

Electronic Contract and its Effects According to the Sudanese Electronic Transactions law for the Year (2007)

A Comparative Study

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Abstract

The most important thing that distinguishes the electronic contract from the traditional contract is the means through which it passes through it through an electronic environment that uses modern means of communication, especially the internet. The study aimed at: To learn about the concept of e-contract and its advantages. Highlighting the languages of affirmation and electronic acceptance and its characteristics. The study followed the descriptive historical descriptive method. The study found many results, including: Electronic contracts are usually concluded online, a network open to users around the world, especially in the case of mutual exchange and acceptance through the site, it creates a problem on how to determine the personality of the parties to the contractual process for the purpose of providing In this case, the owner of the site that is exchanging the offer and acceptance of the other must identify the persons who use it, if not the obligor or the owner of the site itself, Sudan is one of the first Arab countries that has an electronic transactions law is the law of (2007). Only Jordan, the Emirate of Dubai, Bahrain, Tunisia and Lebanon. preceded this. In addition, the method of expression in contracts for acceptance of online contracts is consistent with the method of contracting. An icon or by entering private information, and we find no value for silence as an expression of acceptance in electronic contracts. The study recommended the following: We propose to amend some articles of the Sudanese civil law to be in a way that shows (concluding contracts by means of modern communication) to accommodate all the new developments in communications, and the means of contracting modern, such as the Internet. As well as the creation of special websites on the net providing advice and guidance to provide protection to the less experienced party in the electronic contract.

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العقد الإلكتروني وأثاره في قانون المعاملات الإلكترونية السوداني للعام (2007م) - دراسة مقارنة

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ملخص الدراسة

أهم ما يميز العقد الإلكتروني عن العقد التقليدي هو تلك الوسيلة التي يمر عن طريقها، بحيث يتم من خلال بيئة الكترونية تستخدم فيها وسائل الاتصال الحديثة وعلى رأسها شبكة الانترنت. هدفت الدراسة إلى التعرف على مفهوم العقد الإلكتروني ومميزاته. وإبراز لغات الإيجاب والقبول الإلكتروني وخصائصه. اتبعت الدراسة المنهج الوصفي التاريخي الاستقرائي. توصلت الدراسة إلى العديد من النتائج من بينها: إن العقود الإلكترونية مبرمة عادة عبر الإنترنت، وهي شبكة مفتوحة أمام المستخدمين في جميع أنحاء العالم خاصة في حالة تبادل الإيجاب والقبول من خلال الموقع، فإن ذلك يخلق مشكلة تتعلق بكيفية تحديد شخصية طرفي العملية التعاقدية وذلك لغرض توفير الأمان القانوني لها، ففي هذه الحالة يجب على صاحب الموقع الذي يجري تبادل الإيجاب والقبول غيره، أن يقوم بتحديد الأشخاص الذين يستخدمونه، هذا إن لم يكن الموجب أو القابل صاحب الموقع نفسه، السودان من أوائل الدول العربية التي لديها قانون للمعاملات الإلكترونية وهو قانون المعاملات الإلكترونية لسنة (2007م) ولم يسبقه في ذلك إلا الأردن، إمارة دبي، البحرين، تونس، لبنان، بالإضافة إلى أن أسلوب التعبير في العقود عن القبول في العقود التي تتم عبر الإنترنت يكون متماشياً مع طريقة التعاقد فقد يكون عن طريق النقر عدة مرات على إيقونة ما أو عن طريق إدخال معلومات خاصة، ولا نجد قيمة للسكوت باعتباره تعبيراً عن القبول في العقود الإلكترونية. أوصت الدراسة بالآتي: نقترح تعديل بعض مواد القانون المدني السوداني لتكون بشكل يوضح (إبرام العقود بوسائل الاتصال الحديثة) لتستوعب كل ما يستجد على صعيد الاتصالات، ووسائل التعاقد الحديثة كالإنترنت. كذلك استحداث مواقع إلكترونية خاصة على الشبكة تقدم النصائح والإرشادات لتوفير الحماية للطرف الأقل خبرة في العقد الإلكتروني.

1. Introduction:

The electronic contract is regulated by the general rules and provisions governed by the general theory of contract by the exchange of the contracting parties to express two identical wills based on the principle of consent. This is required to be linked to the acceptance of the contract as a remote contract, so that the exchange of will is through an electronic intermediary aiming to form the corner of compromise, which is the most important corner in all legal actions.

