



# **Applications of Saudi Law in the Field of Electronic Commerce “ Analysis of Legislation and Legal Practices”**

**الدكتورة**

**مشاعل حامد محمد الأحمدى**

**أستاذ مساعد جامعة المجمعة**

**المملكة العربية السعودية**

**Aymanelashmawy100@gmail.com**

## ملخص البحث

يدور البحث حول التنظيم التشريعي للتجارة الالكترونية في المملكة العربية السعودية، فالتجارة الإلكترونية فرضت وجودها في ظل عصر الرقمنة، وإن المنظومة التشريعية لا غنى عنها في إرساء الثقة و تطوير المبادلات الإلكترونية الاقتصادية من أجل تطوير الاقتصاد الرقمي ومواكبة الدول المتطورة.

وقد تناولنا الأنظمة القانونية المتعلقة بالتجارة الالكترونية وذلك من أجل بيان مدى نجاعة النظام القانوني السعودي في توفير الحماية القانونية للمتعاملين بالتجارة الالكترونية من حيث بيان احكام العقد الالكتروني وما يتعلق بالملكية الفكرية والمحل التجاري الالكتروني وكذلك وسائل الإثبات الالكترونية، فضلاً عن تناولنا لمحاولات المشرع السعودي تسهيل التجارة الالكترونية للمتعاملين بها من حيث قيامه بعمل منصة تضم كل ما له علاقة بالتجارة الالكترونية بموقع واحد في العلاقة ما بين المستهلك وموفر السلعة أو الخدمة مما جعل أطراف التعاقد يخضعوا لتنظيم واحد وهو ما يوفر الكثير من الحماية.

وقد تبين لنا من خلال ما بحثناه، أن هناك العديد من القوانين تحكم التجارة الالكترونية، ورغم توفر الحماية في جميع هذه القوانين، إلا أننا نذهب إلى أنه يفضل أن تجمع كافة المواد المتعلقة بالتجارة الالكترونية في قانون واحد حتى يتحقق الشمولية في ذلك. فضلاً عن ذلك، إن التعامل عن طريقة الإنترنت هو من الأمور التي تجري فيها المستحدثات مجرى الدم من الإنسان، فالمسائل التي تظهر كل يوم فيما يتعلق بالتكنولوجيا لا تنتهي، ومن ثم يكون لزاماً على المشرع اليقظة لمثل هذه التغيرات ومواكبتها، حتى لا يكون المواطن السعودي أقل وضعاً من غيره من المتعاملين أو حتى لا يكون التعامل مع المستهلك السعودي حسب النظام القانوني السعودي مرهقاً لموفري الخدمة ممن هم من خارج المملكة.

الكلمات المفتاحية: التجارة الالكترونية - المحل الالكتروني - الملكية الفكرية الالكترونية - الاقتصاد الرقمي - المستهلك الالكتروني.

وهذا والله التوفيق....

### **Abstract**

The focus of the research is on the legislative regulation of e-commerce in the Kingdom of Saudi Arabia. As e-commerce has become inescapable in the age of digitization, developing economic electronic exchanges and building trust are essential to the development of the digital economy and maintaining pace with developed nations.

In addition to our discussion of the Saudi legislator's attempts to facilitate e-commerce for its dealers in terms of creating a platform that includes everything related to e-commerce in one location in the relationship between the consumer and the provider of the goods or service, we have also discussed the legal systems related to e-commerce in order to demonstrate the effectiveness of the Saudi legal system in providing legal protection for e-commerce dealers in terms of stating the provisions of the electronic contract and what relates to intellectual property and the electronic commercial store as well as electronic means of proof.

Our study has shown us that there are several laws that regulate e-commerce. Although these laws offer protection, we feel that it is better to compile all the information pertaining to e-commerce into a single legislation to attain comprehensiveness.

Furthermore, one of the ways that innovation is ingrained in human nature is through online commerce. The problems with technology are never-ending, so it is the legislator's responsibility to stay aware of these developments and stay up to date. This way, the Saudi citizen will not be at a disadvantage compared to other dealers, and Foreign Service providers won't find it difficult to comply with Saudi law when working with Saudi consumers.

**Keywords:** E-commerce - E-store - E-intellectual property - Digital economy - E-consumer.

**And Allah is the arbiter of success....**

## Saudi Arabia

### Introduction

The "Information Age," also known as the "Information Revolution Era," is the new scientific and practical age that the world is currently living in. This is a result of the enormous technological advancements in digital communication networks, which have eliminated geographic barriers and allowed people to observe events occurring on the other side of the world. The exchange of data has become a simple and convenient process with the availability of voice and video throughout the event.

Due to this growth, the business environment has undergone a significant shift, and e-commerce—a new kind of trade distinguished by speed and convenience of transaction completion—has emerged.

Given the current state of digitalization, e-commerce has emerged as a universally recognized necessity. Creating laws that govern e-commerce also goes a long way towards building trust and expanding the scope of electronic commerce, which is essential for developing the digital economy, keeping up with developed nations, and following their lead.

E-commerce is one of the contemporary methods that facilitates faster online negotiation, marketing, and transaction closing by bringing dealers' points of view closer together. It has ties to information systems that started in many significant institutions in the early 1980s. These systems developed through closed electronic networks between known trading partners who needed multiple ways to exchange messages and data, a process known as electronic data exchange. Today, however, this trade is no longer limited to the operations of commercial businesses; it also includes numerous activities that consumers and governments carry out on the World Wide Web in a variety of fields.

There's no denying that there has been a commendable shift in the way technology is moving, how it affects the Saudi business sector, and what the Saudi government has done to address these developments

The researcher immediately noticed a legal framework for the electronic commerce process when he visited the Saudi Ministry of Commerce website. After determining that his objective was to give thanks to God and then imbibe everything he could from it in order to help him make sense of the notion he had always had about himself, he stayed patient.

Therefore, our research and exploration's focus is on clearly and simply explaining the Saudi legislator's realistic legal framework for electronic commerce, projecting real-world issues onto the texts to show

how effective the legal system is at addressing these issues and creating a framework that takes them into account.

### **Issues of the Study:**

This research aims to address the following important questions regarding the regulatory environment in the Kingdom as a result of the prevalence of modern technology, its dominance over the mechanism of concluding commercial transactions, the shift from the traditional method to the electronic method that takes place remotely between the parties to the commercial transaction, and its necessity in the field of electronic commerce:

- 1- To what extent is legal protection available in the Kingdom for parties dealing in e-commerce?
- 2- To what extent is there regular protection for industrial and intellectual property for stakeholders in the e-commerce environment?
- 3- How to conclude an electronic contract that is binding on both parties, methods of proving it, methods of electronic signature, their authenticity, and procedures for securing them in the Kingdom of Saudi Arabia?
- 4- How mandatory is the contract concluded through e-commerce?
- 5- To what extent is there legal protection for electronic documents resulting from e-commerce transactions?
- 6- What is the extent of consumer protection in e-commerce transactions and the protection of personal data?
- 7- What is the legal and judicial jurisdiction for disputes arising from e-commerce transactions?

This research will be limited to discussing the answers to these questions in the context of the Kingdom of Saudi Arabia's current legal framework and providing examples of other countries' legal frameworks and systems in this area for comparison, due to the extensive nature of the answers to these questions, which necessitates containing many systems beyond the scope of this study.

### **Objectives of the Study:**

The research seeks to achieve the following objectives:

- 1- Some researchers have addressed the regulatory aspect of this topic in general, but this research will be limited to the systems of the Kingdom of Saudi Arabia through the relevant regulations in this field.
- 2- Identifying the most important regulatory dimensions in commercial dealings through modern means of communication, especially the Internet, and knowing their technical dimensions in contracting through

them, and explaining the legal rather than jurisprudential provisions regarding them under the Saudi system.

- 3- Describing the actual reality of e-commerce systems in the Kingdom of Saudi Arabia to identify their shortcomings and deficiencies and clarifying the shortcomings in a way that is consistent with the current situation of the Kingdom and the future conditions of e-commerce.
- 4- Contributing to providing recommendations that help decision-makers adopt them to meet the challenges in the issue of e-commerce systems at the local level, in a way that supports the international standing of the Kingdom of Saudi Arabia and its accession to many international agreements in this regard.

