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عيسى السليطي للمحاماة
ESSA AL SULAITI LAW FIRM

MODERN LAW



ELECTRONIC CONTRACTS

A STUDY ON THE ROLE OF TECHNOLOGICAL
DEVELOPMENTS IN THE FORMATION OF THE CONTRACT AND
THE PROTECTION OF THE WILL OF THE CONTRACTING
PARTIES

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STUDY ON THE ROLE OF TECHNOLOGICAL DEVELOPMENTS IN THE FORMATION OF THE CONTRACT AND THE PROTECTION OF THE WILL OF THE CONTRACTING PARTIES

PREAMBLE

This era is witnessing an unprecedented technological revolution coupled with significant and rapid development in digital communications network, which has brought the world closer, shortened time, and abolished geographical boundaries between States. With this, contracts of all kinds have emerged, leading to a new type of trade called "Electronic Commerce or E-Commerce". Commodities and services are now displayed in an intangible way where contracting parties negotiate remotely, exchanging information and other data rapidly in a virtual contract meeting. According to UNCTAD, global e-commerce sales surpassed \$27 trillion in 2021, and also Qatar Chamber of Commerce and Industry estimated that the e-commerce volume in the State, during the same year, amounted to \$2.3 billion. Amongst the factors that boosted this type of commerce were COVID-19 precautionary measures, the development of the State's digital sector, and the growing and a large number of internet users. E-commerce is projected to generate revenues of up to 12 billion riyals in 2022.

It has become crucial to find means for processing and regulating electronic contracts, which created a challenge to legal systems, most notably remote contracting via the Internet and the legality of electronic transactions such as the expression and convergence of wills through the exchange of data messages, the contract fulfillment, and due proofs. The forms of violations and daily crimes in the e-commerce environment have led to an increase in disputes regarding these transactions, which calls for a search for the applicable law and the competent court to adjudicate the dispute and the extent to which the existing legal texts conform with the problems and challenges created by modern means of communication. Therefore, many legal attempts at the doctrinal, judicial and legislative levels have emerged to identify the problems of dealing with electronic media and the forms of disputes arising as a result of such means and to propose appropriate solutions in order to regulate and put them in the correct frame.

IMPORTANCE OF SHEDDING LIGHT ON ELECTRONIC CONTRACTS

We are in dire need of legal studies on the nature of this new topic in the context of law to determine the extent of response to modernity and information technology in commerce and transactions and the relationship between law and information technology, and to determine whether the law follows technology and adapts to it, or a different approach should be adopted with the appropriate legislative environment and advanced laws that entail such approach to regulate electronic transactions in order to address this type and the resulting unfamiliar problems, disputes and methods of entitlement and violation of rights. Let alone the lack of legal culture among dealers involved in electronic commerce, especially in developing countries, which leads to fear and reluctance of merchants and consumers to deal with these types of contracts.

As a result, national and international interest in these types of contracts increased due to their great importance in the lives of individuals

and States. The United Nations Commission on International Trade Law, the World Trade Organization, the Organization for Economic Cooperation and Development, the Council of Europe and the World Intellectual Property Organization, as well as many national legal systems, among which is undoubtedly the Qatari national legislator, are focusing on these contracts.

In view of the above, the study of the legal aspects associated with electronic transactions, especially with regard to the will of the contracting parties, is critical due to the great importance of such matters, both during the negotiation of electronic transactions or during the conclusion of such transactions, and even during their implementation. People who deal electronically must have a free and conscious will when they sign a contract in a manner that guarantees the integrity of their will from any defects, and that protects the contract from the possibility of avoidance.



DEFINITION AND CHARACTERISTICS OF ELECTRONIC CONTRACT

Definition of e-commerce in general and e-contracts, in particular, was one of the things that sparked controversy and had differing views. The reason for such disagreement maybe is probably due to the complexity of this type of commerce and the diversity of contracts involved, which led to different concepts and definitions.

And whereas e-contract is a form of a distance contract, it was defined by the Article 2 of the Directive of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts as: "any contract concerning goods or services concluded between a supplier and a consumer under an organized distance sales or service-provision scheme run by the supplier, who, for the purpose of the contract, makes exclusive use of one or more means of distance communication up to and including the moment at which the contract is concluded".

