinary bonds and official papers that have not been signed, as they lose their value and become a principle proven in writing. This principle must be supplemented by evidence and presumptions so that it has power in proof and that electronic documents and e-mail messages can be adapted as a principle of proof in writing, and the issue remains up to the judge"³⁹. This is stipulated in the Palestinian Law of Evidence in Article (1/80): "The court may, on its own, order evidence by witness testimony in the cases in which the law permits evidence by testimony whenever the court deems that a real benefit."
- D. In the case of law circumvention: Circumventing the law is considered as other cases that can be proven by all means of proof. Information fraud is a real threat to the process of proving all the actions that take place through the Internet, as it reduces the trust granted to the electronic document. Therefore, the judge must derive his convictions from any evidence, including electronic evidence⁴⁰
- E. Agreement between individuals: Evidence rules are of two types: formal rules related to evidentiary procedures, and substantive rules not related to the general system. This is the opinion of most jurists. Therefore, the parties to the contract have the right to agree to violate or modify it explicitly or implicitly. For example, the litigants may agree to transfer the burden of proof from one party to another based on Article (68) of the Palestinian Evidence Law, mentioned earlier in this research, and Article (28) of the Jordanian Evidence Law. This is of importance to the electronic contractors, as it gives the parties in the event of an agreement to exclude written evidence and adopt the electronic evidence. It is considered lawful because the Palestinian and Jordanian legislators gave the electronic document signed electronically the same authority that the traditional customary document enjoys in the Evidence Law.

Authenticity Of Electronic Documents in Electronic Transactions Law in The Palestinian and Jordanian Law:

First: Authenticity of Electronic Documents in The Palestinian Legislation:

The Palestinian legislator gave the electronic document authoritative evidence in the text of Article (19) of the Evidence Law No. (4), of 2001, as it considered it a customary document and gave it the same authority in proof in the event that the electronic document was associated with the testimony of the one who sent it and the testimony of

³⁷ Palestinian Evidence Law No. (4) of 2001, the text of Article (71/2/3) stipulates: "It is permissible to prove by witness testimony what should have been proven in writing in the following cases: 2- If there is a physical or moral impediment that prevents obtaining written evidence. Or if custom and custom do not require linking the obligation to a written bond and it is considered a material impediment that there is no one who can, or that the applicant for proof is a third person who was not a party to the contract and is considered a moral barrier to kinship between the spouses or between the assets and branches, or between the footnotes to The third degree, or between one of the spouses and the parents of the other spouse, or between the fiancé and his fiancée 3- If the creditor loses his written bond for a reason he has no control over.

³⁸ The Palestinian Evidence Law, the text of Article (71/1), and it corresponds to Article (30/1) of the Jordanian Evidence Law..

³⁹ Ayed, Al-Murri, previous reference 143..

⁴⁰ Muhammad, Abu al-Hija, previous reference, p. 39.

the one who received it. In the event that the conditions in the e-mail message stipulated in the Electronic Transactions Law are fulfilled, it shall have the force of a customary bond of proof without being associated with it in the certificate. However, this procedure is wrong and insufficient to address all issues related to electronic contracting and electronic proof.⁴¹

Therefore, the Palestinian legislator issued Law No. (15) of 2017 regarding electronic transactions, as Article (9) states: "Electronic transactions, records and signatures have legal effect and are considered valid and effective, as are written documents and documents under the provisions of the legislation in force regarding its authority to obligate the parties or its validity in proof. Moreover, the copy copied on paper from the electronic data message is considered sufficient evidence unless one of the parties disputes this. In this case, the copy will be identical to the original." Article (13) of the same law included the conditions that must be met in the evidence message so that it is equal to the written document. Accordingly, the Electronic Transactions Law No. (15), of 2017 addressed the issue of convening an electronic contract and its conditions, and gave electronic bonds the authority of traditional written bonds in evidence. It also referred the issue of proof to the Palestinian Evidence Law No. (4), of 2001. The Electronic Transactions Law was influenced by the UNCITRAL Electronic Commerce Law to a large extent as an attempt to keep pace with developments in e-commerce, but we wonder when these legislations will become applicable on the ground and when Palestine will protect the contractors electronically in accordance with fair and applicable legislation on the ground.

