



ELECTRONIC CONTRACT UNDER JORDANIAN
LAW: COMPARATIVE STUDY WITH ISLAMIC
LAW

BY

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ABSTRACT

This study is entitled “Electronic Commerce under Jordanian Law: Comparative Study with Islamic Law, Focusing on Contractual Issues”. It is a legal study that attempts to explore and discuss the legal issues which come as a result of contracting via electronic means. The study searches for suitable solutions for these issues within the general frame of the theory of the contract. It is conducted in two axes: Jordanian Law and Islamic Law. While the basic rules in Jordanian Civil Law which regulate the contract are taken from Islamic Law, the rules which are assigned to regulate the electronic contract in Jordanian Electronic Transaction Law are influenced by the international conventions, particularly by the United Nation Conventions, but not by Islamic Law. Therefore, this study attempts to harmonize between Islamic rules, the basic rules in Jordanian Civil Law and the rules of Electronic Transaction Law which are dedicated to regulate electronic contract. The method applied in the study is analytical, that includes comparative examinations of Quranic verses, Prophetic traditions, legal articles and literatures from relevant sources. Finally, the study comes out with several conclusions and recommendations which include harmonized solutions that are suitable for both laws; Jordanian Law and Islamic Law.

ملخص البحث

تأتي هذه الدراسة والتي هي بعنوان "المشكلات العقدية الناتجة عن التجارة الإلكترونية في ضوء القانون الأردني: دراسة مقارنة مع الفقه الإسلامي" للبحث في المشاكل القانونية المتعلقة بالعقد الإلكتروني والتي ظهرت بعد ظهور الوسائل الإلكترونية بشكل عام والانترنت بشكل خاص. وقد اختار الباحث أن تكون الدراسة مقارنة ما بين محورين: القانون الأردني من جهة والفقه الإسلامي من جهة أخرى. وقد وقع الاختيار على هذين المحورين لأن القواعد التشريعية المنظمة للعقد في القانون المدني الأردني نابعة من الفقه الإسلامي. في حين جاءت القواعد المنظمة للتجارة الإلكترونية والعقد الإلكتروني في قانون المعاملات الإلكترونية الأردني متأثرةً بالمعاهدات الدولية المنبثقة عن الأمم المتحدة، تحديداً قانون الأنسترال النموذجي. لذلك جاءت هذه الدراسة لمناقشة المشكلات القانونية الناتجة عن العقد الإلكتروني ووضع حلول لها من خلال عمل تجانس وتناسق ما بين القواعد الأساسية في القانون المدني (والتي نبعت في أصلها من الفقه الإسلامي) من جهة مع القواعد الخاصة لتنظيم العقد الإلكتروني الواردة في قانون المعاملات الإلكتروني (والتي تأثرت بشكل جلي بقانون الأنسترال النموذجي) من جهة أخرى. وقد حرص الباحث على أن تستفيد الدراسة من مرونة القواعد الأساسية في الفقه الإسلامي لتتسع وتستوعب المشكلات القانونية التي ظهرت في التعاقد الإلكتروني. وقد تم ذلك من خلال دراسته تحليلية مقارنة ما بين نصوص القانون المدني وأصلها في الفقه الإسلامي والنصوص القانونية المخصصة لتنظيم العقد الإلكتروني الوارده في قانون المعاملات الإلكترونية.

APPROVAL PAGE

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DECLARATION

I hereby declare that this thesis is the result of my own investigation, except where otherwise stated. Other sources are acknowledged by footnotes giving explicit references and a bibliography is appended.

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**ELECTRONIC CONTRACT UNDER JORDANIAN LAW: COMPARATIVE
STUDY WITH ISLAMIC LAW**