### **Significance of the Study:**

The following points emphasize the significance of the study and the rationale for its choice:

- 1- 1. Because the study topic is exposed to problems that merchants, customers, and individuals interacting with the information network face on a regular basis and through the Internet, it directly affects their reality. In this particular instance, it is also imperative to elucidate the regulatory landscape in the Kingdom with respect to these matters, as well as the Saudi statutory texts that safeguard them and of which many individuals are unaware. Who does this kind of business?
- 2- The significance of this study is further underscored by showing how far the Saudi regulator may go to rectify regulatory roadblocks or deficiencies impeding e-commerce in order to stay up to date and respond to advancements in this domain.
- 3- Drawing attention to the systemic reality of e-commerce in the Kingdom in particular, given the pressing need for this subject in everyday life and the paucity of comprehensive studies or Kingdom-specific literature in this area, in a way that enhances scientific research.

### **Methodology of the Study:**

The method that I will use in this research will be the following:

- 1- **Inductive approach:** for systems related to e-commerce.
- 2- **The analytical approach:** where I analyze the systems in question and compare them with some international systems and their lack or lack of clarity, in order to arrive at what I consider to be correct in rooting some of the issues related to the various e-commerce systems in the Kingdom.

**The Previous studies:**

The researcher put a lot of work into reading the studies and laws that were written on electronic commerce generally because the study topic was new and focused on the Saudi system, which helped me comprehend the technical aspects of the topic. A large portion of the Sharia and legal works on the subject issue were also seen by me. The Saudi regulator's stance on how to handle contemporary communication channels and arrange them in a way that complies with Islamic Sharia law and keeps up with industry advancements clarified to me the issue's dual regulatory nature on a local and global scale. But none of the earlier researches go into enough detail on the topic of this study in the Saudi context. The researcher was inspired to do this research because of this.

**Plan of the Study:**

The researcher divided the research topic into four parts:

First: An introduction in which I clarified general and basic ideas in e-commerce and the importance of developing an integrated regulatory framework for it in the Kingdom.

Second: The stages of forming an e-commerce contract, considering that it is the basis for the emergence of e-commerce systems and the subject of discussion about the foundations of protection in e-commerce for those dealing with it. Through this part, I will highlight the gaps that require organized intervention to establish the necessary protection to ensure integration in the systems, protection in e-commerce in the Kingdom.

As for the third part, the researcher will review the most important national systems that have a major direct and indirect relationship to the field of e-commerce, identifying their weaknesses and shortcomings. Finally, the fourth part will be devoted to reviewing the conclusion and the most important recommendations that I came up with.

### **First: Introduction:**

The new way, that both the consumer and the merchant may get a good or service as quickly, cheaply, and efficiently, is through electronic transactions. As a fresh approach to increase sales and draw in customers, it has turned into a paradise for businesses and retailers alike.

It should be mentioned that this approach covers transactions between merchants as well as those between them, going beyond the straightforward application between a merchant and a customer. Instead, it now encompasses the usage of many state agencies to guarantee that their demands are met and that they get what they need as quickly and cheaply as possible. As a result, people are able to compare the quality and price of goods offered by different merchants on websites that are widely dispersed over the Internet, overcoming national boundaries and legal restrictions. This has contributed to the growth of electronic marketplaces and the area of commercial competition in these digital environments.

Even though electronic commerce is widely used, it cannot be completely relied upon in financial transactions involving mutual obligations that affect people's financial liabilities unless a system is in place to protect the parties to the relationship in this kind of trade, just like any new development in the legal field. A secure environment for electronic commerce transactions cannot exist without them, and without a regulatory framework that safeguards consumers using these new channels, no one can be trusted to deal with them. These parties are the vendor, the buyer, and others. How is the electronic market owner going to make sure he receives paid for the things he sold? and safeguard his webpage! However, in the absence of systems that ensure their protection and make certain actions that compromise the honor and legitimacy of legitimate competition in electronic commerce and commerce illegal, how can the buyer—whether an individual, business, or government—guarantee that he will obtain the good or service, guarantee its suitability for use, and ensure its defects? broadly speaking.

Given that e-commerce in Saudi Arabia has achieved amazing numbers recently, as the Kingdom comes in 25<sup>th</sup> place in the ranking list of the largest e-commerce markets around the world, with revenues reaching 7 billion US dollars in 2020, and with Internet users reaching more than 33.58 million users in 2020, it is expected that the e-commerce market will continue its rise and reach advanced ranks in the ranking, and accordingly countries, including the Kingdom of Saudi Arabia, have sought to put in place systems that ensure adequate protection for the e-commerce environment and its customers.



In order to promote the advancement of electronic commerce systems and elevate the standard of dealing in them in the Kingdom of Saudi Arabia, my research will be based on the regulations pertaining to electronic commerce in Saudi Arabia as they relate to current developments, relevant regulations, and comparative jurisprudence in this area.

E-commerce does not seem, at first glance, to differ much from traditional commerce except in terms of the means used in it. However, the use of means and systems for processing information via information networks has imprinted this method with a distinctive character and unique features that have resonated in various branches of public law in general, and private law in particular.

The phenomenon of e-commerce has cast a shadow over many of the principles of the commercial system, necessitating a reassessment of those concepts even if e-commerce concerns are tied to those laws. This covers, for instance, the commercial business idea outlined in Saudi Commercial Court Law, enacted in 1350 AH, Article Two., which is thought to be the oldest commercial system in Saudi Arabia. As a result, in order to meet the protection requirements for electronic commerce, it is necessary to review the articles of this system as well as the articles of many other systems that are related to it. This is especially important when it comes to contracts and commercial transactions that have new ways of being conducted, like electronic commerce. Apart from the electronic handling of commercial paperwork and financial processes, other examples of electronic transactions include magnetic cards, electronic checks, and electronic banking. The advent of electronic commerce could necessitate reevaluating the time and space requirements between contractual parties online, in addition to other systemic issues that need to be reviewed in order to stay up with the data from e-commerce.

Particularly, if we know that all of these variables require, from a systemic standpoint, the creation of a systemic container or framework to address the problems that this trade and the techniques used in it cannot produce, especially since this method of trade is based on intangible or tangible electronic foundations, which means that the rule must be the regulations governing it are appropriate; It is capable of creating a safe environment in which safety and reassurance are achieved for those dealing in this type of trade.

## **Chapter (1)**

### **Introduction to Electronic Commerce**

We will review the definitions found in the Saudi system, the systems that surround Saudi Arabia, and the pertinent international conventions in order to introduce electronic commerce. We will also extract the characteristics of electronic commerce from the definitions we will discuss, so long as the definitions used to divide this research are in the first requirement and the characteristics of electronic commerce are in the second requirement.

#### **Section (1):**

##### **Definition of Electronic Commerce in Language and Terminology:**

The word "Tejara" is defined in language to become a base form from (Tajara), which is what is traded in, and it allows money to be bought and sold for the purpose of profit.( Al-Haj Hassan: 2012, P.21)

It is legally defined as: (the process of trading money and intermediating services for the purpose of profit). (The Arab Guiding Law for Electronic Transactions and Commerce: 2006)

It is defined in economics as: (the process of exchanging goods and services by obtaining them from people who wish to sell them in order to distribute them and deliver them to people who wish to acquire them by purchasing).

(E-commerce) is defined by the Arab Guiding Law for Electronic Transactions and Commerce No. (4) as "commercial transactions conducted by electronic means," and many Arab countries have tended to define electronic commerce in the legislation regulating it. For example, Tunisian Law No. (83) of 2000 AD Regarding electronic exchanges and commerce, he defined electronic commerce as: "commercial operations that take place through electronic exchanges," and he defined electronic exchanges as: "exchanges that take place using electronic documents". As for the Lebanese legislator in the Electronic Transactions Law No. (81). Issued on 10/10/2018 AD in Article (42/2), it defined electronic commerce as: "commercial transactions, purchases, sales, and financial operations that are carried out by electronic correspondence and contracts in general via the Internet". It defined the federal law of the United Arab Emirates No. (1) of 2006 AD regarding electronic transactions and commerce, e-commerce is defined as "commercial transactions that are conducted by means of electronic correspondence," as the Emirate of Dubai's law on electronic transactions and commerce of 2002 AD in Article (8) also defined it as "commercial transactions." which is carried out by electronic correspondence.