Second: Authenticity of Electronic Documents in The Jordanian Legislation:

The Jordanian legislator issued the Electronic Transactions Law in 2001 and amended the Jordanian Evidence Law according to the amended Law No. (37), of 2001. Under this legislation, Article No. (13) granted the electronic document an argument in evidence, giving it the authority of ordinary documents. Despite that, this article failed to find a solution to the problem of proof through electronic writing and electronic signature. Therefore, the Jordanian legislator issued the Electronic Transactions Law No. (85), of 2001, speaking in its articles about how to conclude an electronic contract, prove the electronic document and electronic signature, and stressed that its objectives are to facilitate the use of electronic means, facilitate electronic transactions and conclude electronic contracts. It also gave the electronic papers the authenticity of the customary papers.

Accordingly, the Palestinian and Jordanian legislators granted the electronic document the authority of the customary proof. However, electronic document is not granted the power of proof unless it fulfills a set of conditions, namely: A- The ability to keep the information contained in the electronic document, no matter how long the period of time B- That the information is kept in the same form in which it was created, sent, and delivered. C- The information recorded on the document should be understandable and readable, and contain the date and time of sending and the time of delivery, and indicate the person who wrote it. D- The document must be authenticated by the accredited certification body, such as the Ministry of Communication, which was specified by the Palestinian legislator. If these conditions are not met by the document, then it will have no authority in the evidence. However, what raises the controversy is the Palestinian legislator in the absence of the authentication body's work on the electronic signature. It has to clarify the reality of the electronic document in the event that the ratification condition for the electronic signature is missed, and whether it has legal authority or not, or does it have legal authority that is incomplete and can be supplemented by other means of proof such as evidence, or follow the Jordanian legislator who removed the authenticity of the electronic signature if the e-signature certification requirement is missed.

The Electronic Signature and Its Authenticity in Proof:

The word signing means that the person writes his name on the contract, in a normal way; the hand-signature, or that the person puts his own seal or fingerprint. Sometime ago, signatures were specific and limited. But now, with the development of means of communication and the emergence of electronic contracts, there has become a new meaning and form of electronic signature, commensurate with electronic contracts and exchanges. It can perform all the functions of a traditional signature at the same time. Below we will explain the nature of the

⁴¹ Article (19) of the Evidence Law, No. (4) of 2001..

signature, its definition, its forms, the terms of the electronic signature and its authenticity according to the Jordanian and Palestinian law.

The concept of an electronic signature:

Oxford dictionary defines a signature in general as “a mark or a special and distinctive sign for the signatory, which he places on a document as an expression of his will to abide by the content of the bond and an acknowledgment of its issuance” (Saddah, 2009). Therefore, the importance of signing the document lies in the fact that it is a means that may determine the personality of the signee and determine the direction of his will on his commitment to what he signed and the legal effects that may result from it. But the question is, does this apply to an electronic signature? This is what will be answered below.

A- Definition Of Electronic Signature:

International organizations, international and national legislation and jurisprudence have made a great effort to define the electronic signature and to clarify the conditions that must be met in it in order for it to have complete authority in proof.

The Palestinian legislator defined the electronic signature in Article (1) of the Electronic Transactions Law No. (15) of 2017 as: “A set of electronic data, whether letters, numbers, symbols, or any other similar form, associated with an electronic transaction in a way that allows identification of the person who signed it, and distinguishes him from others for the purpose of approving the content of the electronic transaction.”

The Jordanian Transactions Law No. (85) of 2001 in Article (2) defines it as: “Data that takes the form of letters, numbers, symbols, signs, or others and is included in an electronic, digital, optical or any other similar means in an information message, or added to it or linked to it and has a character that allows the identification of the person who signed it and distinguishes him from others in order to sign it for the purpose of approving its content”.