Thus, the most important characteristic of the electronic contract is the means through which it passes through, through an electronic environment using modern means of communication, especially the Internet, which contributed significantly to obtaining some kind of material dimension between the contracting parties. In this type of contract, which was reflected in the nature of both the positive and acceptance of the terms of consent in the electronic contract, since the latter is held without the parties having a physical presence at the council of the contract at the time of the meeting. Each party is in a place different from the location of the other party and is separated from each other geographically and with a different language and legislative. In addition, the Internet, which is the intermediary in this contractual relationship is characterized as an open network, in the sense that it allows any person from the public to access it, without any condition only to be linked to the web.

In view of the challenges and legal problems arising in the electronic contract, it was addressed by the jurisprudence, international organizations and domestic laws. The 1996 Model Law on Electronic Commerce, which was the basis for all laws relating to electronic contracts in most comparative legislations. This includes the Moroccan legislator who tried to keep abreast of this legal development by making several amendments to its laws, especially after issuing Law No. 53-05 on the electronic exchange of legal data. In this law he approved the validity of the contract concluded electronically. By which the provisions of the dahir of obligations and contracts have been changed and fulfilled, and all that has to do with the family code and customary texts concerning personal or in-kind guarantees of a civil or commercial nature other than those carried out by a person for the purposes of his or her profession.

2. Significance of the Study:

Since an electronic contract is a special type of remote contract, it must respect the rules for this range of contracts, especially those relating to consumer protection. This is in the case where a contract is concluded between a professional and a second party that does not contract within the scope of his or her professional activity.

The privacy of the electronic contract also affects the provisions of the mutual consent clause in both electronic affirmative and acceptance aspects. This in turn has a great influence on the traditional concepts prevailing in the general theory of contracts, which hinders the application of general rules to this type of conciliation that is formulated to suit the nature of traditional transactions.

3. Objectives of the Study:

- 1- Identifying the concept of e-contract and its advantages
- 2- Highlighting the languages of affirmation and electronic acceptance and its characteristics.

Questions of the Study:

1. On the basis of all this, we have the right to ask how to deal with the specificities of consent in an electronic contract. And the extent to which the law recognizes the will expressed electronically, mainly in both electronic positives and acceptance?
2. What are the languages of affirmation and electronic acceptance and its characteristics?

4. Statement of the problem:

The uniqueness of the electronic proposition of the traditional is that it is done by means of an electronic medium that makes it special, which raises a number of specific problems, with regard to the existence of the will and the form of expression, which actually lead to a certain legal effect, that is, there must be a positive within this framework. Which requires the study of the latter, starting with the definition of its definition and characteristics (the first requirement), and to determine the language and spatial scope (the second requirement).

5. Methodology of the study:

The researcher followed the descriptive historical inductive method.

6. Organization of the Study:

- The first topic: the positive in the electronic contract.
- The second topic: acceptance in the electronic contract.
- The conclusion contains the findings and recommendations.
- Sources and references.

7. Preface:

Electronic contract is undergoing in its regulation and public rules which organized by the contract public theory, thus by exchanging the two contracted parties for expressing about two duplicated intends depending on the satisfaction principle, that need to be conducted to correlate acceptance and responds in considering the electronic contract as a distance contracting, where the intends exchanging using an electronic medium in order to configure assumption base which considered as an important base in all the legal treatments.

{A} Definition of electronic contracts:

The contract is a language: the two ends of the thing are joined by their knot, and the contract means Confirmation . The electron is a minute with a negative electric charge, And its charge is the integral part of the electricity The description of the contract is that.

This is an expression of the field, or the means under which the contract is made, Or through it. E-contract: A positive correlation is accepted through the data message In which the two contractors exchange the expression of two identical desires on a confirmed basis Its impact on the meeting, and the consequent commitment of each of them to what is required For the other. Is the correlation of the acceptance to the acceptance through the data message to the extent proven (Its impact in the meeting. The data message is a means of expression of will - in whole or in part - (For the purpose of expressing acceptance and acceptance, with a view to establishing a contractual obligation) The message of data means: the information produced, or Transmission, receipt or storage by means of electronic, visual or other means.

Other technology, including electronic data interchange, or mail (Electronic, lightning, telex, telegram).

The electronic contract was defined as: ((the contract in which the affirmative is joined Acceptance through an international telecommunications network using electronic data interchange (With a view to establishing contractual obligations).