Regarding the United Nations Commission on International Trade Law (UNICTRAL) Model Law on Electronic Commerce for the year 1996 AD, which is regarded as the origin of electronic commerce legislation for all countries, it stated that it applies to "any type of information in the form of a data message used in the context of Commercial activities". These definitions make it abundantly evident that any economic activity involving the sending and receiving of electronic communications is included in the category of e-commerce.

Regarding the Saudi e-commerce system issued by Royal Decree No. (M/126) dated 11/7/1440 AH, it defined "e-commerce" as: (an activity of an economic nature, undertaken by the service provider and the consumer, in whole or in part, by electronic means in order to sell products, providing services, advertising them, or exchanging data about them).

### **Section (2):**

#### **Characteristics of Electronic Commerce:**

When comparing the definition contained in the Saudi e-commerce system with the definitions contained in the previously mentioned Arab legislation, we find that the Saudi regulator has described e-commerce as an activity of an economic nature, while all legislation went on to describe it as commercial, and therefore, through this definition, it is possible to determine the characteristics of commerce. Electronic, these characteristics are:

#### **The First Branch: Activity of an Economic Nature:**

According to the system, e-commerce is a business venture that both the service provider and the customer engage in. The legal and economic definitions of the term "commerce" are not the same. Economists define trade as the movement and distribution of wealth; therefore, commercial activities are constrained to operations involving producer-consumer mediation, whereas trade in law extends this definition to encompass industrial activities as well. The distribution and movement of wealth indicates that jurists' understanding of commerce is more expansive than economists' understanding of it (Al-Farshi: 1440 AH, p. 11).

Since both economic and commercial activities are carried out through electronic means, we think it would be preferable if the Saudi regulator refrained from characterizing e-commerce activities as such because this definition is inconsistent with the definitions of e-commerce found in all of the aforementioned legislation. They all agreed that it was a business endeavor.

### **The Second Branch: Multilateral Activity:**

The definition of e-commerce makes it abundantly evident that the parties involved are the customer and the service provider. In the e-commerce system for the year 1440 AH, "the merchant or practitioner" and "the person registered in the commercial registry who practices e-commerce" were defined as the service provider and the merchant, respectively. The e-commerce system proceeded to require the online retailer to register his electronic store with the business registration in compliance with its guidelines. "A natural or legal person" is the definition of (person) in Commercial Registry.

As a result, whether a company or natural person engages in commercial activity, the e-commerce system also applies to them. "A person not registered in the commercial registry that practices electronic commerce" is another definition of the term "practitioner" provided by the system.

Regarding the customer, he was described as "the person who deals in e-commerce with the desire to obtain products or services offered by the service provider" by the e-commerce system for the year 1440 AH. Therefore, the customer may also be a natural person or a legal person in accordance with what is specified in the system's definition of "person."

The term "consumer" is defined as "every person of a natural or legal capacity who obtains a good or service, in exchange for or without compensation, to satisfy his personal or personal needs" in Article One of the Regulation of the Consumer Protection Association. This definition of "consumer" differs from that found in the Electronic Commerce System 1440 AH. Considering "Other people's needs", we discover that the e-commerce system's regulator has left out of its purview anyone who receives products or services as a gift or donation—that is, without receiving payment for them. Similarly, the system does not specify that the consumer's objective in acquiring the goods or services is to fulfill his own wants or the needs of others. Instead, he could want to resell it, or he might want it to fulfill his demands for his line of work. An example of this would be a doctor who purchases a stethoscope online from a website.

Thus, the parties involved in e-commerce can be defined as follows: the consumer who purchases goods and services from the service provider for personal use, to resell in any legally permissible form, or to fulfill a professional requirement; the merchant who is registered in the commercial registry and engages in e-commerce, regardless of whether they are natural or legal entities; and any individual who engages in e-commerce but is not registered in the commercial registry.

### **The Third Branch: The Uses of Electronic means:**

"Any technology used by means of communications and information technology, whether electrical, electromagnetic, optical, optical, digital, or any other form of similar technical means," is how the system defines (electronic means).

Accordingly, even though it is the most typical of all electronic commercial transactions, what is meant by electronic commerce as defined by the provisions of this system is not only commerce conducted over the Internet but also commerce conducted using any of the technologies listed in the system. Additionally, by stipulating the term (or any form of equivalent technical meaning) mentioned in Article 1 of the system, any new technology can be utilized later after it arrives and is employed. This has greatly expanded the system's potential applications.

The definition makes it clear that e-commerce can occur when transactions are conducted only online, for as when a digital book is ordered and paid for on a website. Additionally, it can be completed in part online by placing an electronic order for the product on The customer must have it delivered to his home, and payment must be made right away.

### **Section (3)**

#### **Contract Shop in E-commerce:**

According to the system, an e-commerce contract may cover the sale of goods or services, their promotion, or the exchange of associated data. Consequently, in e-commerce, commodities, products, services, and ads found on websites are all regarded as the subject of the contract and are governed by the rules of this system.

Subsequent contracting does not present any issues regarding the contract's subject matter since it is covered by the general standards, which provide the following requirements for the topic of the contract to be legal (Shalqami: 2005,P.):

- 1- To exist or be able to exist.
- 2- It must be specified or capable of being specified.
- 3- It must be legitimate, within the scope of dealing, and not in violation of public order and public morals.

Applying this to the electronic contract, it means that the contract becomes enforceable in the shop's corner once these requirements are satisfied. The third requirement, which states that the store must be compliant with the electronic contract with the public system, presents a challenge, though, as online contracts can result in agreements that are compliant with national public systems. What is the remedy in this situation,

even if it goes against the public order in another nation, such dealing in narcotics, exchanging money in an illegal manner, forging business ties with an adversarial nation, or engaging in gambling?

Some think that this need emphasizes how difficult it is to regulate the public system through contracts signed using contemporary technological methods, necessitating some form of international cooperation in this area. (Al-Desouki: 2011, PP. 993:1032)

We think that electronic trade is unaffected by this situation. Since regulating websites is the sole purpose of controlling them, controlling websites is not a function of the law; instead, the law specifies the proper penalty for breaking the terms of the contract, which is its invalidation.

#### **Section (4)**

#### **Fourth requirement**

#### **Application scope of e-commerce system**

As per the provisions of Article Two of the Law, the following parties are covered by its provisions: service providers operating within the Kingdom, as well as practitioners from outside the Kingdom who offer products or services inside the Kingdom by displaying them in a manner that makes them accessible to consumers.

Hence, this system applies to the consumer: he is the one who deals in e-commerce out of his desire to obtain the products or services provided by the service provider. The system also applies to the merchant registered in the commercial registry in the Kingdom, and who practices e-commerce, whether he is a natural or legal person, in addition to the person not registered in the commercial registry, the practitioner who provides products or services from outside the Kingdom by displaying them in a way that enables the consumer to access them.

The remarkable thing about the Saudi e-commerce system for the year 1440 AH is that its regulations apply not only to service providers operating within the Kingdom but also to foreign practitioners operating within the Kingdom who supply goods and services to customers by presenting them in a manner that makes them accessible. In order to address the issue of the consumer's presence in a nation other than the practitioner's country and the ensuing issue of determining which law applies between the laws of the consumer's country and the practitioner's country, the system has expanded the scope of its application outside the Kingdom, so long as the legal action's effects extend within it.

E-commerce contracts are governed by the laws of the country where the customer resides normally. This is the case when the customer completes the steps necessary to enter into a contract in this country, such as registering an order online, accepting an offer via email, or filling out an order and mailing it to the supplier or seller. The actions of acceptance that the customer issues are connected to the laws of the state in which he normally resides in each of these presumptions (Hegazy: 2005, p. 58.).