We also note that the Palestinian legislator and the Jordanian legislator have defined the signature as roughly the same, as the words differ, but the meaning and content remain the same. The definitions were flexible, as they did not specify the types of signature by limiting them to specific signatures, in order to accommodate any electronic means that might appear in the future, and followed the example of the UNCITRAL law. In addition, these definitions defined the function of the electronic signature, which has the same function of the traditional signature; through it the identity of the signatory on the document and its approval of the data contained therein are determined. This definition does not require that the signee be a natural person, as it can be a natural or moral person.⁴²

B- Types of the Electronic Signature:

The traditional signature appeared in several forms, including the fingerprint, the signature, and the stamp. Moreover, the electronic signature has several images that may differ in terms of the method in which the signature is made. These images are:

-Digital signature:

It is a secret code or number that its owner creates by means of a computer program that is used for coding, through which the writing is converted into an incomprehensible encrypted form in the form of a mathematical equation that is sent electronically and then returns to its original form by the person who has the decryption key. The digital⁴³ signature is one of the most common types of electronic signatures as it enjoys a high level of security, accuracy and

⁴² Ghada, Muswaddah, previous reference, p. 155..

⁴³ Muhammad, Amarneh, “Means of Evidence in Electronic Transactions in the Palestinian Legislation,” International Journal of Judicial Jurisprudence, Issue 4, 2021, p. 20..

trust, and relies on an encryption system based on protecting information and maintaining its confidentiality, so only those to whom it is directed can use it. It is also documented by special documentation authorities.⁴⁴

-Biometric signature:

This form of signature is done by verifying a person's personality through natural, behavioral and physical characteristics, which may distinguish individuals from others, such as scanning the eye, fingerprint, or voice. A ⁴⁵ clear and accurate image of the fingerprint is taken and stored through a compressed digital image in the computer, and by accessing the computer; no person can use the information in it except by verifying the conformity of what is stored in the computer. But this signature may be subject to forgery by recording the voice print and placing it as a signature or by imitating contact lenses similar to an eye print. The specialist can detect and prove this manipulation.⁴⁶

-Hand-digitized signature:

It is the use of techniques based on converting the handwritten signature into data that represents it digitally through the use of a scanner that transmits the handwritten signature by photographing it and storing it in the computer. Thus, that signature is transferred to the electronic document. However, this type of signature causes many problems, as it is difficult to prove the link between the signature and the electronic editor. It is possible that the addressee will save the copy of the signature and may place it on any other electronic document.⁴⁷

-Electronic pen signature:

This signature is done by the sender using a special electronic pen and writing it on the computer screen through a specific program. This program captures the signature and verifies its authenticity. Here, this type of signature is needed for a computer system with special specifications. But this method does not achieve sufficient security because anyone can use this signature on any document who wants to add it by creating edits using the editor's signature without his knowledge.⁴⁸

-Signature using the magnetic card:

It is the card issued by banks so that the bank's customer can withdraw money from its ATM or make purchases via the Internet or the stores that accept this card according to a prior agreement between them. This method is widely used since it is safe, fast, reliable, easy to use and inexpensive.⁴⁹

-Authenticity of the Electronic Signature in Evidence:

We will talk here about the conditions of electronic signature in proof and its function as well as the authenticity of the electronic signature in the Palestinian and Jordanian law of evidence.

A- Electronic Signature Terms and Functions:

An electronic signature is a new form of signature. In order for that signature to be as authoritative in proof as the traditional signature, a set of conditions and functions must be met, which are as follows:

Conditions that must be met in the electronic signature:

The Palestinian legislator specified in Article (34) of the Electronic Transactions Law the conditions that must be met by the electronic signature "1. It is specific to the signatory and proves his identity. 2. It is created by means

⁴⁴ Ghada, Muswaddah, previous reference, p. 157..

⁴⁵ Muhammad Amarneh, previous reference, p. 20..

⁴⁶ Ghada, Muswaddah, previous reference, p. 158..

⁴⁷ Munir, Al-Janabihi, Electronic Signature and its Authenticity in Evidence, 1st Edition, Dar Al-Fikr Al-Jamii, Alexandria, 2004, pg. 136..

⁴⁸ Iyad, Seddah, previous reference, p. 75..

⁴⁹ Ghada, Muswaddah, previous reference, pg. 160

that the signatory keeps under his exclusive control. 3. Ensures that there is a link to the document related to the signature and reveals any subsequent change made to it.