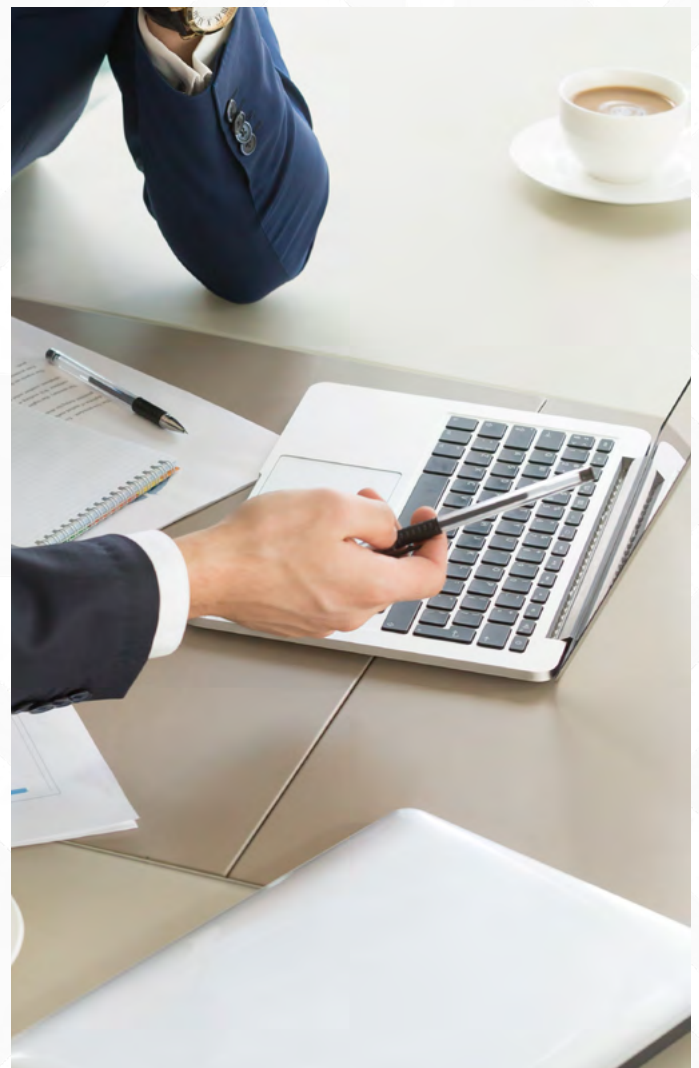
While Article 2 of the Electronic Transactions and Commerce Law No. 16 of 2010, defined electronic transaction as: "any deal, contract or agreement concluded or performed, in whole or in part, through electronic communications".

A part of legal jurisprudence based its definition of e-contract on the capacity and characteristics of the contracting parties, and defined it as: "The performance of some or all business-to-business or business-to-consumer transactions for goods and services through information and communication technology".

E-contract has several characteristics, the most important of which is that it is a distance contract. The essential feature of the e-contract is that it is concluded between two contracting parties not present in an actual contracting

setting, but rather concluded remotely through different technological means via a virtual or constructive contracting session. E-contract is also characterized by the commercial nature, as well as the consumer nature as it is often concluded between a merchant and a consumer, therefore it is a consumption contract.

In addition, one of the distinguishing characteristics of the e-contract is that it is a bargaining contract. Mere agreement of the contracting party to the pre-set conditions is not the end of it, but rather he has the right to move from one site or offer to another and choose and leave whatever he wants. Therefore, consensuality is prevailing in e-contracts, not adhesion.



FORMATION OF ELECTRONIC CONTRACT

E-contracts concluded through the Internet are not essentially different from traditional contracts, as they do not fall outside the framework of the general rules regulating the provisions of the contract in general, although these contracts need special legal rules to address some of their aspects. It is known that the e-contract is concluded remotely without the physical presence of the contracting parties, therefore it is necessary to address two main points, electronic negotiation and consensuality in e-contracts.

ELECTRONIC NEGOTIATION

The increase in commercial activity between states gained negotiations significant importance in commercial dealings, whether for individuals or commercial companies. The conclusion of an electronic contract is often preceded by extensive negotiations in preparation for the conclusion of the contract, especially important contracts that may involve dealings of a large technical or economic nature. In an e-contract, negotiation means a series of talks, exchange of views, and exertion of every effort between the two negotiating parties with the aim of reaching an agreement on a specific deal.

Traditional swift negotiation is commensurate with the nature of simple contracts, but cannot work with the contracts created by advanced and modern methods, as they relate to giant and multinational projects, involve complex operations, and full of technical and legal complications. Accordingly, it is critical that its conclusion be preceded by a difficult stage of negotiations that may take a lot of time and effort. Therefore, this stage is one of the most important stages in an e-contract, and indeed the most serious at all, as it identifies most of the obligations and rights of the contracting parties, and due to legal issues, it entails, such as cutting off negotiations with bad faith or without a serious reason, as well as the nature of the responsibility that results from this cutting off.

The importance of negotiation is also evident in that it is a means of understanding and convergence of views between the contracting parties, and plays a preventive, vital and effective role in preparing for the stage of concluding the contract and limiting the causes of conflict in the future. It also ensures that each of the negotiators has access to the precise details of



the contract terms and the basic specifications related to the negotiated subject.

There are contracts that are not preceded by negotiations, such as the familiar contracts in daily life. However, the importance of negotiation becomes more evident, especially in commercial or industrial contracts whose execution expands over a long period of time, in terms of being an effective means of restoring the contractual balance in the event of a change of circumstances. As the economic conditions surrounding the contract are subject to continuous change, this may upset the balance of contractual relations, and make the execution of the contract as agreed upon cumbersome for the debtor, so both parties in this type of contract are keen to include a clause under which each of them is committed to negotiating how to overcome these difficulties. This condition is called the renegotiation clause or contractual rebalancing clause, or hardship clause as in English law.

The obligations arising from the negotiation stage are pre-contractual obligations posed by law on negotiators and shall be respected, with the aim of reaching a final agreement and achieving the interests of the parties and protecting their legal rights. Breach of these obligations entails a tort liability, as contractual liability may not be imposed before the contract is concluded.