The electronic contract is a distance contract:

Canadian law has been defined in the Act, "Remote Contracts For consumer protection after contracting in Quebec, Quebec Section (20) that: (4) a contract between a trader and a consumer without a physical presence between them.

Whether in the case of affirmation or acceptance, or if the affirmation is not directed (For a specific consumer.

The Problems of Electronic Contracts:

Some American scholars have identified the electronic contract as: "That is:

- A contract that involves an exchange of letters between the seller and the buyer that is Based on pre-prepared formulas, electronic processing, and obligations (Contractual). It is noted that this definition deals only with electronic sales contract, without any remaining Other electronic contracts, such as a contract of carriage, lease.
- Contracts for medical operations, contracts for the establishment of electronic sites, and contracts Enrollment in educational institutions, employment contracts and services (2) and others. The electronic transactions law [Sudanese] for the year 2007, All contracts are conducted via electronic means and are not non-contractual: Marriage and divorce only 1) The provisions of civil transaction laws, evidence and procedures shall apply) In the absence of a specific provision in this law.

8. Definition of traditional paper bond:

Article 37 (1) of the Sudanese Evidence Act defines the traditional documents as evidence recorded in the form of writing, picture or sound. In Egyptian law, the document was defined (which appeared in the name of the editor), and a difference was made between the official and customary editor. The definition in Article 10 of the Egyptian Evidence Law (that it is the editor who is edited by a public official or a person charged with a public service in which he is proved to be in his hands or what he received from the people concerned, in accordance with the legal conditions and within the limits of his authority and jurisdiction).

As for French law, the official editor of Article 1317 of the French Civil Code ("he is the one who receives a public official who has the right of authentication in the place where the editor wrote in accordance with the required formalities).

From these definitions it becomes clear to us that the traditional document, whether formal or customary, the writing element is necessary, except for the definition contained in the Sudanese law, which did not limit the definition of the document, in the Evidence Act of 1994, to that blogger on paper support only, This is because the definition does not limit the pillar that should be the document, which is the paper pillar only, as in the case of the definitions contained in some of the laws of the states Arabic, and this is it Almost the fact that more flexible Arab legislation.

We conclude from this that the definition of the traditional document in the laws of the Arab countries, as well as the laws of the Western countries, from the reference jurisprudence to the schools of jurisprudence, which is based on each law alone, namely three schools or doctrines, known in modern jurisprudence modern doctrines of a proof.

- The first of these schools was known as the Free School of Evidence.
- The second school was known as the school of limited proof.
- The third is in the School of Mixed Evidence, a school that combines freedom with evidence and restriction. The Sudanese law belongs to this school. The French law, in article 1317 of the Civil Code, defines linear proof as the result of a sequence of letters, Whatever their backbone, and form their dispatch.

9. Definition of the Electronic Law:

Many transactions and other forms of trade are now conducted electronically. For example, most people will at least be familiar with, if not frequent users of, ATMs situated outside or inside banks. When a bank's customer withdraws money or uses an ATM for other purposes, an electronic transaction takes place. More and more business is now done electronically, often with the parties never physically meeting each other. Online shops, for example, allow potential customers to browse, select and purchase goods without ever asking a salesperson for advice or assistance. Negotiations, giving quotes or submitting tenders for work may all be done electronically and indeed are. A great deal of information is now passed electronically within organizations and from one organization to another. This all raises a number of legal questions, specifically with regard to electronic contracts. Some of the most important issues include whether an electronic contract is valid, that is, whether it must comply with certain formalities, whether electronic signatures are admissible as evidence of intent and agreement, and what law applies to an electronic contract (if it is between international parties). These issues are addressed below.

10. Formalities of an electronic contract:

Generally, contracts can take any number of forms. They can be by deed, in writing, evidenced in writing, oral, or implied from the conduct of the parties. Certain contracts, however, require a specific form, and will not be legal (though they may be equitable) if they fail to comply with the formalities. For example, a conveyance of land or any interest in land must, under s52 of the Law of Property Act 1925, be by deed, save for the exceptions listed in that section. Other contracts are required to be in writing. So what form, if any, must an electronic contract take? The answer depends on the nature of the contract. If writing is a requirement, do documents which are stored digitally on a computer hard drive comply? Schedule 1 to the Interpretation Act 1978 states: "Writing' includes typing, printing, lithography, photography and other modes of representing or reproducing words in a visible form, and expressions referring to writing are construed accordingly." Since words stored

digitally on a computer may be reproduced on a monitor or printed onto paper, it would appear that computer storage is covered by this definition. Nevertheless, individual cases may still have to be decided by the courts.