The Palestinian legislator also required the authentication of the electronic signature in order for it to have legal authority in proof. The Jordanian legislator agreed with the Palestinian legislator regarding the conditions that must be met in the electronic signature, which were stipulated by the Jordanian legislator in Article (31) of the Electronic Transactions Law. These conditions are:

1-Relationship of the electronic signature to the person who signed the electronic document alone:

In order for the electronic signature to be exclusively linked to its signatory, this signature must be distinct from the signatures made by others. The Palestinian legislator defined the signatory in Article (1) of the Transactions Law as “the person who possesses an electronic signature tool used to sign an electronic transaction.” This condition is achieved through the types of the signature that we mentioned earlier, because the signature is considered a mark belonging to the signatory. It indicates its association with the person who signed alone, for example, the signature with personal characteristics that include the eye print. It is not possible to have the same eye print for more than one person. So this signature is linked to the person signing only.⁵⁰

2-The electronic signature tool and systems are under the sole control of the signatory; meaning that the signatory is the only one who knows the decoding of the electronic signature. This condition is very necessary for the signature to be an argument in proof, since it is not logical that anyone can decipher the codes.⁵¹ The Court of Cassation decided that if there is a person authorized to sign electronically on behalf of the original person, the condition here is fulfilled and his signature replaces the original person because he signs in his name and not in the name of the original person, and it is permissible in principle.⁵²

3-The possibility of detecting any alteration or modification of the signature data after placing it on the electronic document:

This condition is intended to protect the document from any change that may occur to it after it is signed electronically. In order to achieve this condition, the information and data related to the electronic document and the signature must remain connected and in a manner that does not allow the modification of the electronic document after it is signed. Therefore, in the event of any modification to the electronic signature, this would lead to a modification in the document's data as well, which would facilitate the detection of this modification.⁵³

4-Documentation:

In order for the electronic signature to be authentic in proof, it is necessary that it be authenticated, since dealing via the Internet is subject to fraud. To reduce this risk, recourse is made to accredited government agencies based on authenticating and certifying the electronic signature. Thus, it is concluded that the Palestinian legislator was not successful in formulating the terms of the electronic signature, as it combined the conditions that must be met in the electronic signature with the instructions that the signee must abide by in order for his signature to be safe and trustworthy.

B- Electronic Signature Functions:

An electronic signature has two main functions: Determining the identity of the signatory and expressing his will to approve the content of the bond.

1- Determine the identity of the signatory:

⁵⁰ Ghada, Muswaddah, previous reference, p. 163..

⁵¹ Anwar, Al-Tawil, previous reference, p. 156..

⁵² Jordan, Court, Rights, No. (1728/2018), date of chapter 24/4/2018, Qistas, date of visit 20/8/2022, at 11:30 pm, website: <https://qistas.com.ezproxy.Aaup.edu/en/decs/info/4915517/2?vmode=1&fromquick=1>

⁵³ Anwar, Al-Tawil, previous reference, p. 157..

This function is considered one of the most important functions on which the electronic signature is based, as it determines the identity of the parties to the contract. Article (16) of the Palestinian Evidence Law stipulates this⁵⁴ function: "The customary bond is considered an argument against the one who signed it, unless he denies what the handwriting, signature, seal, or fingerprint was attributed to him when he was informed of it. His silence is considered an acknowledgment of the validity of what was attributed to him." The electronic signature is able to determine the identity of the signing person, as it is based on electronic techniques that may guarantee the identification of the signatory, due to the automated system that ensures that the signature is not modified, and also because of resorting to the certification authorities that preserve the signature for its affiliation to its owner. The⁵⁵ electronic signature expresses the will of the signatory on the document:

The Palestinian legislator has stipulated in the Evidence Law in Article (1/16) that: "A customary bond is considered an evidence against the one who signed it, unless he denies what is attributed to him in terms of handwriting, signature, stamp or fingerprint when he sees it. His silence is considered an admission of the validity of what is attributed to him". It can be seen that what expresses the will of a person to agree to the content of the bond is the signature. Therefore, it expresses the will of the bond signatory to agree to what is stated in it. Therefore, when a person signs the electronic bond, this means his acceptance of the contractual obligation. Therefore, when the signatory enters the secret number or genetic fingerprint on the screen, this is considered evidence of the person's acceptance of everything stipulated in the electronic bond and his commitment to.⁵⁶