The tort liability is part of public order, and parties to the electronic negotiation may not agree in advance to waive it, and every clause to the contrary is null and void. The legal book of the great jurist, Dr. Abdul Razzaq Al-Sanhouri, states that the obligation whose breach results in tort liability is a legal obligation, i.e. obligation established and determined by the law, and shall not be waived by the will of the parties. Therefore, compensation is due for all the damage, whether foreseen by the parties or not, and the parties may not agree to waive tort liability.

(Dr. Abdul Razzaq Al-Sanhouri – Commentary to the Civil Code – First Part – P. 753 – Paragraph 512)

There are several obligations that fall on the parties during the negotiation stage, the most important of which are:

(1) Obligation to enter into negotiations: The parties to the negotiation shall sign a preliminary contract to enter into negotiation to discuss the final contract to be reached on the specified date. So, the negotiation obligation is founded in the negotiation agreement, and no party may refrain, or delay, from entering into negotiations, otherwise, the defaulting party shall be liable for the damages that may occur to the other party. Each party shall exercise due diligence for the succession of negotiations. If any party commits an act that would lead to the failure of the negotiations, he shall be deemed in violation of his obligation to exercise due diligence imposed on such party by the obligation to exercise ordinary diligence and consistent with the requirements of good faith in the implementation of the obligations.

(2) Obligation of good faith: The principle of good faith in negotiation requires safety and honesty, and this is a mutual obligation on both parties to achieve a goal rather than an obligation to exercise diligence.

(3) Obligation to inform: The parties negotiating through the internet are obligated to provide each other with all the information available related to the subject of the contract that each party must be aware of.

(4) Obligation of moderation and seriousness: Each of the negotiating parties is committed to seriousness and moderation in the negotiation stage, and the parties shall continue to negotiate seriously and moderately in submitting offers and discussing the opinions and ideas of the other negotiator in an unexaggerated manner that does not threaten the failure of negotiations. The parties shall

also not be hard-minded, respect treaties and prevailing commercial norms, seek to end the negotiation process on appropriate dates, and not negotiate with a third party, which is called the prohibition of parallel negotiations, provided that there is a prior agreement on that.

(5) **Obligation to cooperate:** This obligation is imposed by the principle of good faith in concluding contracts, and therefore it is implicitly imposed without the need to stipulate it expressly. This obligation remains in place throughout the negotiation stage, and forms of cooperation may not be determined, rather every action based on cooperation and mutual trust falls under the cooperation clause.

(6) **Obligation of confidentiality:** The negotiation process may require that one of the parties disclose to the other some important secrets, and this obligation requires the negotiator to whom such information was disclosed to, not to disclose, nor exploit, the same to others.

Each negotiator has the absolute freedom

to cut off negotiations whenever he desires, according to the principle of freedom of contract, which permits each party to withdraw from negotiations at any time with no liability as long as such withdrawal is justified. The party withdrawing from the negotiations is not forced to continue negotiation until the conclusion of the final contract.

In this regard, the Egyptian Court of Cassation ruled that negotiation is a mere material act and does not have any legal effect. Each negotiator is free to cut off negotiation at any time with no liability and is not required to justify his withdrawal. The offer is the proposal through which the person expresses his definitive will to conclude a specific contract and when accompanied by a corresponding offer, then the contract is concluded. The contract shall be complete and binding only with the evidence of the convergence of the contracting parties' will to establish and enforce this obligation.

(Egyptian Court of Cassation – Appeal No. 559 of Judicial Year 74 – Hearing of 20/03/2007)



CONSENSUALITY IN ELECTRONIC CONTRACTS

The law requires consensuality and mutual consent to produce the intended legal effect of the contract in order to conclude the contract. The will constitutes consent and has no legal value unless it is expressed by an apparent action. The contract is concluded as soon as the parties express their mutual consent, taking into account the specific conditions required by the law that decides the conclusion of the contract.

It is worth noting that most Arab civil laws did not require a specific method of expressing the will, and it may be implicit unless the law stipulates or the parties agree otherwise. The Hague Convention of 1964 on the Uniform Law on the

Formation of Contracts for the International Sale of Goods, as well as the 1980 Vienna Convention on the International Sale of Goods, emphasized the principle of consensuality.

Consensuality is an essential requirement and a prerequisite for contracting through the Internet, by expressing the will expressed as an offer and acceptance for a legal bond stating that an e-contracting is when an offer is proposed by a party through audio and visual methods, or both, on the telecommunication network meets an acceptance expressed by another party through the same methods in order to achieve a process that both parties wish to accomplish.



EXPRESSION OF WILL IN ELECTRONIC CONTRACTS

Civil laws in general, and laws that govern contracts conducted (digitally - electronically) in particular, are concerned with the legal protection for contracting parties. Every day, billions of transactions and contracts are concluded, all of which have legal aspects. According to the World Bank, there are now about 3.4 billion Internet users around the world, and about 210 billion e-mails are exchanged daily around the world, in addition to about 40 million purchases per day on Amazon alone.