In the UAE e-commerce law, the definition of an electronic record or document is as follows:

Article 2 Definitions (Any record or document created, stored, extracted, copied, sent, communicated or received by electronic means, on a tangible medium or on any other electronic medium, and shall be recoverable in an understandable manner).

In the Sudan Electronic Transactions Act (2007), the definition of the electronic document under the concept of digital signature is defined in Article 3 of the term "means that the signature, which is created, sent, received and stored by an electronic means and takes the form of letters, numbers, symbols or signs that have a unique character and allow identification and discrimination (Article 3-3 of the Lebanese International Chamber of Commerce (ICC) Model Rules and Guidelines on International Trade (URGETS) refers to the definition of an electronic document as the content of any connection that assumes an electronic transmission of digital information via the Of the public or closed, or through any electronic means of communication accessible as possible, any usable in subsequent reviews.

In Egyptian law, the electronic document was defined in the first article of the law, describing it as a message of electronic, digital or optical data that is stored, transmitted or received in whole or in part by electronic electronic means, or by any other similar means. It seems that the Egyptian legislator adopted the definition contained in the law UNCITRAL Model Electronic Trading.

11. Electronic signatures:

A signature is generally understood as evidence that the signatory approves of a document's contents. But does this ring true also for a person's name printed on a telex or fax, or reproduced in electronic mail? In *Good Challenger Navegante SA v Metalexportimport SA* (2004) the Court of Appeal held that for the purposes of s30 of the Limitation Act 1980 a typed name on a telex was a signature. The Court held that "...the typed name of the sender at the end of the telex not only identified the maker but led to the inference that he had approved the contents." This does not apply to all instances of typed names, however, and a formal contract with typed names at the end with spaces underneath where the parties are expected to write their names would be unlikely to fall within the reasoning given in the *Good Challenger* case. Above all, the signature must be able to objectively show that the signatory, by signing or printing their name, approved of a document's contents and intended to be bound by them. It is irrelevant whether the contents have been read (unless there has been some misrepresentation). The courts confirmed in *Mehta v J Pereira Fernandes SA* (2006) that a person's name which is shown as part of an email address in the header of an email does not mean that the person intended to be legally bound by the contents of the email. The automatic insertion of an email address could not be considered as a signature.

Under s7 of the Electronic Communications Act 2000 an electronic signature is anything in electronic form which :

1. is incorporated into or otherwise logically associated with any electronic communication or electronic data, and is certified as such by the signatory.
2. Such a signature is admissible in evidence for the purpose of establishing the authenticity, the integrity, or both, of the electronic communication or data.
3. Certification of the signature requires the signatory to make a statement that the signature, its production, communication or verification, or a procedure applied to it, is a valid means of establishing the authenticity, integrity or both of the electronic communication or data.

12. Governing law:

Most contracts contain a clause which states which country's law the contract is governed by. Additionally, the 1980 Rome Convention contains rules on the applicable law which apply to all EU Member States. Basically, the parties are free to choose which law will apply to their relations, as long as it is expressed with reasonable certainty. In the absence of any choice of law, the contract will be governed by the law of the country with which it is most closely associated. Additional rules are used to determine which country this is. Contracts concluded electronically

Article 9 of Directive 2000/31/EC, on electronic commerce, requires EU member states to ensure both that contracts can be concluded by electronic means and that the law does not create any barriers against using such contracts or which deprive such contracts of their validity. In the UK, the Electronic Communications Act 2000 supports approved cryptography service providers and provides that electronic signatures are admissible in evidence. Some contracts, though, such as those which transfer rights in real estate, are exempt from these general principles. Article 10 of Directive 2000/31/EC requires certain information to be provided regarding electronic contracts, such as describing the technical steps to be followed to conclude the contract, and the technical means for identifying and correcting input errors before placing orders. On the basis of the electronic contract remotely, so that the exchange of wills is through an electronic intermediary aims to form the corner of compromise, which is the most important corner in all legal actions.