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- Court of Cassation of Dubai, in 3\9\2001.
- Court of Cassation of Egypt, 22 may, 1991, Majmū‘at Aḥkām al-Naqḍ, at 1171.
- Court of Cassation of Egypt, 31 January, 1978, Majmū‘at Aḥkām al-Naqḍ, at 357.
- Court of Cassation of Iraq, decision number 12, at 29\8\1984, Majallat al-Figh wa al-Qaḍā’, Majlis al-Amānah al-‘āmmah, al-‘Adad al-Qānūny, April\1986, at 274.
- Court of Cassation of Iraq, decision number 32, at 19\2\1989, Majallat al-Qaḍā’, no 1, 45\1989, at 555.
- Court of Cassation of Iraq, decision number 565\Ḥuqūq\956, al-Karkh, at 28\5\956.
- Court of Cassation of Jordan, Decision Number 1011\93, 1994, al-Ijtihād al-Qaḍā’y, at 150\4.
- Court of Cassation of Jordan, decision number 1043\93, 1995, al-Ijtihād al-qaḍā’y, at 152\4.
- Court of Cassation of Jordan, decision number 1075\91 of 1993. al-Ijtihād al-qaḍā’y, at 730\5.
- Court of Cassation of Jordan, decision number 1075\91, at 851 of 1993, al-Ijtihād al-Qaḍā’y, at 164\4.
- Court of Cassation of Jordan, decision number 1095\2000, at 31\7\2000, al-Ijtihād al-qaḍā’y of 2000, at 89\7.
- Court of Cassation of Jordan, decision number 121\84 of 1984.
- Court of Cassation of Jordan, decision number 1242\94, 1995, al-Ijtihād al-qaḍā’y, at 153\4.
- Court of Cassation of Jordan, decision number 1256\1995, at 29\11\1995, at 1382 of Majallat Naqābat al-Muḥāmīn of 1996.
- Court of Cassation of Jordan, decision number 1323\97, at 4677 of 1997, al-Ijtihād al-Qaḍā’y, at 183\4.
- Court of Cassation of Jordan, decision number 158\1979, at 16\6\1979, at 1496 of Majallat Naqābat al-Muḥāmīn of 1979.
- Court of Cassation of Jordan, decision number 158\1990, at 27\6\1990, at 1656 of Majallat Naqābat al-Muḥāmīn of 1991.
- Court of Cassation of Jordan, decision number 1705\1998, at 17\2\1999, at 500\2 of Al-Majallah al-Qaḍā’eyyah of 1999.
- Court of Cassation of Jordan, decision number 183\1968, at 1\8\1968, at 612 of Majallat naqābat al-muḥāmīn of 1968.
- Court of Cassation of Jordan, decision number 1878\2003 of 2003, Manshūrāt ‘Adāleh.
- Court of Cassation of Jordan, decision number 1906\1999, at 29\2\2000, at 207\2 of Al-ijtihād al-qaḍā’y of 2000.
- Court of cassation of Jordan, decision number 226\1961, al-Majallah al-qaḍā’eyyah of 1961, at 612.
- Court of Cassation of Jordan, decision number 229\2001, at 21\6\2001, Manshurāt ‘Adālah.
- Court of Cassation of Jordan, decision number 2357\2001, at 13\9\2001, Manshūrāt Markiz ‘Adālah.

Court of Cassation of Jordan, decision number 262\1999, at 31\3\1999, at 285\3 of Al-Majallah al-Qaḍā'eyyah of 1999.

Court of Cassation of Jordan, decision number 275\1970, at 21\1\1971, at 177 of Majallat Naqābat al-Muḥāmīn of 1971.

Court of Cassation of Jordan, decision number 2765\1998, at 26\6\1999, at 243\6 of al-Majallah al-qaḍā'eyyah of 1999.

Court of Cassation of Jordan, decision number 3210\2004, at 16\1\2005, Manshūrāt Markiz 'Adālah.

Court of Cassation of Jordan, decision number 347\1986, at 5\6\1986, at 1685 of Majallat Naqābat al-Muḥāmīn of 1989.

Court of Cassation of Jordan, decision number 395\1998, at 29\4\1998, at 3666 of Majallat Naqābat al-Muḥāmīn of 1998.

Court of Cassation of Jordan, decision number 41\96 of 1996, al-Ijtihād al-Qaḍā'y, at 689\5.

Court of Cassation of Jordan, decision number 470\986, Majallat al-Muḥāmīn, issuance number 37, at 2009.

Court of Cassation of Jordan, decision number 48\1960, at 50 of Majallat naqābat al-muḥāmīn of 1960.

Court of Cassation of Jordan, decision number 49\48 of 1984.

Court of Cassation of Jordan, decision number 53\1979, at 12\3\1979, at 1015 of Majallat Naqābat al-Muḥāmīn of 1979.

Court of Cassation of Jordan, decision number 551\94, 1997, al-Ijtihād al-Qaḍā'y, at 167\4.

Court of Cassation of Jordan, decision number 560\1985, at 27\1\1986, at 219 of Majallat Naqābat al-Muḥāmīn of 1988.

Court of Cassation of Jordan, decision number 627\1998, at 26\5\1998, at 233\5 of al-Majallah al-qaḍā'eyyah.