These amazing statistics should not obscure the fact that any transaction completed was based on a contractual framework that entails mutual obligations between the transacting parties, which requires protection for the person who contracted with electronic services or goods providers, whether through websites, social media, electronic stores, and others, in light of the development of international trade and technological developments impact on it. Therefore, legislators, at the international and local levels, were prompted to develop appropriate plans and legal mechanisms to regulate e-contracting.

The conclusion of contracts in general and e-contracts, in particular, requires offer and acceptance. Electronic offer is the express the will of the person wishing to contract remotely through the internet by audio and visual methods and includes all the elements necessary for concluding the contract, and the other party can directly accept that offer of contracting. Electronic offer may be privately addressed to specific persons through e-mailing technology that allows the exchange of contract offers through data messages, and maybe generally addressed to unspecified persons through commercial websites spread across the Internet.

Electronic offer must be matched by another contractual will that includes acceptance of such offer, and e-contracts concluded over the Internet do not differ from traditional contracts in this respect. The second expression of the will must be final and legally effective, and must be informed and expressed freely by the contracting party, confirming his intention to engage in the contractual relationship.

1980 Vienna Convention on the International Sale of Goods defined the acceptance in a manner that conforms with the general rules, as Article (18/1) states: "A statement made by or other conduct of the offeree indicating assent to an offer is an acceptance."

In order to confirm acceptance, the French Council of State referred to two phases: the phase of clear information, without the numerous texts referring to the general conditions of sale. While the second phase is acceptance of the offer, acceptance of the price, acceptance of other conditions in the contract, the final declaration of confirmed satisfaction, whether by e-mail with saving the message or by two different clicks.

There are also many techniques to overcome doubt in the confirmation of acceptance, including a purchase order document (Commande De Ban) that the customer must edit on the screen to confirm his intention or confirmation of the purchase order (Confirmation). Another way that some websites and companies use, which is to ask the consumer to confirm his acceptance by e-mail, or to fill out a model form with additional information, including writing statements expressly stating acceptance as "Agree" or "I Accept", or to enter the credit card password or to use a third-party authenticated private, in order to prove the expression through

that information edited on the computer screen.

In the same context, the Qatari Electronic Transactions Law addressed the expressing the acceptance to conduct transactions using electronic communications electronically in its second article, stipulating that the consent of the person to conduct transactions using electronic communications may be inferred from that person's conduct. It also stated that the governmental entities shall give explicit consent in relation to electronic transactions to which they are a party.

It is worth noting that the Qatari judiciary dealt with the issue of electronic expression of will in a judgment rendered by the Court of Cassation No. 158 of 2012 on 04/12/2012, recognizing its legal effect when the contracting party sent an email to the other contracting party expressing his will to terminate the contractual bond on the grounds that he is not willing to renew the lease contract.

The Court of Cassation, in its judgment No. 275 of 2016 on 15/11/2016, when hearing an appeal related to the enforcement of legal rules relating to contracts concluded electronically, emphasized that: "Contracting parties who use electronic means in their dealings may conclude their contracts and agreements through such means, whether through e-mail, or through pre-set electronic mechanisms. The judge may constitute the offer and acceptance through these means without the need for the offer and acceptance to be hard written and signed by both parties, except in the case of electronic signatures. And after referring to Articles 1, 4/1 and 20/1 of the Electronic Transactions and Commerce Law No. 16 of 2010, electronic media have become a means of increasing popularity and use among individuals and merchants, forcing the legislator to intervene to keep pace with this development in the transactions by regulating them and setting their controls and legal effects, and allowing those dealing with such means to conclude their contracts and

agreements through them. Considering the above, and whereas the appellant company insisted on the evidence of the extracts of the electronic messages exchanged with the appellee and its representatives, and the bank messages it received showing the appellee's payment of some amount to prove the appellee's offer and the conclusion of the contract. This defense is material and would - if proved to be true - change the argument in this case, requiring the court to examine such documents thoroughly and estimate their evidential weight. However, the judgment disregarded them after the appellee denied the same, although this does not revoke that evidential weight, as long as their exchange is proved between the litigation parties in accordance with the regulations set by the legislator for the evidentiality of e-messages, rendering the judgment fatally flawed by insufficient substantiation."

This judgment establishes the recognition of the legal value of the electronic offer, as well as the corresponding electronic acceptance, leading to the recognition of the electronically concluded contract and the legal effects thereof, in accordance with the provisions related to electronic transactions applied in the State of Qatar, the Electronic Transactions and Commerce Law No. 16 of 2010, notwithstanding the method of electronic contracting, whether through e-mail or any electronic system that ensures the integrity of the offer, acceptance and conclusion of the contract.