In reference to other legislation, we can compare the Saudi regulator's adoption of the Model Law for Electronic Commerce for the year 1996 AD to determine which law applies to electronic consumer contracts. However, the Model Law for Electronic Commerce did not address determining which law applies to electronic commerce contracts or what affected. On the grounds that his meddling with regulations would have an impact on the national law governing the formation of contracts; he left this matter up to the states to decide in their own national legislation (UNCITRAL Model Law on Electronic Commerce with Legislation Guide 1996, United Nations Publication, 2000).

As for the European Parliament, in order to regulate the protection of the electronic consumer in contracting through modern communication technologies, it issued Directive No. (97/7) on May 20, 2017 AD, including controls that protect the consumer in distance contracting, as Article Two of it defined distance contracting as: "Every contract related to goods or services entered into between a supplier and a consumer within the framework of a system for selling or providing services remotely, organized by the supplier using this contract, has only one or more technical capabilities for remote communication and implementation." Accordingly, what the Saudi system went to is the closest thing to what was stated. In the European directive, which confirms the interest in providing protective rules for the electronic consumer within the Kingdom.

Examining the electronic commerce laws of several Arab nations, we discover that the majority of them adopted the same stance as the Model Law and did not address the question of which law should apply in electronic commerce contracts. As a result, it can be concluded that this issue is acceptable in terms of commerce law. The electrical model serves as a broad rule of thumb.

The system has required the (service provider) to do the following in order for the customer to know who he is working with: The system indicates that the location listed in the merchant's commercial record is the place of business, regardless of the nature of the business—trader,

practitioner, natural or legal—by indicating his place of business (Electronic Commerce Law: 1440 AH, Article 3). His place of business, however, is the acknowledged place of business, which is the headquarters, if he has many places of business and does not name one of them, the closest relationship to the agreement. As for (the practitioner), his place of work is the place he specifies in his electronic shop unless proven otherwise. However, if the practitioner with a natural personality does not have a place of work, then the place of work that is considered valid is his regular place of residence. The regulations specify the standards and conditions for this.



## **Chapter (2: Stages of Forming an E-commerce Contract**

In the absence of a civil system or judicial codes that govern contracts in the Saudi system, the principle of contractual freedom governs the conclusion and formation of contracts in the Kingdom of Saudi Arabia in a way that does not conflict with the provisions of Islamic Sharia, and it regulates the contractual relationship in electronic commerce with formal and objective terms. As a result, Islamic jurisprudence's rules and provisions govern this area in the Kingdom. This is different from the practices of many other nations, where civil law is adopted to regulate all contract-related matters and is thus applicable to e-commerce contracts.

Generally speaking, the regulator has granted it authority and approved its regularity in accordance with the provisions of Articles Ten and Eleven of the Saudi Electronic Transactions System, which were issued in 1428 AH. Additionally, if Islamic jurisprudence and the Saudi judiciary demand the availability of pillars and conditions for the validity of the contract, regardless of the type of contract and the method of its conclusion Since these components are definitely present in e-commerce contracts as opposed to traditional contracts (Gharib:2007, p. 63), e-commerce contracts will have more legal weight and validity in the eyes of the parties involved as well as precedence over other contracts under the Saudi legal system.

Consequently, in order to understand the reality of the e-commerce systems in the Kingdom of Saudi Arabia, one must first develop a preliminary concept before going on to explain the systems in the Kingdom of Saudi Arabia, including the steps involved in forming an e-commerce contract from the outset to the conclusion, regardless of whether the parties to the contract are located within the borders of the same nation. or between parties from different nations, and based on these phases, we are able to determine the problems, inquiries, and regulatory barriers that each dealer—that is, the contracting parties, the regulator, and the Internet service provider—finds interesting in the Saudi market's e-commerce environment.

Three fundamental steps make up the formation of an e-commerce contract. It is during these steps that the regulatory obstacles that e-commerce in the Kingdom of Saudi Arabia must overcome will be emphasized, and the pertinent laws will be clarified:

### **The First Stage: the Pre-Contract Stage:**

An electronic contract may naturally be completed over the Internet in any format since it is an electronic contract, unlike traditional contracts that

are completed through customary channels. As a result, there are two methods that an electronic contract can be completed over the Internet:

**1- Concluding an Electronic Contract through Data Exchange: (Gamal: 2005, p. 105)**

The UNCITRAL Model Law, previously referred to in Article 2, 2, defines data exchange as “the electronic transfer of information from one computer to another using an agreed upon standard for composing the information”.

Information exchange can be defined as the process by which the two parties to an electronic contract exchange information about contracting for commercial goods and services, with the aim of reaching an agreement after which the contract is concluded and its effects on international trade are arranged.

The exchange of information may take the form of negotiations between the two parties, purchase and delivery orders, a certificate of conformity, payment of invoices, and a letter of credit, and this occurs via e-mail or direct communication between the two parties, whether in writing, voice, or image and voice together.

*This is done by sending the data via his email address.*

Some have defined e-mail as “a method that allows the exchange of written messages between devices connected to an information network.” Others have defined it as “a method that allows the exchange of written messages between devices connected to an information network.” Others have defined it as “those documents that are sent or delivered by a communications system.” My e-mail address includes limited notes of a real formal nature” (Al-Hayani, Anjoum: 2006, p. 49).

**2- Concluding the Electronic Contract from the Store's Websites:**

An electronic contract may be concluded if a person enters a website and offers his services or a specific commodity, and in return another person accepts this sale. Expression of will occurs through the website by writing or clicking on the OK button on the keyboard (Jamal: 2005, p. 106.).

Until he settles on what he wants to buy; Comparing this to the price and quality of the product, the reputation of the e-commerce site, the guarantees provided, and the level of security and protection of the method of payment, and at this stage the following legal questions arise:

How reliable is the website (electronic market), goods or service? What is the extent of protection established for the intellectual property of the website, including the trademark, the commercial store, the trade name of the website, and other matters related to the product where it is sold? To

what extent does the system protect the parties to the electronic contract (the seller and the buyer) from the possibility of fraud, fraud, commercial fraud, or the lack of necessary guarantees for the good or service? What is the mechanism for paying taxes on online e-commerce revenues, especially cross-border e-commerce? What are the criteria for calculating it? To what extent is it considered a severe restriction preventing the prosperity of e-commerce?

The significance of this subject becomes apparent in nations that implement both zakat (Islamic tax) and an income tax system. In e-commerce, these and other queries and difficulties inevitably arise at every step of the electronic contract completion process.

### **The Second Stage: the Stage of Concluding the Contract:**

At this point, the buyer, or consumer, chooses a website for electronic shopping and starts negotiating with the electronic seller while also reviewing the details of the good or service that is covered by the electronic sales contract. In many instances, the meeting of the offer and acceptance on the line characterizes this step. This can take many different forms depending on the nature of the commercial activity and the contracted means created on the site; the three most significant techniques are as follows:

### **The First Method: Electronic Contracts on the Web:**

These are model contracts found on the website that include conditions and obligations between the parties to the contract, and the buyer has no choice but to accept them without expressing any comments or reservations (Sharaf El-Din: 2013, p. 16). Here the issue arises of considering that the electronic sales contract here is a contract of adhesion, and this is what prompted some explanations of jurisprudence and law. This type of electronic contract has been classified as a contract of adhesion, like some French and Egyptian jurists, considering that one of the characteristics of the contract of sale is that it is a consensual contract based on complete consent between the parties to the contract (Al-Roumi: 2004, p. 55).

However, we see that until we are faced with a contract Compliance: The conditions for compliance must be met, which are that the good or service must be important and necessary for the buyer, and that the seller be the sole monopolist of this good. These conditions combined may not often be met in selling via the Internet, as services and goods are often available on competing websites.

### **The Second Method: Contracting through Electronic Correspondence via E-mail:**

Here the issue arises of the time of issuance of the offer and acceptance, which is an important element in determining the time of concluding the contract.