Authenticity of Electronic Signature According To the Palestinian and Jordanian Legislations:

A- The authenticity of the electronic signature according to the Palestinian legislation:

Among the means of proof that have been applied in Palestine is writing represented by electronic records and electronic signature. Thus, when looking at electronic documents, there are two components; Writing and signature. Referring to the Palestinian Evidence Law No. (4), of 2001, we find that Article (19) stipulates: "1- Signed letters shall have the value of the customary bond in terms of proof unless their location proves that he did not send them and no one was assigned to send them. 2- Telegrams, telex, fax correspondences and e-mail have this evidentiary power as well if its original copy, which is kept in the export office, is signed by its sender, and the telegrams are considered identical to their original until evidence is established to the contrary. 3- Fax, telex, e-mail and similar modern means of communication shall have the power of customary bonds if they are accompanied by the testimony of the person who sent them to confirm their issuance, or the testimony of the person who received them to confirm his receipt of them, unless this is proven. B. E-mail messages have the power of customary bonds of proof without being associated with a certificate if the conditions required by the Electronic Transactions Law are met." The electronic contract here is considered to have the pretext of a customary bond, meaning an argument against the one who signed it, except in the case of denying the one who signed it by signing or fingerprinting, so it is not invoked against others, unless it has a fixed date, the law made the electronic contract the pretext of the customary bond. The Palestinian legislator issued Decree Law No. (15), of 2017 regarding electronic transactions. This law consists of (51) articles. In Chapter VI, this law talked about the provisions of electronic signature and gave it the authority of the traditional signature established in the Palestinian Evidence Law, as it stipulated in Article (4) of the Electronic Transactions Law: "the same provisions of written transactions are applied to electronic transactions". Then article (34) came to specify the conditions that must be met by the electronic signature in order for it to have authority in the evidence. With reference to Article No. (9) of the Law by Decree regarding electronic transactions: "1. Electronic transactions, records and electronic signatures have a legal effect and are considered valid and effective, as are handwritten documents, under the provisions of the legislation in force in terms of their obligation to their parties or their authority to prove. 2- A copy copied on paper from an electronic data message is considered authentic, unless one of the parties disputes this, in which case the copy shall be identical to the original copy. We note that the Law of Electronic Transactions went in the same direction as the Law of Evidence, which affirmed that electronic

⁵⁴ Ayed, Al-Murri, previous reference, p. 84.

⁵⁵ Ghada, Muswaddah, previous reference, p. 169..

⁵⁶ Iyad, Seddah, previous reference, p. 72.

documents have the same authority as customary bonds. In commercial transactions, they are proven in all ways of proof. In the event of an electronic transaction on the Internet, the parties can prove by all means of proof.⁵⁷

Authenticity of electronic signature according to Jordanian legislation:

The Jordanian legislator agreed with the Palestinian legislator regarding granting the electronic signature an authority in proof, and equated the electronic signature with the signature on the customary document. In this context, Article (7) of the Jordanian Electronic Transactions Law emphasized that: “A- The electronic record, the electronic contract, the electronic message, and the electronic signature are considered to produce the same legal effects resulting from written documents and written signature under the provisions of the legislation in force in terms of their obligation to their parties or their authority to evidence. B- The legal effect of any of what is stated in Paragraph (A) of this Article may not be neglected because it was conducted by electronic means, provided that it is in accordance with the provisions of this law.

We note that the legislator in this article gave the electronic signature the same authority as the traditional signature in proof. The tenth article of the same law also confirmed the authenticity of the electronic signature. Article 31 of the same law specifies the conditions that must be met by the electronic signature, in order for it to have an argument in proof, and it complies with the same conditions set by the Palestinian legislator.

Therefore, the researcher notes that the Palestinian legislator and the Jordanian legislator agreed with the UNCITRAL Model Law on Electronic Transactions, Electronic Documents and Electronic Signatures, and gave it the same evidence power as the customary basis as long as it was not denied by its signee. But what is lacking in Palestinian legislation is the application of these texts on the ground and the establishment of an accredited authentication body to certify the electronic signature and provide confidence and security when resorting to electronic contracting and to give the electronic document full validity in proof.