Article 75 of the Qatari Civil Code stipulated that the offer shall be made during the contract session without containing a time limit for acceptance after the session ends. Article 76 of the same Code also stipulated that the contract shall be deemed to have been concluded if the offer is accepted, save as otherwise agreed or required by law or customary usage. Article 77 of the same Code determined the mechanism of contracting through correspondence and deemed the contract concluded at the time and place when and where acceptance reaches

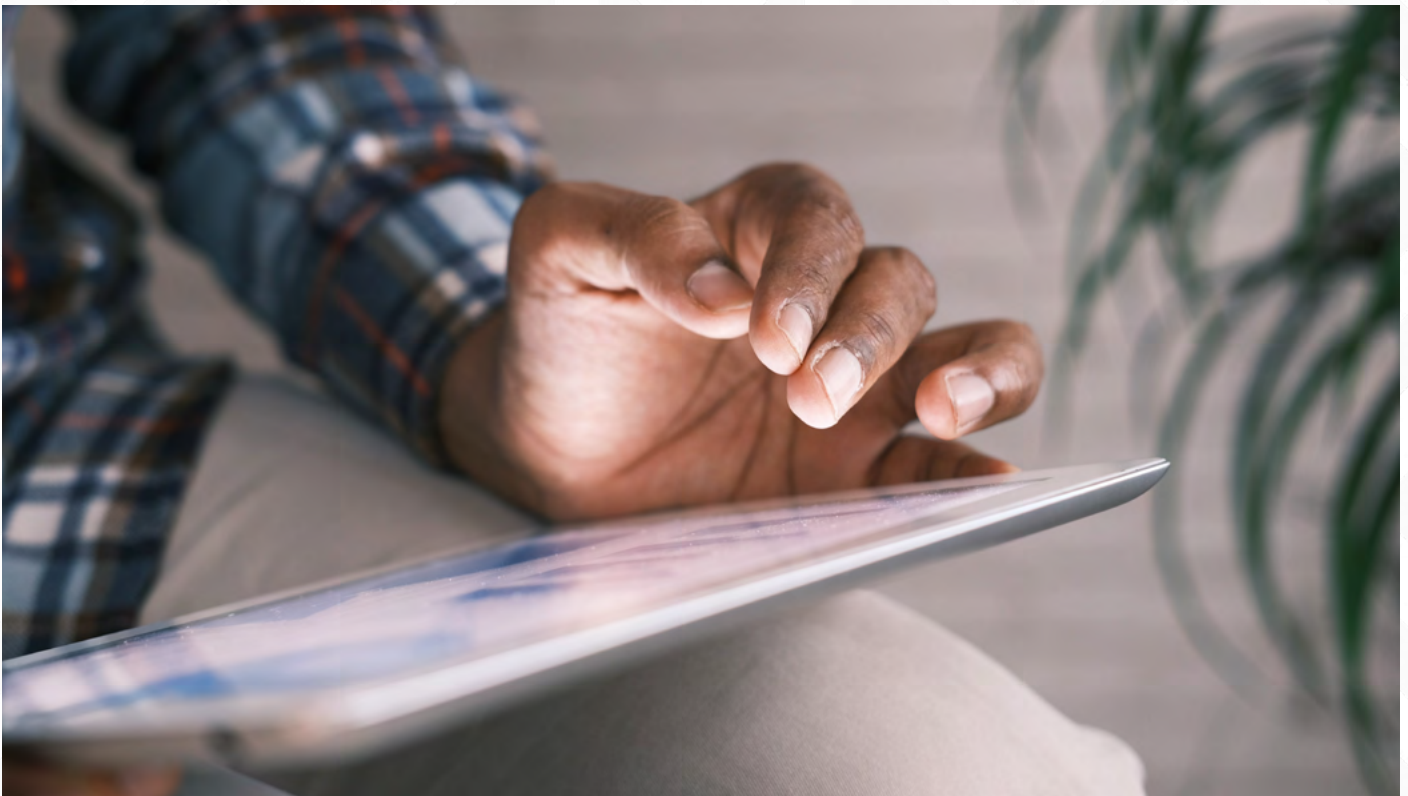
the offeror's notice, unless otherwise agreed or required by law or usage. In addition, Article 78 stipulated that a contract made by telephone, or by any other similar means shall, in respect of time, be regarded as having been concluded between present contracting parties and such contract shall, in respect of place, be regarded as having been concluded between absent contracting parties.

In case we want to apply these rules to the e-contract, then Article 4 of the Electronic Transactions and Commerce Law No. 16 of 2010 in force in the State of Qatar stipulates that: "When concluding contracts or conducting transactions, an offer or acceptance thereof, may be expressed in whole or in part, by means of data message transmitted through electronic communications. The use of one or more data messages in concluding contracts or conducting transactions shall not prejudice the validity or enforceability thereof."

When contracting through audio-visual communication programs, then the electronic

contract session is called a constructive contract session, where both parties are in direct contact with a time interval between the expression of will and its recognition by the person to whom it was addressed. In this context, the electronic contract session in the event of contracting via e-mail raises is deemed contracting between absentees, because the contracting parties are not present in the same time or place, assuming that there is a time interval between sending this e-mail and its arrival, opening and reading by the other party.

In this regard, the International Chamber of Commerce (ICC) has issued a Guide to Electronic Contracting in 2004 that included a warning clause regarding "unintended electronic contracting", and stated that the e-contract shall include accurate and clear expressions for the person who intends to contract electronically on the legal value of the terms he agrees to, and whether it constitutes an acceptance by which the e-contract is concluded, or just an invitation to negotiate or contract. It is appropriate – as



per the guide – to include the term “I agree” at the end of such clauses as a clear indication of accepting the offer with its general and special terms.