### **The Third Method is Contracting through Chat Rooms between the Parties to the Contract:**

Regarding the application of the jurisprudential rule (the choice of the council) of the two contracting parties, some jurisprudential opinions have held that what is valid for this method of contracting is valid for a contract between two attendees; on the other hand, others believe that the same rules that apply to telephone contracts and their validity can also be applied to this method (Abu Al-Ezz: 2008, p. 193).

At this stage, when the will of the supplier, producer, or seller converges with the will of the buyer (consumer), and the contract is concluded online, the following questions arise:

What is the time and place of concluding the electronic commerce contract, especially if the parties to the electronic contract are located in two different places or two different countries? And what follows from this in terms of contractual errors and misunderstanding by one of the parties regarding the availability of a sound contracting will that is serious in contracting with the other party? As well as the extent of the existence of a defect of consent on the part of one of the parties to the contractual relationship, such as error, dishonesty, deception, or deceit by one of the parties, especially when Buyer (consumer)? (Sharifat: 2009, p. 61), and also to what extent does each party document the character and existence of the other party and the legal capacity to contract among the parties to the contract? What is the solution, for example, if a person with limited legal capacity, namely a person who has not reached the legal age to contract, uses his father's credit card without his permission and purchases a commodity from an electronic website, deceiving the second party that he is fully qualified, does the guardian of this minor have the right to annul the contract with the seller who is ignorant? Lack of buyer qualification? What is the solution if this minor does not abide by his obligations as a buyer? Does the seller have the right to seek recourse against his guardian (for example, his mother) or against the buyer who lacks the capacity to contract, whether according to the rules of contractual liability or according to the rules of tort?

What is the solution if an error occurs in the website's automated response system? Will the website owner (the seller) bear responsibility for

computer errors? Is he responsible according to the rules of contractual liability for that mistake in the face of the buyer, even though he did not intend to enter into the contract?

The degree to which neutral parties (intermediate certificate authorities) arbitrate between the contractual parties in order to ensure verification of each party's presence is one of the issues that arises while establishing e-commerce transactions. Ensuring that the data they communicate is accurate, handled by regulatory bodies, and completed online by providing each party with authentication certificates or confirmation letters attesting to the other party's status? What is the validity of the electronic contract, how binding it is between the parties, and how strong is its enforcement against third parties?

This issue has been addressed by most laws and regulations in countries in the field of traditional trade contracts, which considered that expressing the will in writing is a means of proving rights and obligations, and the books of Islamic jurisprudence schools detailed it, and considered it to be one of the means of proving rights in matters of contracts (Abu Al-Ezz: 2008, p. 193).

However, when it comes to electronic commerce, the issue that has to be answered is: To what extent is writing produced electronically admissible as evidence that the parties and the judge can use to establish rights and obligations? Given that these are only files and records kept in a system, how can they be presented as evidence? How much does the Saudi judiciary consider the effects of e-commerce, which have produced alternative ways to prove contracts and rights aside from more conventional techniques like electronic papers and digital signatures? To what extent is it genuine?

### **The Third Stage: the Contract Enforcement Stage:**

This step follows the completion of the electronic contract and provides the foundation for the development of mutual duties between the two parties. According to the general rules of the sales contract, the seller is required to deliver the sold item (good or service), guarantee non-violation and entitlement, and transfer ownership of the item. Lastly, a duty to ensure that concealed flaws are disclosed. Regarding the buyer, he bears the responsibility of providing the agreed upon amount and obtaining the item (product or service) (Mansour: 2007, p. 159).

When examining how parties carry out their responsibilities under an electronic contract, we see that they may encounter different challenges than when carrying out their obligations under traditional contracts. For instance, the duty to deliver presents issues with delivery that is incomplete or

delayed, delivery of a location that differs from the specifications (product or service), and the seller's promise to conceal any flaws. These are issues that arise in the sphere of traditional contracts, but because of ignorance, they could be more challenging in the e-commerce setting. The parties communicate with one another and are frequently located in several nations (Ibrahim:2008, p. 12).

**Regarding the price**, which is the buyer's first duty under the electronic contract; it brings up the issue of technological payment options, including credit card payments and online credit card number submission. This payment method, the issue of the security of transmitted information, the certificates of parties that mediate the fulfillment process from third parties outside the contractual relationship, in addition to the challenges of criminal activities in the field of credit card misuse and seizure activities, are all examples of the challenges that have arisen in and are a result of the technical environment. Numbering and utilizing the card again are for unauthorized use (Mujahid: 2000, p. 39.).

In addition to these problems, there are problems that can be described as general problems related to the activity as a whole. Because it takes place during the electronic environment and not during the stages of its implementation, such as the challenge of the privacy of the relationship between the contracting parties, the privacy of the information circulated between them, and the extent to which contractual activity in electronic commerce as a whole is protected from the criminal activities of hackers of computer systems and networks, or what is generally known as information crimes, and a challenge related to the problems of jurisdiction in view of Disputes that arise between parties to an electronic contractual relationship, as in the Internet environment geographical borders and separations disappear, and with them the spatial jurisdictions of judicial authorities, so which judiciary governs the dispute and which law or legislation applies to it when the nationalities of the contracting parties differ, which is the common situation in the field of electronic commerce (bin Salman: 2008, p. 28).

- By reviewing these three stages in concluding an electronic contract, we find that there are several regulatory aspects related to the electronic environment that are of primary concern to all dealers in electronic commerce and require setting a protection framework, which are the following:
- Regular protection for establishing commercial websites on the Internet and registering their addresses, trademarks, trade names, domain names or Internet fields, and intellectual property rights.

- The regulatory mechanism for forming an electronic contract binding on both parties, methods for proving it, methods of electronic signature, their authenticity, and procedures for securing them.
- Adapting the contract in electronic commerce: Is it a contract between absentees or between those present? As a result, the rules for each type and the court competent to hear the dispute in these contracts are determined.
- Regular protection to oblige contracting parties to implement their contractual obligations in e-commerce.
- Regular protection of electronic documents resulting from e-commerce transactions, how to deposit, register and authenticate them, and the periods of their preservation.
- The validity of electronic documents and electronic signatures before the Saudi judiciary.
- The level of security in making payments on electronic communication networks and the rules of participation and responsibility of banks in this regard in the field of electronic commerce.
- Consumer protection in e-commerce.
- Systems for imposing tax and customs duties in e-commerce.
- Legal and judicial jurisdiction over e-commerce contract disputes.

### **Chapter (3)**

#### **The Regulatory Reality of E-commerce in the Kingdom of Saudi Arabi:**

While entering the digital economy necessitates providing the right regulatory environment for e-commerce, anyone considering the stages of forming an electronic commerce contract will discover that the aspect of regulatory protection for electronic commerce is not limited to establishing a special regulation for electronic commerce that includes all the elements of protection, but rather includes a set of systems related to electronic commerce. Therefore, the researcher will go over the Kingdom of Saudi Arabia's laws that deal with e-commerce both directly and indirectly in this section, along with a statement from the relevant government bodies:

#### **Section (1)**

#### **Regulations Directly Related to Electronic Commerce in the Saudi System**

#### **The First Branch: The Electronic Transactions System and its Executive Regulations:**

With the issuance of the Electronic Transactions System in 1428 AH with (31) articles, and its executive regulations in 1428 AH with (74) articles, the Saudi regulator laid a strong foundation for what is called electronic commerce, which came based on the strong expansion and spread that electronic commerce is witnessing, This system came in line with the Kingdom of Saudi Arabia's accession to the World Trade Organization. The aim of this system was to recognize electronic means of conducting transactions, whether commercial or civil, by electronic means, as well as to support commercial investment by facilitating communication and contracting processes in a safe environment for those dealing with it, whether merchants or consumers. Whether a state agency or an individual.

The scope of application of the system's provisions, the method of contracting, the definitions of electronic record, electronic contract, electronic message, electronic signature, digital authentication certificates, and the duration of the validity of proof provided by electronic documents are just a few of the significant aspects of electronic transactions that this system sought to regulate.