Thus, the most important characteristic of the electronic contract about the traditional contract is the means through which it passes through, through an electronic environment using modern means of communication, especially the Internet. Which contributed significantly to obtaining some kind of material dimension between the contracting parties in this type of contract, which was reflected in the nature of both the positive and acceptance of the terms of consent in the electronic contract, since the latter is held without the parties having a physical presence at the Council of the contract at the time of the meeting, Where each party is in a place different from the location of the other party and separated between them after a geographical and a different language and legislative. In addition, the Internet, which is the intermediary in this contractual relationship is characterized as an open network, in the sense that it allows any person from the public access to it, without condition only to be linked to the Web.

Since an electronic contract is a special type of remote contract, it must respect the rules for this range of contracts, especially those relating to consumer protection in the case where the contract is concluded between a professional and a second party that does not contract within the scope of his or her professional activity.

The privacy of the electronic contract also affected the provisions of the mutual consent clause in both electronic affirmative and acceptance aspects, which had a great influence on the traditional concepts prevailing in the general theory of contracts, which hindered the application of general rules to this type of conciliation, Formulated to suit the nature of traditional transactions. In view of the challenges and legal problems arising in the electronic contract, it was addressed by the jurisprudence, international organizations and domestic laws. The 1996 Model Law on Electronic Commerce, which was the basis for all laws relating to electronic contracts in most comparative legislations, Including the Moroccan legislator who tried to keep abreast of this legal development by making several amendments to its laws, especially after issuing Law No. 53-05 on the electronic exchange of legal data in which he approved the validity of the contract concluded electronically. By which the provisions of the dahir of obligations and contracts have been changed and fulfilled, and all that has to do with the family code and customary texts concerning personal or in-kind guarantees of a civil or

commercial nature other than those carried out by a person for the purposes of his or her profession are excluded. In light of all this, we have the right to ask how to deal with the specificities of consent in an electronic contract. And the extent to which the law recognizes the will expressed electronically, mainly in both electronic positives and acceptance?

13. The first topic: the positive in the electronic contract:

The uniqueness of the electronic proposition of the traditional is that it is done by means of an electronic medium that makes it special, which raises a number of specific problems, with regard to the existence of the will and the form of expression, which actually lead to a certain legal effect, that is, there must be a positive within this framework. Which requires the study of the latter, starting with the definition of its definition and characteristics (the first requirement), and to determine the language and spatial scope (the second requirement).

The first requirement is to define the electronic proposition and its characteristics.

First: Definition of electronic payment

The affirmative is defined as the expression of the will of someone who is offered to others to contract with. Thus, it is considered the first step in concluding all contracts, represented by an offer made by one person to another or others for the purpose of concluding a contract. So that the expression of a positive will must be finally settled by the positive, in the sense that it must be firm, complete and complete, and must include the essential conditions of the contract to be concluded, in addition to the intention to conclude the contract, which raises legal problems for the electronic answer Which is done through open electronic networks?

However, since the electronic contract in the framework of electronic commerce falls within the scope of the contract of remote contracts, the definition of the positive must be made in the definition of the positive in these contracts. This is what the European Directive on Consumer Protection in Contracts Which was concluded in the past, when the positive in these contracts was defined as: "Every teleconference contains all necessary elements so that the consignee can accept the contract directly and exclude from this scope merely the declaration." However, this definition did not define or determine the means of communication remotely, nor did it highlight the most important characteristics of the electronic claim, which is the electronic character in this proposition, but it is clear from his interest that the positive elements should be included in the affirmative so that the consumer, evidence. Thus, e-affirmation may be a special affirmation directed at specific people, which is often in e-mail or chatting offers, and may be a general affirmation directed at unspecified persons, which occurs in the case of contracting through commercial websites deployed Via the Internet.

The electronic claim, as in the case of traditional affirmation, is required to be firm, specific and irrevocable, in the sense that the intention of the assignor is to conclude the contract once it has been accepted. However, if the debtor maintains a condition stating that he is not committed to what he has presented in the case of acceptance, this is not a positive, but merely a call to contract. Thus, the positive in the electronic contract is an expression of the will of the person wishing to contract remotely, which is through an international network of communications by means of audible audio. And includes all the elements necessary to conclude the contract so that the person can directly accept the contract. Thus, it is no different from traditional affirmation except in the method used only with the very essence. The description of the electronic affirmation does not change the self-affirmation simply because it was made over a communication network. The electronic word, if added to the affirmative, does not impair its original meaning. Traditional obligations and contracts. The question is merely a description of the different means of expression of will in an online contract. The latter, which made the electronic claim to be characterized by some characteristics related to

the nature of being made through a global network of information and communications. So what are the most important characteristics?