The e-contract currently includes many forms of expression of will deemed an acceptance by which the contract is concluded. One of which is contracting through the web where the acceptance is constituted by clicking on the term “Agree” as previously stated, after the accepting party has read all the basic clauses electronically. Alternatively, the acceptance is constituted through entering another link that includes the clauses, where entering this site linked to the main website is deemed an acceptance. In addition, the acceptance is constituted through referring the person who wishes to issue his electronic acceptance to another site that includes all the conditions that constitute a part of the contract. This is a practical application of the provision of Article 78 of the Qatari Civil Code previously referred to, and also Article 65 of the Qatari Civil Code, which states that: “An intention shall be expressed orally or in writing, by a commonly used sign, by actual consensual exchange, and also by conduct that, in the circumstances, leaves no doubt as to its true meaning.” And we find that e-contracting conforms with such a form of expressing the will.

The will can also be expressed by using some signs and symbols that have become common among Internet users. For example, a smiling face indicates acceptance and an angry face indicates rejection. Likewise, shaking the head vertically indicates acceptance, and shaking it horizontally indicates rejection. Some consider such signs are mere signs, however, the new sign is issued by a computer, but it expresses the will of the sender and not the will of the computer.

In a more advanced form, websites used in the exchange of goods and services require the electronic signature of the contracting party linked to an approved and valid electronic

certification issued by one of the licensed electronic certification service providers, in order to verify the identity of the contracting parties through the Internet and ensuring that the content of the data message is not modified. Also, most websites use encryption techniques to prevent hacking.

Also, the contracting process and the exchange of will can be performed through e-mail, when the person wishing to enter into a contract log in to his e-mail box and sends an e-mail to the party who wishes to contract with him (Addressee) at his e-mail address that includes the terms or conditions of the contract and all relevant data. This can be done by writing the Addressee's e-mail address in the designated place, then writing the message or attaching it to the e-mail, and then pressing the “Send” button. After which, the message is sent to the server of the e-mailing service provider that stores the message in the addressee's e-mail box. When the addressee logs in to his e-mail box, he can read the message and reply to it with approval or rejection.

The means of expressing the will via e-mail is writing, which is not fundamentally different from ordinary writing except that the means are different. The only difference is that writing on the computer is a special kind of writing that uses electronic means, rather than using paper.

The French Civil Code confirmed the validity of expressing the will to contract using e-mail by adding paragraph 2 to Article 1369 of the Civil Code with Decree No. 674 of 2005, which states that: “Information which is requested for the purpose of concluding a contract or that which is addressed during its performance may be transmitted by electronic mail where their addressee has accepted the use of this means.”

In addition, Article 1369/3 of the French Civil Code states that: “Information aimed at a professional may be addressed to him by electronic mail when he has communicated his electronic address.”



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IMPACT OF TECHNOLOGICAL CHANGES IN PROTECTING THE WILL OF THE PARTY ENTERING INTO ELECTRONIC CONTRACTS

In light of the development of international trade contracts related to the exchange of goods and services across borders, contracting through electronic means has raised many problems and general rules could not find solutions to all those problems, which necessitated innovative solutions to accommodate techno-legal developments.

Hence the importance of protecting the party entering into e-contracts, as he must be protected before contracting, during the conclusion of the contract, and during its implementation, especially if he is a consumer. Whether the contracting parties are located within the same state (National E-Contract), or indifferent states (an International E-Contract), the whole process must include guarantees through which the vulnerable party, i.e. the consumer, is duly protected in terms of satisfaction, the abuse of the professional, the merchant or the other contractor and electronic means that he may misuse while expressing his will, or while e-signing, taking into account the privacy of such contracts.

The UNCITRAL Model Law on Electronic Commerce stated that referral to model contracts or reference to other terms is an aspect of electronic agreement of contractual terms and that the inclusion of such by referral to a recognized model contract shall have full legal value, and grant the necessary protection to the will accepting such referral and legal recognition.

In this context, the Qatari Civil Code in its Article 80 emphasized this recognition, stating that: "1- Where the contracting parties agree that their affairs shall be governed by the provisions of a standard (model) contract or standard regulations, such provisions shall apply unless any party proves that they had no notice of such provisions or had no opportunity to discover them at the time of the agreement.

2- Where such provisions of which no notice has been taken are essential, the contract shall be invalid. If the provisions are auxiliary, the judge shall resolve any dispute arising therefrom in accordance with the nature of the transaction, current usage, and the rules of justice."

Also, for the protection of the party entering into e-contracts, the law does not recognize e-contracting in some specific contracts. Article 3 of the Qatari Electronic Transactions and Commerce Law No. 16 of 2010, and according to the amendments approved by Cabinet Resolution No. (1) of 2019, stated that its provisions shall not apply to the instruments and documents relating to family matters and personal status, as well as negotiable commercial instruments in accordance with the provisions of the Trade Regulation Law. This means that for protection reasons, the Qatari legislator had to set these exclusionary rules.