As a result, the researcher studying the electronic transactions system discovers that this system has profited from and was eager to adopt international organizations' and other nations' legal experiences pertaining to electronic commerce. Aware of the type of environment the system operates in, he was also eager to include certain regulatory specifics in the executive rules. By reviewing what is stated in the articles of the law, we find that the



law and its regulations have been keen to establish a proper regulation of some issues in the field of electronic transactions, and this is clearly evident, for example, in its organization of procedures for keeping electronic records and data in Articles (6), (7) and (8). ) and (12) and (13) of the system and articles (2-9) of the executive regulations of the system, which shows in these articles the regulator's keenness to ensure the necessary and secure procedures for all parties in electronic dealings, as this clearly appears in the subject The electronic signature in Article (14) of the system, and Articles (10-12) and other relevant topics related to authentication, such as digital authentication, as it shows the regulator's keenness to establish previous and subsequent preventive measures in the subject of electronic dealing, which are considered issues of relevance. It is of great importance to support trust and confidence in dealing with the outcomes of electronic transactions.

The system has supported the recognition of electronic documents and records, and considered them to be evidence of proof that parties may rely on. Thus, the system has addressed the jurisprudential and judicial disagreement in many countries' systems regarding the extent to which the judiciary recognizes the validity of electronic documents, given that they may be subject to forgery (Ibrahim: 2006. p. 112), and this recognition is clear. From the texts of Articles (7 - 8 - 9), this also appears in the text of Paragraph (1) of Article (9) of the acceptance of electronic records and electronic signatures as evidence as long as it meets the requirements stipulated in Article (8) of the system. These requirements are the importance of the integrity of that electronic record, which Article 1 of the system defines as: (data that is created, sent, delivered, transmitted, or preserved by electronic means, and is retrievable or obtainable in a form that can be understood.

To prevent any distortion or falsification, the system needs the safe technical conditions outlined in the rules to be available. If not, it lacks standing before the courts. This admission may be relative, but it can be refuted by demonstrating to the party bearing the burden of proof that there is forgery or distortion in this electronic record, or that it was not preserved in compliance with the technical requirements listed in Article (5) of the executive regulations of this system, which are:

- 1- Follow clear and documented rules and procedures for maintaining electronic records.
- 2- Preserving electronic records and data in any format consistent with the system in effect by the person who saved them.

3- Follow clear, documented rules and standards to ensure the safety of saved electronic records from unauthorized access and modification, so that these rules include application, auditing, and disaster recovery plans.

4- If any paragraph in these regulations requires specifying, memorizing or highlighting the date and time, the following must be adhered to as a minimum:

A) Determine the date according to the Gregorian calendar at least, adding the Hijri calendar if required by any regulatory text, and specifying the time in hours, minutes, and seconds as a minimum.

b) The date and time must agree with the official time approved by the Centre, unless the two parties agree otherwise.

5- To prove the validity of the time, the record must contain the time stamp approved by the center (as stated in the list of rules and procedures regulating the work of the center) or any time stamp that was explicitly agreed upon by the parties to the electronic transaction.

6- Use appropriate technologies to ensure that the electronic record is preserved in the same form in which it was created, sent, or received, or to ensure that its content is identical to the content in which it was created, sent, or received. The party obligated to preserve electronic records must perform archiving and backup operations periodically, in a way that guarantees the rights of those who rely on these records. Article (6) of the system also includes the conditions for displaying the electronic record, and the system thus achieves the highest levels of authentication for electronic records according to which electronic transactions are documented, and without verifying what is stated in these articles, the electronic document cannot be relied upon as an authoritative means of proving rights (Al-Janabihi: 2006, p. 56).

The system also reflected its objectives in Article (2) of the system. If we look at the text of Paragraph (1) of Article (4), which states: "This system does not oblige any person to transact electronically without his consent, and this consent may be explicit or implicit".

However, the issue here is that Saudi Arabia's legal system lacks both judicial and civil law rules of contracts. What does implied consent entail, particularly in light of the fact that parties interacting in an electronic setting want clarification on the meaning of implied consent (Al-Roumi: 2004, p. 34), and the system's executive regulations omitted any definition of the term? This is not evident in the electronic transaction system in the electronic transaction environment, where trading is associated with using a computer to conduct immaterial and intangible labor.

As for Paragraph (3) of the same article, you find that the system has given one of the parties to an electronic transaction the right to set additional conditions of its own for accepting electronic transactions and signatures. Provided that these conditions do not conflict with the provisions of this law, but what raises the question here: is the extent of the right of one of the contracting parties to set conditions of his own unilateral will? (Sharifat: 2009, p. 7), which may transform this contract from being adapted as a consensual contract into a contract of adhesion in the electronic sales contract, which is one of the characteristics of the sales contract that distinguishes it from many types of contracts, especially considering the event that the site or electronic market has a monopoly on the good or service that is the subject of the contract, and it was It is better to keep the electronic sale of goods and services in the midst of its characteristics that distinguish it, which is the characteristic of consent as its most prominent characteristic that distinguishes it from other contracts.

The Electronic Commerce Law, on the other hand, rendered a significant decision regarding this matter and stated in Article Seven that: "The service provider shall furnish the consumer with a statement outlining the terms and conditions of the contract to be executed, provided that the statement comprises the following:

- A- The procedures that must be taken to conclude the contract.
- B- Data related to the service provider.
- C- The basic characteristics of the products or services subject to the contract.
- D- The total price includes all fees, taxes, or additional amounts related to delivery, if any.
- E- Payment, delivery and implementation arrangements.
- F- Warranty information, if any.
- G- Other data specified by the regulations.

According to the specifics of each activity, the regulations outline the controls that must be in place for the data that the service provider must supply. As a result, adding requirements beyond what has been agreed upon is prohibited.

In Article (10) of the third chapter of the system (concluding an electronic transaction), it recognized the conclusion of an electronic contract by simply offering and accepting, but by extrapolating this article we find that the electronic transactions system is the only Saudi system that indicates how to conclude a contract by expressing it through an offer and acceptance despite There is no system of contracts, civil law, or codes in the Saudi

system to rely on in this regard. Also, this article and its executive regulations did not clarify many of the contractual issues for concluding a contract with regard to the elements of offer and acceptance. For example, neither the system nor its regulations stated the ruling in the event of a mismatch. Acceptance with the affirmative? Is it possible to issue an advance acceptance? Or a delayed positive?

Is it thought that this electronic contract was completed correctly? (Siraj: 1998, p. 45) Although the text of Article (10) was significantly condensed, it left open a number of questions about how the electronic contract was formed in the absence of a Saudi system contract system to refer to. This could cause significant issues when it comes to concluding the electronic contract as well as whether it was concluded to the full extent.

Paragraph (1) of Article (11) of the system indicates that a contract may be concluded through an automated electronic data system between two or more electronic data systems that are prepared; It is pre-programmed to carry out such tasks as representatives of both parties to the electronic contract. The system considers the contract to be valid, enforceable, and productive of its legal effects, despite the lack of direct intervention by any natural person in the process of concluding the electronic contract.

However, this article did not mention a very important issue, which is contractual computer errors that may occur and be contrary to the will of the computer owner or the owner of the electronic market, which is expressed in contractual computer errors, which were the subject of controversy in many countries' laws (Berenstein, Campbell: 2002, p.25), and which jurisprudence scholars may include. Islamic and legal under what is called (the responsibility of the animal keeper and the keeper of things) (Abu Al-Ezz: 2008, p. 73).

Maybe what we should draw attention to in this case is that the Saudi electronic transactions system did not adequately address this, summarizing the responsibility in Article Twelve of the system, which stated that the electronic record—a message sent by the same person—must be issued by the originator if it originated from an automated system that serves the person's interest, as in the case of the so-called electronic agent, whose regulatory center is regarded as the same as that of the agent.

Article Four of the Electronic Commerce Law, however, provided a ruling on this matter. It stated that: "If a consumer makes a mistake in an electronic communication and the technology does not allow him to fix it, he may notify the service provider of the error's location as soon as he becomes aware of it within the timeframe given by the regulations, and this is

considered If you have not profited from the product or service offered by the service provider, or if you have not benefited from any of them, report the error.