Second: the characteristics of electronic payment:

Electronic payment is subject to the same general rules governing traditional billing, but it is characterized by certain specificities relating to its nature and its existence through a global communications network. This allows for those who are more likely to use graphic illustrators more appropriate for certain types of sales, Of what is stable in the general rules, and can be limited to these particulars in the fact that it is expressed through a global network: for telecommunications, via an electronic intermediary. Thus, the most important of these characteristics are reflected below.

A. Electronic positivity is a global positive

The electronic payment is carried out using electronic media and via an international network of communications and information. Therefore, it does not comply with the political and geographical boundaries of countries, and the electronic payment accordingly is internationally positive due to the open and global internet. However, some see that there is nothing to prevent e-affirmation from being limited to a specific geographical area, with a specific geographical and spatial scope. It may limit the offer of products and services to a particular geographic area, for example, on some French websites Which restricts the positive only to French-speaking Francophone countries, and also the decision of the United States of America to ban the granting of economic sanctions to countries that are signatories to economic sanctions such as Cuba and North Korea, ie the affirmative may be regional or international, Delivery of products outside the pre-established regional range. The French Model Contract for Electronic Commerce has authorized the geographical area covered by the offer or those covered by the contract.

B - Electronic payment is made remotely:

Since contracting online is through websites, the positive is located on the site of the merchant owner of the goods or service, where it contains everything related to this commodity or service information such as type, price, quantity and delivery method . Because the electronic contract belongs to the remote contracting category, the electronic payment is in turn positive from a distance. It is subject to the rules of consumer protection in remote contracts, which impose on the professional or supplier a set of restrictions and obligations that he commits to the electronic consumer, , Providing the consumer with information about the merchant's identity and address, e-mail address, the basic characteristics of the products and services offered, their descriptions and prices, the means of payment or payment, the method of delivery, the consumer's choice of recourse in the contract, D-sale, and warranty period. Which are referred to in European Directive No. 7/97 on the protection of consumers in remote contracts. Which are the same as those approved by the Moroccan legislator in articles 29 and 30 of Law No. 31-08.

C - Electronic payment :

Is through an electronic intermediary requires an electronic presence of an electronic intermediary is the Internet service provider, it is through the network and using a visual audio device, and there is nothing to prevent the positive is the same Internet service provider. It should be noted that there are others participating in the provision of this service, as there are many people intervene in the communication and contribute to each role in the completion, including the communications agent and information supplier and the port supplier and

information provider. In both cases there is no paper support. Despite this similarity, the e-mail is characterized by a certain continuity, so that the payee can always return to read the catalog or the advertisement on the back The website or the addressee via e-mail, while the advantage of contracting the television through the time of the message displayed through the television screen, the duration of broadcast on television is limited and characterized by speed and short information, that is, the answer on television is characterized by Shortcut and meridian. The second requirement is to determine the language of the electronic billing and its spatial scope.

First: Determine the language of electronic billing:

The assumption of e-positivism has been an international cross-border benefit, until the language used in it is of great importance in the framework of electronic contracts, which raises the question of the eligibility of the requirement to use a particular language when expressing electronic affirmation?

What prompted us to raise this question is that some laws require the use of the national language to express the positive, such as the second article of the French law of August 4, 1994, called the law of Toubon, which requires the use of the French language in description and affirmation and presentation as well as the method of operation or use , Description of the warranty area of the product or service, as well as invoices and communications, and in any written, oral or audiovisual, and failure to respect this obligation entails the signing of the penalty. The aim of these measures is to ensure that consumers are protected so that they can buy, use, use or benefit from a service they know. Their nature, how they are used and the conditions for the guarantee of such products or services. It goes without saying that the offer is international in the case of electronic commerce, and here it may be asked whether the French consumer should be based on the law of toubon so that he can, in bad faith, decide the invalidity of the contract. It seems difficult to accept such a solution, especially if we imagine the situation of the trader if such legislation exists in many other countries

Here is the analogy proposed by the European Directive of 21 May 1992: "If a French consumer responds to an advertisement in an English-language newspaper or a television program for sale in German.