Court of Cassation of Jordan, decision number 67\1988, at 28\2\1988, at 1080 of Majallat Naqābat al-Muḥāmīn of 1990.

Court of Cassation of Jordan, decision number 788\2004, at 18\8\2004, Manshūrāt 'Adāleh.

Court of Cassation of Jordan, decision number 80\1993, at 30\3\1993, at 2096 of Majallat naqābat al-muḥāmīn of 1993.

Court of Cassation of Jordan, decision number 815\92 of 1993, Majallat Naqābat al-Muḥāmīn, 6th issuance, at 1198.

TABLE OF STATUTES

Bahrain Commercial Law, 1987 (Act No. 7 of 1987).
Bahrain Electronic Transaction Law, 2002 (Act No. 28 of 2002).
Bahrain Evidence Law, 1996 (Act No. 14 of 1996).
Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters 1968.
Convention on the law applicable to contractual obligations for the European Union (EU) of 1980 (Rome Convention).
Convention on the Limitation Period in the International Sale of Goods of 1974.
Egyptian Civil and Commercial Procedure Law, 1968 (Act No. 13 of 1968).
Egyptian Civil Law, 1948 (Act No. 131 of 1948).
Egyptian Electronic Signature Law, 2004 (Act No. 15 of 2004).
Egyptian Evidence Law in Civilian and Commercial Articles, 1968 (Act No. 25 of 1968).
Egyptian Telecommunication Law, 2003 (Act No. 10 of 2003).
Electronic Transaction and Commerce Law for the Government of Dubai (ETCLGD), 2002 (Act No. 2 of 2002).
English Law of the sale of goods of 1979.
European Directive for Electronic Signatures, 1999 (Act No. 93 of 1999).
Iraqi Civil Law, 1951 (Act No. 40 of 1951)
Jordanian Arbitration Law, 2001 (Act No. 31 of 2001).
Jordanian Banking Law, 2000 (Act No. 28 of 2000).
Jordanian Civil Law (JCL), 1976 (Act No. 43 of 1976).
Jordanian Civil Procedure Law (JCPL), 1988 (Act No. 24 of 1988).
Jordanian Constitution Law of 1952.
Jordanian Electronic Transaction Law (JETL), 2001 (Act No. 85 of 2001).
Jordanian Evidence Law, 1952 (Act No. 30 of 1952).
Jordanian Labor Law, 1996 (Act no.8 of 1996).
Jordanian Law of Formation of Regular Courts, 2001 (Act No. 17 of 2001).
Jordanian Penal Code, 1960 (Act No. 16 of 1960).
Jordanian Personal Status Law, 1976 (Act No. 61 of 1976).
Jordanian Securities Law, 2002 (Act No. 76 of 2002).
Jordanian Telecommunication Law, 1995 (Act No. 13 of 1995).
Jordanian Trade Law, 1966 (Act No 12 of 1966).
Kuwaiti Civil Law, 1980 (Act No. 67 of 1980).
Kuwaiti Evidence Law, 1980 (Act No. 39 of 1980).
Kuwaiti law of regulation of legal relationships which contain foreign element, 1961 (Act No. 5 of 1961).
Lebanese Civil Procedure Law, 1983 (Act No. 90 of 1983).
Libyan Civil Law, 1936 (Act No. 29 of 1936).
Majallat al-Aḥkām al-‘Adleyyah (MAA) (The Ottoman Courts Manual (Ḥanafī)).
Malaysian Digital Signature Law, 1997 (Act No. 562 of 1997).
Malaysian Electronic Commerce Law, 2006 (Act No. 658 of 2006).
New York Convention of 1958: Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

Syrian Civil Law, 1949 (Act No. 84 of 1949).
Syrian Evidence Law, 1947 (Act No. 359 of 1947).
Tunisian E-Commerce Law, 2000 (Act No 83 of 2000).
UNCITRAL Model Law on Electronic Commerce of 1996.
UNCITRAL Model Law on Electronic Signature of 2001.
United Arab Emirates Civil Code of 1986.
United Arab Emirates Commercial Transaction Law, 1993 (Act No. 18 of 1993).
United Arab Emirates Federal Law on the Issuance of the Evidence for Civil and Commercial Transactions, 1992 (Act No. 10 of 1992).
United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea - the "Rotterdam Rules" of 2008.
United Nations Convention on Contracts for the International Sale of Goods CISG of 1980.
United Nations Convention on the Carriage of Goods by Sea - the "Hamburg Rules" of 1978.
United Nations Convention on the Use of Electronic Communications in International Contracts of 2005.
Yemeni Electronic Transaction Law, 2006 (Act No. 40 of 2006).
Yemeni Evidence Law, 1992 (Act No. 21 of 1992).