Article 19 of the same law also stated that: "Where a natural person makes an unintentional entry or any error in entering information in a

PROTECTING THE WILL OF THE CONTRACTING PARTY FROM ELECTRONIC MISTAKE:

data message exchanged with the automated message system of another party and the automated message system does not provide the person with an opportunity to correct the error, that person, or the party on whose behalf that person was acting, shall have the right to withdraw the portion of the data message in which the input error was made provided that the person or the party on whose behalf that person was acting:

- 1- notifies the other party of the error as soon as possible after having learned of the error;
- 2- where the input error relates to goods or services, not uses the goods or services or any benefit or material value thereof"

The above shows that the law is keen on protecting the will of the party entering into e-contracts by various means, especially if he entered his consent by error, which means that he was not willing to produce the legal effect envisaged by the contract to be concluded. In this regard, a famous judgment No. 12/442 was rendered by the French judiciary, specifically, the Nancy Court of Appeal, on 14 February 2013 in the case brought by CB, successor to SPP, against M.W. related to accepting an e-signed credit contract as evidence of an e-contract, and the court ruled that: The electronic signature has a probatory value ... and it is a reliable form of identification that guarantees the signing party's association with the signed document, and therefore it shall be presumed reliable unless proven otherwise. Upon this, the court ruled that the e-signed supplementary agreement was valid, and did not dismiss the case, and the court ordered the borrower to pay the debt with interest.

Legal jurisprudence deems mistake as a defect of consent and defines it as an illusion that is generated in the mind of a person, which makes him perceive the matter contrary to the truth. A mistake does not revoke consent, but only defects consent, and therefore it does not affect the existence of the contract, but rather it renders it voidable or relatively voidable.

This mistake may be committed with regard to the nature of the subject matter of the contract or one of its qualities, or a mistake in the person or capacity of the contracting party if the contracting person is essential in concluding the contract.

Article 130/1 of the Qatari Civil Code states that: "Where a contracting party commits a mistake that prompted him to enter into contract without which he would have not given his consent to the terms of the contract, such contracting party may demand voidance of the contract if the other contracting party commits the same mistake, or knows of its occurrence, or could easily have detected such mistake."

In accordance with the above article, the mistake that defects the consent of the contracting party and gives him the right to demand voidance of the contract requires two conditions, the first of which is that the mistake prompted him to enter into contract, and the second is that the other contracting party has committed the same mistake, or was aware of its occurrence, or could easily have detected such mistake.

The conclusion of the e-contract does not involve a realistic meeting between its parties, but rather the meeting is virtual or online, and therefore the legislator emphasized the requirement that the professional, merchant

or service provider shall provide the other contracting party with correct, complete and clear information, and this requirement shall be in place prior to the conclusion of the e-contract and after the conclusion of this e-contract and upon implementing the e-contract.

Therefore, the party entering into e-contracts must be aware of the essential information related to the description of the good or service, in addition to defining the personality and description of each contracting party, and specifying the exact price, in addition to the period during which the offer remains valid with its legal effect.

Article 2 of the Qatari Consumer Protection Law No. 8 of 2008 states that the consumer's rights include his right to obtain correct data and information about commodities or services he purchases, uses or provided to him, in addition to his right to obtain knowledge related to protection of the consumer's legitimate rights and interests, so that consent of the consumer is deemed valid.

The Qatari Electronic Transactions and Commerce Law required the service provider – provided electronically – to make available to the users of its services the name of the service provider; the address of the service provider; contact information relating to the service provider, including its electronic mail address; the details of the commercial register or any other equivalent means to identify the service provider, if the service provider was registered in a trade or similar register available to the public; in addition to the details of the competent authority that the service provider is subject to, where the provision of the service requires an authorization or license from that authority. It also required the service provider to make available the codes of conduct that the service provider is subject to and whether and how those codes can be viewed electronically; and any other

information that the Supreme Council deems necessary in order to protect the consumers of the electronic commerce services. Moreover, Article 53 of the Qatari Electronic Transactions and Commerce Law required that any contract concluded electronically through any electronic communication (constitute or form part of an e-commerce service of commercial nature, and shall be provided by a service provider) shall satisfy certain requirements to protect the party entering into e-contracts from mistakes that defect the consent. Of these requirements, the electronic offer shall be clearly identifiable as a commercial communication and clearly identify the person on whose behalf the commercial communication is made.

Article 55 of the same law requires the service provider – electronically – to furnish the consumer, in a clear and comprehensible manner, with the terms and conditions of the contract, including the technical steps required to conclude the contract; information regarding the service provider; a description of the main characteristics of the services or goods; the prices of services and goods, and whether they are inclusive of tax and delivery costs; arrangements regarding payment, delivery and implementation; the validity of the offer and the price; whether the consumer has the right to cancel the order; whether the contract will be stored or retained by the service provider, the accessibility, storing, copying and retention of the contract by the consumer and the means for that.

And Article 56 required the service provider to make available to the consumer of the service (electronic consumer), appropriate, effective and accessible means which allow the consumer of the service to detect and correct input errors before placing the order; however, parties who are not consumers may agree otherwise. The same applies to all electronic contracts in this context.