The first requirement: the methods of electronic acceptance:

Electronic acceptance is expressed in a number of ways, including written consent or electronic signature through e-mail, or through the chatting room chat, or download remotely by downloading the software or product or online download and download on the device The computer is connected.

One of the methods of electronic acceptance is also one-click approval simple-clic on the icon for that icon icone. "I'm OK" and French-language websites often use phrases like "j'accepte l'offre" or "d'accord". Web sites in English use "i agrée" or "ok".

However, in order to validate the admittance procedure, the positive may be required by double-clicking the icon for acceptance on the screen, in which case a single click does not affect the contract and acceptance becomes ineffective, What is positive to this method to ensure the consent of the contractible. In order not to invoke that the first click was through omission or error, double clicking is evidence of the consent of the contract holder.

In general, acceptance may be expressed in any way that does not cause the complainant to complain that his or her affirmation has been accepted, and the expression in this sense may be explicit and may be implied. How valid is silence to express it?

First: the express expression of electronic acceptance:

Article 11 of the Model Law on Electronic Commerce provides that "data messages may be used to express consent and that the contract does not lose its validity or enforceability solely on the basis of the use of a data message for that purpose".

In Chapter 65.5 of the CPA, it states that: "The validity of the conclusion of the contract requires that the person who sent the offer to him has been able to verify the details of his authorization and the total price and correct the possible error before confirming the said authorization for the expression About his acceptance

The bidder must give notice in an electronic manner without undue delay in receiving the offer. Upon receipt of the offer, the consignee becomes irrevocably bound to it

Acceptance and confirmation of the offer and notice of receipt shall be deemed to have been received if the parties to which the communication is made are able to access it. "

This chapter shows that it is easy to say that there is will if it is expressed in writing, but the difficulty arises in the absence of written evidence, and here is the question in particular whether the mere contact of the positive sign of acceptance or pressure on it is sufficient to express acceptance.

A - Click the Accept button:

The issue of the authoritative clicking on the icon for admission raised questions before the courts in the United States of America, and to what extent was this a sufficient expression of acceptance?

The US judiciary has responded that this act is acceptance, but the expression must be decisive. Therefore, the contract must include the so-called final acceptance letter, so as to avoid a spontaneous or spontaneous error that may arise from the hand while working on the computer. The message is in the form of questions such as "Do you confirm acceptance?" The answer is "yes" or "no" or in the form of a request to express the acceptance of two successive clicks on the icon assigned to it, rather than one click as well as the existence of many means that can be followed in order to overcome suspicion and reach full certainty in the matter By confirming an acceptance by means of an electronic order document to buy in the form of an electronic message, a form of a list or a form of data filling. The user of this website must release it on the screen and press a button to send it, which affirms its positive behavior in this respect.

B) Acceptance by e-mail:

The expression of acceptance by e-mail is the best way to ascertain the will of the latter and if one aspect of jurisprudence considers the illegality of contracting by printing or writing on air. However, the widespread use of e-mail by producers and their customers because it provides high speed and efficiency and greater accuracy in communication. The French Council of State considered it to be a customary editor. The Moroccan legislator followed suit, which stated in Chapter 417-1 that: "The edited document has an electronic pillar with the same evidence as the document on paper

The document shall be accepted electronically for proof, as is the document on paper provided that it is legally possible to identify the person who issued it, and that it is prepared and kept under conditions to ensure its completeness. Thus, the interviewer can express his or her acceptance by e-mail, since there is no doubt that it is an open acceptance of the affirmative addressed to him, regardless of the way in which the offer is directed either by e-mail or by the website. In addition to e-mail, chatting can be expressed as a chatting room, which is in turn spreading, especially in the context of international business dealings. In this regard, the United States Electronic Commerce Transactions Act of 1999 authorized the execution of agreements, negotiations, contracts and the creation of obligations in an electronic manner. In article 2/2, it defines what electronic businesses are: "those businesses which are managed or carried out in

whole or in part by means of Electronic or electronic registration, which are aimed at concluding contracts or fulfilling obligations arising from commercial transactions. " Which would make it possible to conclude negotiations electronically. It is this that leads us to wonder about the validity of silence to express acceptance.

The second requirement: return from electronic acceptance:

Many international and national legislations have established the principle of the right of return for acceptance of remote contracts, in order to provide sufficient protection for the counterpart in the process of electronic transactions, which do not allow the consumer to meet the actual possibility of inspecting the commodity and knowledge of the characteristics of the service before the conclusion The contract, although this right in fact represents a departure from the principle of binding force of the contract, is justified in the need to protect the consumer as the weak party in this contractual relationship.