LIST OF ABBREVIATIONS

ACH	Automated Cleaning House
BETL	Bahrain Electronic Transaction Law
CISG	United Nations Convention on Contracts for the International Sale of Goods CISG of 1980
CSP	Certification Service Provider
EFT	Electronic Funds Transfer
ETCLGD	Electronic Transaction and Commerce Law number 2 of 2002 for the Government of Dubai
IBM	International Business Machines Corporation
IIFA	International Islamic Fiqh Academy
JCL	Jordanian Civil Law
JCPL	Jordanian Civil Procedure Law
JEL	Jordanian Evidence Law
JETL	Jordanian Electronic Transaction Law
JTL	Jordanian Trade Law
MAA	Majallat al-Aḥkām al-‘Adliyyah
MLEC	Model Law of E-Commerce (which issued in 1996)
OIC	Organization of Islamic Conference
TECL	Tunisian Electronic Commerce Law
WTO	World Trade Organization

CHAPTER ONE

INTRODUCTION

The world has witnessed a wide range of advances in science and technology which have made many changes to our lifestyle and have helped us to overcome many difficulties. The field of communication is one of the fastest developing scientific fields in recent decades. It has been creating unknown and unprecedented methods which connect people, regardless of their location.

Today, the Internet has become one of the widest used communication tools which has influenced the development of business and created a new style of commerce known as “e-commerce” or “e-business”. It has become commonplace nowadays for working people to use Internet tools as easily as they use the telephone, and Internet access has become a 'norm' for most offices and work-stations. Therefore, companies and merchants routinely use the Internet for communicating and contacting each other to perform their daily transactions.

As the electronic means, generally, and the Internet, particularly, have changed the form and conduct of commerce, this change has taken place nationally and internationally, placing greater reliance on technology and increasing the use of the Internet as an interactive medium.

Although these electronic means have eliminated a lot of difficulties and reduced the effort needed to conduct transactions among people, they have resulted in some legal challenges. They have generated legal issues in the formation of contracts such as regulating the manner of forming the electronic contract and specifying the exact time and place in which this contract is formed. Further, they have created new

methods of deception and fraud which are not known before. This occurs when the merchants exploit the remoteness which exists between them and the consumers in view of the fact that this remoteness hinders the consumers from inspecting the goods which they buy. Furthermore, they have generated questions about the methods of payment in one hand, and the rules of delivery, particularly those related to software products, on the other hand. Additionally, these electronic means have given rise to complex jurisdictional problems, and created new questions about the law that must be applied on the conflicting parties. Besides that, they have ignited debate in the problem of evidence of the electronic contract whereas the traditional documental proof disappears here. These legal issues need to be studied and dealt with legislatively and judicially, and any legislative shortage shall be referred to other sources of the law which are determined in Jordanian Law such as the rules of equity, customs and other sources.

Like most other countries in the world that have enacted legislation in respect of e-commerce, Jordanian Electronic Transaction Law (JETL)¹ was issued in Jordan in 2001 to regulate this new form of commerce. This law is considered a special legislation that regulates the transactions which are conducted through electronic means. This means, if any dispute arises in these transactions, the court shall follow this Act to judge between the parties. However, this does not necessarily mean that other laws are not applied. Traditional contracting rules in Jordanian Civil Law (JCL)² remain the basic foundation and they are still applied when there is no regulatory provision in the assigned law (i.e. JETL).

This study is dedicated to discussing the legal issues mentioned earlier from the perspective of Jordanian Law and Islamic Law. Islamic Law is selected because

¹ Jordanian Electronic Transaction Law (JETL), 2001 (Act No. 85 of 2001).

² Jordanian Civil Law (JCL), 1976 (Act No. 43 of 1976).

Jordan is an Islamic country. Islamic Law may offer solutions to some existing problems and, thereby, complement Jordanian Law. Additionally, Islamic Law is selected because it is the basic foundation on which the rules of contract in JCL were codified, i.e. the roots of the rules of contract in JCL are found in Islamic Law. This facilitates harmonizing the two laws in the field of this study.

Thus, this study is conducted to discuss the abovementioned legal issues under these two laws. This discussion occurs by making analysis and concluding comparison between them. In the end, suggestions and conclusions are put forth.