Conclusion:

This research dealt with a relatively recent and important topic, which is the electronic documents that are made via the Internet and the extent of their authenticity and the authenticity of the electronic signature, as it is considered one of the most widespread transactions at the present time. Therefore, it is very necessary to provide all legal protection in relation to these transactions, and all means of proof must be followed in case of losing rights. We find that the law in force in Palestine considers that electronic contracts have an evidence power like customary contracts unless denied by the signatory. Through this study, a set of findings and recommendations have been reached, the most important of which are listed below.

Findings:

- 1- Although the Palestinian and Jordanian laws differ in naming the electronic document, they agreed in terms of the content and purpose of its definition, as they recognized the electronic document and defined it as an electronic data message that is an alternative to the traditional document.
- 2- The electronic document is defined as the “information that is generated, sent, received or stored by electronic, optical, or similar means.”
- 3- Writing and signing the electronic document is one of the elements of the electronic document, and it is not considered one of the conditions of the electronic document, since the electronic document is not done without the presence of these elements, both of which constitute the strength of the electronic document, provided that each of the two elements fulfills its legal conditions.
- 4- The electronic document is not given the power of proof unless it fulfills a set of conditions, namely: A- The ability to keep the information contained in the electronic document, no matter how long it takes. B- The information should be kept in the same form in which it was created, sent and received. C- The information recorded on the electronic document should be understandable and readable and contain the date and time of sending and the time of receiving and indicate the person who typed it. D- The document must be authenticated by the accredited certification body, such as the Ministry of Communication, which was

⁵⁷ Abdul-Aali, Al-Asry, previous reference, p. 128.

specified by the Palestinian legislator. If these conditions are not met by the electronic document, then the electronic document is not authentic in proof according to the Palestinian and Jordanian laws.

- 5- The condition to save the electronic document in the form in which it was created should not be subject to the control of the creator of the electronic document, unlike the electronic signature, which must be under the control of the creator of the electronic document so that it can be used as a proof against him.
- 6- The legislator was not successful in formulating the terms of the electronic signature, as it has combined the conditions that must be provided in the electronic signature with the instructions that the signatory must abide by in order for his signature to be secured and trustworthy.
- 7- In order for the electronic signature to have legal authenticity in proof, such as a customary bond, it must meet several conditions: 1- The signature must be related to and identifies the signatory. 2- The signatory of the bond is the only one who controls the signature tool on the electronic document. 3- The electronic document should also be closely linked to the signature. 4- The signature must be attested by an authorized and competent authority.
- 8- The electronic signature is equal to the traditional signature in terms of its function, as it determines the identity of the signatory of the electronic document, and also that it is the will that expresses his consent and commitment under what is stated in the document.
- 9- The Palestinian and Jordanian legislations recognized that the electronic signature is as authoritative in evidence as the signature of traditional customary bonds in proof. Although this authenticity is acknowledged, it is not given the scope of absolute application, legal protection and confidence that is given to traditional bonds.
- 10- Authentication or attestation: It is a competent authority and is considered a safe means aimed at verifying the validity of the signature and the electronic record, and grants authentication certificates. Palestinian law stipulates that this authority was given to the Ministry of Communications, but this has not been implemented on the ground until now.

Recommendations:

Based on the findings of the study, the researcher recommends the following:

- 1- The Palestinian legislator should set a clear definition of the electronic document so that there will be no confusion between the definitions, which negatively affects the interpretation of the text of the law and affects the integrity of its application.
- 2- Reconsidering the drafting of the electronic signature conditions in order to ensure that the terms of the electronic signature are not confused with the instructions that the electronic document signatory should follow. Thus, the signature acquires legal authenticity in proof.
- 3- Supporting the authorized bodies represented in the Ministry of Communications, which are authorized to authenticate and certify the electronic signature, to carry out these tasks on the ground to give legal authority in the proof of documents and electronic signatures.
- 4- The Palestinian legislator, in the absence of the authentication authority's attestation on the electronic signature, must clarify the reality of the electronic document in the absence of the certification condition for the electronic signature, meaning that it must clarify whether the electronic document has legal authority or not, or an incomplete legal authority that can be supplemented, or does it comply with the Jordanian legislator that removed the authenticity of the electronic signature in the event that the ratification condition for the electronic signature was not met.

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