According to the French model contract, the terms of reference shall be set forth in item 9 under the period of reference. The period of return shall be seven days of work days, calculated for the goods from the date of receipt of the goods. The consumer may receive confirmation from the merchant of the information contained in the email. If the merchant does not respect his obligation to confirm by e-mail, the period of reference to three months shall be calculated for the goods from the date of receipt of the consumer and for the services from the day of the contract. If the confirmation is delivered during these three months,

If the consumer begins his right of recourse, the merchant shall be obliged to refund the amounts paid without any additional expenses, within a maximum of thirty days. Which is the same as the European Directive No. 97/07 on consumer protection on remote contracting in Article 6, which gives the consumer the right to withdraw his acceptance within seven working days without giving any reason, or even without being subjected to any penalty, and the only obligation placed on him It bears the burden of returning goods to the professional.

The Moroccan legislator, like his French counterpart, has recognized the consumer's right to refer to remote contracts through article 36 of Act No. 31- 08, which sets out measures to protect consumers, which stipulate that the consumer has a full seven days to exercise his right of retreat; In the event that the Supplier fails to comply with the written assurance of the information provided for in Articles 29 and 32. Without the need to justify it or to pay a fine, with the exception of the return expenses if necessary. The deadlines referred to in the preceding paragraph shall apply from the date of receipt of the goods or acceptance of the offer in respect of the provision of the services. However, it must be noted that the right of recourse is not absolute, there are some contracts that the consumer is not entitled to modify the acceptance of such as those provided for in Article 38 of the same law.

14. Conclusion, finding and Recommendations:

14.1: Conclusion

From the above, it is clear that consent in the electronic contract is only a consensual in an ordinary contract, which is different in the way it is concluded only. It is a compromise that is concluded through electronic means to complete the electronic commerce operations and thus it is no exception to the provisions and rules of the general theory of the contract, Its structure and structure are based on the provisions of this theory, and it applies to all things and services that may be dealt with. However, this is closely related to the provision of protection and security to all parties to the different transactions and to each party obtaining an appropriate degree of confidence which enables it to proceed with the use of electronic means In the compact due to their characteristic Its ease and speed in completing business transactions.

Which is what the Moroccan legislator has mastered through issuing Law 53-05 in order to keep abreast of the developments in the legal environment related to electronic transactions by acknowledging the validity of the contract concluded electronically.

14.2 : Finding

- 1- The most important characteristic of the electronic contract about the traditional contract is the means through which it passes through, through an electronic environment using modern means of communication, especially the Internet. Which have contributed significantly to obtaining some kind of material dimension between the contracting parties in this type of contract, which has been reflected in the nature of both the positive and the accepted acceptance of the terms of consent in the electronic contract.
- 2- Sudan is one of the first Arab countries that has an electronic transactions law is the law of (2007). Only Jordan, the Emirate of Dubai, Bahrain, Tunisia and Lebanon
3. Electronic contracts are usually made online, and are open to users all over the world, especially in the case of reciprocity and acceptance through the site. This creates a problem as to how the parties to the contractual process are identified for the purpose of providing legal security. In this case The owner of the site that is exchanging the favor and acceptance of the other must identify the persons who use it, if not the owner or the owner of the site itself.
- 3- It is difficult to determine the eligibility of contractors in electronic contracts, because of the absence of material contractors, as they do not combine one contract board. There are many techniques for the identification of contractors in electronic contracts, including: adult check system, and also the "authentication system, Of the existence of fictitious persons or companies.
4. The method of expression in the contracts for acceptance of online contracts is consistent with the method of contracting may be by clicking several times on an icon or by the introduction of private information, and find no value for the silence as an expression of the e-contracts in the e-contracts.

14.3 Recommendations

The researcher suggests the following recommendations:

1. There should be more attention to the infrastructure of the Sudanese network to avoid the problems of delay and security of information.
2. We propose to amend some articles of the Sudanese Civil Code to be in a way that clarifies (concluding contracts by means of modern communication) to accommodate all the new developments in the field of communications, and modern means of contracting such as the Internet.
3. Develop a special electronic reality on the network provides advice and guidance to provide protection for the less experienced methods in the electronic contract.

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