1.1 RESEARCH OBJECTIVES

The study aims at achieving the following objectives:

1. To study the important legal issues that arise from contracts concluded via the electronic media, according to Jordanian Law and Islamic Law.
2. To study the Jordanian statutory rules in this field and compare them with Islamic Law to find solutions which are just and fair.
3. To harmonize Jordanian Law with Islamic Law in the field of electronic contract and find unified solutions which are suitable and appropriate for them.
4. To fill the legal vacuum that exists in Jordanian Law, in the field of electronic contract, by exploring the relevant statutory laws and Islamic Law.
5. To study the extent to which JETL complies with the international criteria in electronic commerce.
6. To study the extent to which Jordanian Law protects consumers in the field of electronic contract.

1.2 RESEARCH BACKGROUND

This research is dedicated to discuss the legal issues which have appeared as a result of electronic communication media. It also discusses the legal solutions which have been adopted for these issues. This discussion is done within Jordanian law framework and Islamic Law framework. Therefore, it focuses on the act which is assigned to regulate e-commerce in Jordan, and also focuses on some verses and prophetic traditions which were narrated from the prophet Mohammad (PBUH). Making comparison between these two laws may lead to integrate each other, particularly because the general rules of the contract in Jordan find their roots in Islamic Law.

This research, at first, defines e-commerce and e-contract in the light of Jordanian Law and Islamic law doctrines. The research also defines and discusses several terms used in the assigned act in Jordan and compares them with other similar laws. The research also discusses the viewpoint of Islamic law and the extent to which this new method of commerce agrees with this law. It clarifies the basic rules in Islam and the viewpoint of temporary Muslim jurists in this regard.

Whereas the stage of conclusion of the contract is important, this study searches in the mechanism and the manner of the conclusion which occur through electronic means. It focuses on the elements of the contract and how these elements are formed electronically. It discusses where and when the e-contract is exactly concluded. In addition, despite the fact that the contract becomes binding after conclusion, the study discusses the cases in which it remains rescindable, i.e. the options (*al-khayārāt*) which were originated and regulated by Islamic law. The study shows that these options are very important to protect the consumer from cheating and deception which may find fertile environment in e-commerce.

The study does not only focus on the issues which come as a result of the stage of formation of electronic contract, but it also focuses on the issues which may happen during the performance stage of this contract. Thereby, it gives the delivery of goods important part in this research. Likewise, electronic payment takes wide range of discussion.

Beside these stages (the stage of formation and the stage of performance of electronic contract), the study discusses the issues which relate to litigation stage if a dispute arises between the parties. Accordingly, the study discusses the issue of competent court, i.e. the court which the plaintiff can bring his case before. In addition, if the court competent is specified, which law should be applied between the parties? The applicable law is important issue that should be regulated in the electronic contract. The study is interested with this issue because the parties of the electronic contract are usually from different countries and each of them belongs to legal system differs from the other.

If a dispute arises between the parties, each party brings his proofs before the court. In order to bring a legal proof in this regard, the research is interested with the electronic writing and the electronic signature. Thereby, the research discusses the evidential weight which is given to the electronic document and to the electronic signature in the light of the rules of Jordanian law and Islamic law.

Thus, this research discusses the legal lacunas in the field of electronic contract which come as a result of the invention of electronic media. This is done comparatively between Jordanian Law and Islamic Law.

1.3 STATEMENT OF THE PROBLEM

There are several legal issues arising from electronic contract. Some of these issues are dealt with under the law of contract. The solutions differ from country to country based on original basic policies and attitudes. Accordingly, the following are the primary questions of this research:

1. How are the new legal issues which have appeared in the field of electronic contract dealt with in Jordanian Civil Law?
2. If the traditional rules in the Jordanian Civil Law are unable to solve these issues (the issues of electronic contract), does the Act assigned to electronic commerce in Jordan able to solve them?
3. Does the Jordanian legislation ensure the balance between the parties in the electronic contract? If the consumer is weak in this contract, is he subjected to deception without legal protection?
4. In case the Jordanian legislation is not able to cover the mentioned legal issues, is the Islamic Law able to do that? Does the Islamic Law ensure protection to the consumers in these contracts?

The study discusses these legal issues in light of Jordanian and Islamic Laws. This requires analyzing these issues, studying and analyzing the statutory rules, comparing Jordanian rules to Islamic rules and introducing solutions to the issues.

1.4 HYPOTHESES

For carrying out this research, the researcher's conviction is that the current legislation in Jordan is inadequate to solve the new legal issues. This is because the rapid development in the communication sector has been creating issues that are not covered by the current legislation. Issues such as the place and the time of formation