PROTECTING THE WILL OF THE CONTRACTING PARTY FROM ELECTRONIC FRAUD

This defect is defined as the use of fraudulent methods, which lead to the contracting party to commit a mistake that leads him to conclude the contract. Articles 134, 135 and 136 of the Qatari Civil Code addressed this defect as the use of fraudulent methods that lead to contracting and due to the conduct of the other contracting party.

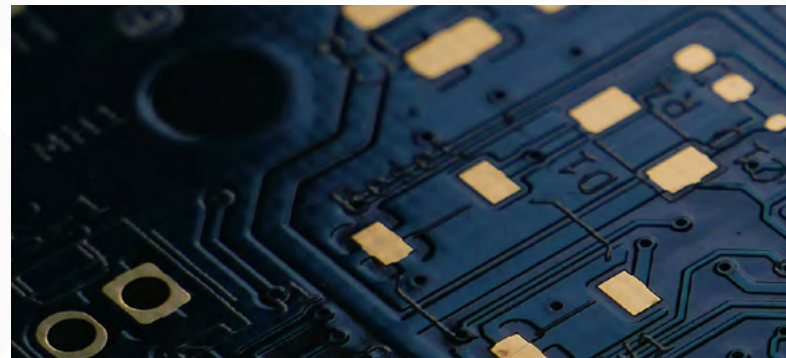


PROTECTING THE WILL OF THE CONTRACTING PARTY FROM ELECTRONIC DURESS

Duress is a defect of consent and is illegal pressure that creates fear in the contracting party to force him to conclude the contract. Article 137 of the Qatari Civil Code addressed this defect of consent by stating that:

- 1- A contract may be voidable as a result of duress if one of the parties has contracted under the stress of a justifiable fear unlawfully instilled in him.
- 2- Fear is deemed to be justified when the affected contracting party was confronted by circumstances that led him reasonably to believe that a grievous and imminent danger to life, limb, honor or property threatened him or others.
- 3- In determining the extent of the duress, the gender, age, knowledge or ignorance, and health of the affected contracting party, as well as any other circumstance that might have aggravated the duress, shall be taken into account."

Article 138 of the same law states that: "1- Voidance of a contract on the basis of duress shall be justified where the duress emanated from the conduct of the contracting party or his representative, or one of his subordinates, or the broker he empowered to conclude the contract,



PROTECTING THE WILL OF THE CONTRACTING PARTY FROM ELECTRONIC EXPLOITATION

or of the party for whose interest the contract was concluded.

2- Where the duress is caused by a third party, the affected party may not demand voidance of the contract unless it is established that the other contracting party had, or should necessarily have had, knowledge thereof."

By analyzing the forms of duress that the law tried to protect the contracting party from in general, and the party entering into e-contracts in particular, we find that the act of duress consists of two elements; tangible and intangible. The tangible element is using a physical means is duress, such as threatening through the use of illegal images of the contracting party, for example, that were pulled electronically over the Internet, which instills fear in him that pushes him to contract electronically. As for the intangible element of duress, it provides for the illegality of pressure against the contracting party under duress.

The concept of duress has evolved significantly, especially with the amendment of the new French Civil Code to include economic duress arising from circumstances, which means any of the contracting parties misusing by employment relationship with the other party to pressure him.

Article 140 of the Qatari Civil Code states that: "Where a person exploits another person out of need, obvious frivolity, visible vulnerability, or sudden heat of passion, or his moral influence over the other person causes that other person to conclude a contract in his own or a third party's favor, and such contract contains an excessive imbalance between the obligations he must perform and the material or moral benefits he shall obtain from the contract, the judge may, at the request of the affected party, reduce his obligations, or increase the obligations of the other party, or void the contract."

When we apply the above to e-contract and protect the contracting party from electronic exploitation, we find that Article 57 of the Electronic Transactions and Commerce Law gave the electronic consumer the right to rescind or terminate the contract within three (3) days from the date of entering into the contract, unless otherwise agreed by the parties, (as long as the service provider does not fully implement the contract in a manner that serves the purpose of the contract during that time and the consumer does not use the goods or products which he/she receives nor receive any benefit or value from them).



CONCLUSION

The use of the Internet in various fields is constantly on the rise, especially in the economic and commercial fields, such as concluding contracts on various goods and needs. Therefore, in this study, we addressed the conclusion of e-contracts, which is one of the most important issues in modern times, and focused on its specific aspects.

We also previously discussed the impact of technological developments on the formation of the e-contract and the development of the concept and scope of defects of consent, as we have studied and monitored the impact of technology, especially digital, in this matter, taking into account the relevant national legal frameworks in the State of Qatar, such as the Qatari Civil Code of 2004 as well as Decree-

Law No. 16 of 2010 Promulgating the Electronic Transactions and Commerce Law, and Law No. 8 of 2008 on Consumer Protection.

It's inevitable to keep pace with the daily developments in the field of information and communication technology in the State of Qatar, resulted by the relatively modern means to conclude the contracts, so we have tried to show the extent to which the traditional contracting rules apply to the issues raised by the conclusion of the electronic contract. We have also tried to clarify the rules for electronic transactions that are necessary to supplement the general rules, in case they are not sufficient to solve any legal issue related to the electronic contract.



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