Accordingly, in order to remedy the electronic contractual error, the consumer must report within the period specified by the executive regulations so that this does not lead to undesirable consequences.

What is worth noting is that the ruling was not clarified in the case of contracting by minors who have not reached the legal age for concluding contracts (Hoffman: 2021, p.6) and do not have the capacity to contract if they conclude a contract with an electronic website that entails obligations for that minor without the knowledge of his guardian; Is the contract here considered invalid despite not being referred to in the law, or voidable according to what the jurisprudential rules stipulate, since what appears on the surface of the text of Article (11) of the law is that this contract is considered binding regardless of the full legal capacity of one of the parties? Parties to electronic contracting, and this contradicts the general rules regarding the emergence of contractual liability stipulated by jurisprudential schools and civil legislation, in that contractual liability arises with the availability of three main elements: consent, subject, and reason (contractor, contracted person, and formula), and capacity is considered an important part of consent (Siraj: 1998, p. 39.).

We are presented with two options: either prioritizing the interests of the website owner, which would violate general contract law and expose one of the parties to liability and harm, or prioritizing the interests of a minor who lacks legal capacity, which would render the electronic contract void and cause harm to the second party, the website owner. Who is unaware that the second party lacks capacity?

When we review the electronic transactions system and its executive regulations, we find that they did not address these issues related to concluding electronic contracts and did not refer to the general jurisprudential rules in this field, which raises controversy over this issue despite its great importance, considering that it is the first stage from which the parties begin to form the electronic contract and it has contractual effects

Since the time of concluding the contract is an extremely important stage, on its basis obligations arise between the parties to the contract, its effects arise, and work begins to implement it, especially in contracts in which the time of concluding the contract plays an important role in the emergence of obligations, such as insurance contracts, employment contracts, and others. If we look at the text Article (13) of the system we find

that it referred to the stage of sending the electronic record, which in other words is the means of communication between the parties to the electronic contract for contracting, as this article indicated that the electronic record is sent as soon as it enters the data system that the sender cannot, and he may be the seller. Or the buyer in the electronic sales contract and the government agency or its supplier in the administrative supply contract, for example, and here the following question arises:

**Who determines this time? Are they the parties to the contract or a third party? What is the time of the electronic contract? Is it once the electronic record is sent or received by the addressee and is aware of it? What if the addressee cannot receive the electronic record despite sending it by the sender due to a technical error, is he considered bound by the contract even though he was not aware of it? These issues have been a matter of disagreement between regulators in civil law and traditional contracts. Can an electronic contract be treated according to the same traditional theories!?**

According to Article (15) of the Electronic Transactions System, the Saudi Arabian Ministry of Communications is authorized to work with other government agencies to coordinate the implementation of this system. This system is linked to many other systems that require amendment in light of it, such as the trademark system, the anti-commercial fraud system, and other systems closely related to e-commerce issues. Therefore, it is important to understand the role assigned to the Ministry to implement this system and the relationship with other agencies in the nation.

A person who has suffered harm as a result of violations specified in this system has the right to file a lawsuit before the appropriate judicial authority in order to request compensation for the harm they have suffered, according to Article (27) of the Saudi Electronic Transactions System. Generally speaking, what may occur to an individual can be criminal in nature, an infringement on intellectual property rights, the consequence of commercial fraud committed by the owner of the commercial website, or the result of either party's failure to carry out their end of the bargain in the electronic contract (Al-Jaridali: 2008, p. 34.).

However, according to the Saudi pleading system, the competent court to hear the dispute is determined according to spatial and qualitative criteria, which is called in the system by the term spatial and qualitative jurisdiction of the court to hear the emerging lawsuits, but it did not take into account the circumstances surrounding the transactions and disputes that appear in electronic commerce and the nature of the environment in which

they take place. For example, the public (Sharia) judiciary may be the competent judiciary, if the type of dispute is the result of one party to the contract breaching some or all of his obligations in the contract in accordance with the rules of contractual liability. The dispute may be within the jurisdiction of the commercial courts in accordance with the new Saudi judicial regulation issued in (9/19/1428 AH) Commercial courts are competent to consider this type of dispute.

In the event that the dispute pertains to a trademark, website, or any other aspect of copyright, it may fall under the purview of committees having judicial authority, such as the Committee for Reviewing Violations of the Publications and Publishing Law, or any other committees or judicial bodies within the nation, contingent upon the specifics of the case.

Looking at the nature of disputes in electronic transactions, whether commercial or civil, one finds that they need a judicial system that aims to immediately resolve the dispute, and aims to establish peremptory rules that respond to the nature of electronic commerce and ensure the integrity of its data on the one hand, and settle its disputes on the other hand in a quick time that is compatible with the nature of electronic commerce. The electronic environment, in which electronic courts and electronic arbitration may be those methods for resolving e-commerce disputes. Whereas, it is more appropriate that all matters related to disputes in this electronic environment, whether related to the electronic transactions system or the system for combating information crimes, be entrusted to a single court or judicial committee, which, by virtue of the continuous practice of adjudicating this type of cases, is capable of creating regulatory rules derived from precedents. Judicial, so that it provides a safe environment for its customers, and supports the rights of customers in electronic transactions in general and electronic commerce in particular, despite the fact that this judicial path is not taken in most international systems in general and in Saudi Arabia in particular.

#### **The Second Branch: The System for Combating Information Crimes:**

In order to protect the data and funds of electronic transactions, whether civil or commercial, and everyone who deals in the electronic environment from being accessed by tamperers and violators from spying on or assaulting them by taking them, Royal Decree No. 79, dated 3/7/1428 AH, established the Anti-Cybercrime System, or use sabotage or take advantage of under any guise. On the other hand, crimes committed online and through electronic media are brand-new crimes that call for the

perpetrators to take a strong stance in favor of establishing laws that shield participants from violating the rights of others.

Whereas cybercrime differs in its understanding from traditional crimes, which are defined in the text of Article (1) of the new Anti-Cybercrime Law, as: that crime that, when committed, is associated with the use of computers and information technology and its elements are present in a virtual environment whose elements are difficult to determine.

**Considering the persons of the crime committed in the electronic environment, we will notice that it does not involve any person in the following cases:**

One of the parties to the electronic commercial contract—that is, the buyer or seller—or the criminal who violates electronic commerce laws. Given that the customer paid the amount for the item, the seller is as though he had, among other crimes, committed fraud, fraud, or deceit against the buyer. He may even have committed theft or treason against the buyer. Alternatively, the buyer may choose to pay for the service electronically through the use of a credit card, electronic signature fraud, or data modification.

Either the buyer committed the offence specified in the electronic contract—for example, by purchasing under false pretences, exploiting another person's data without authorization, or fraudulently using a credit card—or he wasn't the one who did it.

The perpetrator of the crime occurring in electronic commerce may be one of those other than the direct parties to the electronic contract, such as if one of those involved in operating the technical service or operating technical networks such as the Internet, and they are what are called intermediaries, whose role appears in enabling users to enter the network and roam around it or Transferring the service, or the role of that intermediary may be in storing information, and one of them may commit this crime by entering and tampering with the systems and data of commercial websites, or by accessing information that he is not licensed to view, and these people are either service providers, which is the company that The Internet service provider or accommodation provider (host) is the company or individual that provides a place for hosting on the Internet for its customers, and the perpetrator of the crime may be someone other than those, such as network hackers and pirates (Berenstein, Campbell:2002, p.17.)



**If we want to summarize the crimes committed against electronic commerce data, they can be reviewed in accordance with what is stipulated in the Anti-Cybercrime Law in Article (7) to Article (9) in the following crimes:**

**1- Crimes of assault on e-commerce sites:** such as illegally entering the website, staying without the permission of the site owner, tampering with data, entering new data, deleting or modifying installed data, or violating intellectual property rights.

**2-The crime of assaulting personal data:** Because personal data must be exchanged between parties to an electronic commercial transaction, we find that regulations, particularly those pertaining to the Saudi Electronic Transactions System, have made it clear that concerned parties must take the necessary technical and precautionary measures to protect customer data in an electronic environment from attacks such as disclosure or eavesdropping, fraud, forgery, or breach of trust, among other things.

**3- The crime of attacking digital mobile phone data, information, and services:** Here, the attack may involve stealing mobile phone services, destroying information, or disabling services by sending viruses that destroy those devices and data, or stealing mobile phone data and information.

Based on these attacks, the Saudi Anti-Cybercrime System came to punish these criminal acts in its articles. This system can be called the Electronic Punishment System, because it defines crimes and sets various penalties that vary depending on the seriousness of the cybercrime committed.

Although the researcher notices the importance of reconciling the penalties issued therein with the penalties issued in other systems related to the same criminal act, even if the place of its occurrence differs, for example, Article (4) of Article (6) of the system stipulates a penalty of imprisonment for a period not exceeding A period of five years and a fine not exceeding three million riyals, or one of these two penalties, for every person who creates a website on the information network for the purpose of drug trafficking, even though this criminal act has been criminalized and punished in the anti-drug system in Article (37), which carries the penalty. It goes to the point of killing in support of drug traffickers, as well as what was issued in the intellectual property rights system. It would have been preferable to reconcile what was issued in this system and other systems, even if the environment in which the criminal act took place differed.

## **Section (2)**

### **Indirect Systems for Electronic Commerce in the Saudi System**

The regulatory aspect of e-commerce is not limited to establishing one independent system that regulates it, but rather requires amending some other systems related to e-commerce, in accordance with its requirements and electronic environment, since the electronic contractual relationship takes place in a virtual world whose components are no less than the real world and the requirements of its framework. Regular (Wright: 2018, p.439).

Here the researcher will briefly review these systems without going into depth in their details. The basis for that presentation is to reflect on its current situation and the lack of requirements that it faces, the expansion of electronic commerce in the Saudi system, so that it is not an obstacle to the progress of electronic commerce. These systems are: the Trade Names System issued in 1420 AH, and the Trademarks System issued in the year 1420 AH. 1423 AH, and the Commercial Books System issued in 1409 AH. These three systems require amendment in their articles and wording in order to be compatible with the requirements of e-commerce, so that this amendment includes an understanding of the following topics:

#### **The First Branch: Registering and Protecting Website Names, Domains and Trademarks on the Information Network:**

So that what is included in these regulations explains and regulates the conditions and method for registering a trademark and trade name, and a statement of the site owner's ownership of his trade name on the Internet, and not registering and using it by anyone other than its owner, and the penalties prescribed for those in the event of violation, as well as regulating the relationship between the names of commercial sites on the Internet. And between registered trademarks in terms of priority of registration and who has the right to register the website name. It is necessary for the legislator to intervene to clarify the provisions for registering websites and electronic trademarks on the Internet compared to registering them in traditional cases and to establish clear regulatory procedures for their registration and protection, which are the subject of constant dispute.

Likewise, what is stipulated in the commercial books system stipulates that the merchant must be obligated to keep commercial books, which reflect the financial position of the merchant and show the merchant's transactions that he concludes on a daily basis. The merchant here is whether he is practicing his activity in his commercial store located in reality and in its traditional sense or in his virtual store in the electronic environment. He

must be obligated to keep these commercial books, which is one of the obligations imposed by the system on the merchant in carrying out his commercial activity.

**The Second Branch: Commercial Data System issued in 1423 AH:**

It is the system that protects consumers with regard to the provisions of the data that is written on goods and products in the event that they are purchased through normal means. This is the same situation that must be applied to the data that is written or whose images are placed on products and goods in electronic commerce, in order to protect consumers through the electronic market. As the process of contracting and purchasing in the electronic environment does not provide consumers with the opportunity to know the information and characteristics of the commodity and product more clearly and with credibility (Mansour: 2006, p. 88), which requires the intervention of the regulator to establish adequate protection and suitability for the electronic environment in this regard.

**The Third Branch: The Anti-Commercial Fraud Law Issued in 1429 AH:**

Although it came with its new version of the old system issued in 1404 AH, the new system was not explicitly comprehensive when drafting its articles that this system includes fraud through electronic commercial transactions, which considers this environment a broader and easier field for the use of fraudulent and misleading means and false advertising campaigns on. The consumer, so it is important to put an end to these practices that would weaken consumer confidence in purchasing via electronic media, and thus will lead to weakening confidence in the field of e-commerce.

It is important for the regulator to intervene to amend this system so that it is compatible with the electronic environment and addresses issues of commercial fraud via electronic media. This is in line with many international legislations in this field, including what was issued by the European Union in 1997 regarding the importance of establishing appropriate legal means to protect the consumer in electronic transactions (The European directive: 1997, p.20).

Also, what was issued by the Organization for Economic Cooperation and Development (organization for Economic Co-operation and development: 1998, p.53) is on the importance of creating special regulations for consumer protection in the electronic environment.

In addition to what was issued in the laws of several countries to protect the consumer in electronic commerce, such as the French law through the conditions set by the French regulator in the digital certification

process, which aims to protect the consumer in the French electronic signature law issued in 2000, as well as sets of French laws that refer to consumer protection. Even in the e-commerce environment (Al-Nakas: 1996, P. 22). As well as some Arab laws, such as the Tunisian Electronic Commercial Transactions Law issued in 2000 in Article (25), which stipulates that the seller is obligated to indicate in a clear manner the data related to him and the commodity, its guarantees, and electronic payment methods.

#### **The Fourth Branch: Copyright Protection System Issued in 1424 AH:**

The need for copyright protection on the Internet is growing, particularly in light of the proliferation of digital technologies and the growing number of users. These factors have a negative impact on copyright because technology permits works to be sold and reproduced without the owner's consent, resulting in the loss of the author's material and literary rights. In a virtual world where censorship and regulation may not exist, the Internet has a significant impact on copyright for other works as well, particularly since works are sold on websites without the consent of their owners. Additionally, the prevalence of piracy has increased over time, prompting numerous nations to take action by passing laws to safeguard citizens' rights in electronic environments.

If other information crimes need a certain level of skill and knowledge from their offenders, then copyright violations on the Internet are simple to carry out and may be committed by anybody, whether they be the information supplier or the user. Since it doesn't involve any particular expertise, we might refer to it as an easy crime. As a result, the Saudi copyright protection system had to be redesigned to incorporate this protection for works that are protected online in order to address this situation. As a result, you discover that some nations have passed laws to safeguard copyright and intellectual property.

#### **The Fifth Branch: The Sharia Proceedings System Issued in 1421 AH:**

It is time to re-evaluate its content and modify it to make it more appropriate for the electronic transaction environment. For instance, Article (138), which deals with written evidence, states that, unless it bears the signature of the individual being used as evidence against whom it is used—a signature that is determined by the system—written evidence does not have full authority in proof, regardless of what was issued in Article (5) of the Saudi Electronic Transactions System. pleas by seal, fingerprint, or signature.

Consequently, it is possible to interpret this definition of acceptable signature types to suggest that an electronic signature that does not resemble a signature, fingerprint, or stamp is not utilized to identify the owner of the electronic document. To make this compatible with the electronic transactions system, this article must be amended to include the electronic signature as one of the signature types.

Especially since the use of the Internet to complete electronic transactions has raised several issues related to judicial jurisdiction and methods for settling disputes, in terms of choosing the means of settling disputes that occur through it, and determining the court competent to hear the dispute from among the courts of countries that conflict with jurisdiction (Sharaf El-Din: 2013, p. 11), where The Saudi Electronic Transactions System stipulates in Article (8/3) of the Electronic Transactions System that the competent court shall determine the place or domicile of the originator (the offeror) in the electronic transaction, regardless of the place where the information system that received the message is located, which is the place where acceptance is accompanied by an offer. There was no contrary agreement between the parties. Here, conflicts of laws may arise if we know that the parties dealing in e-commerce are usually from different countries in most transactions. The importance of addressing this issue increases under circumstances that indicate that electronic commerce will be a source of disputes between related parties due to the abundance and diversity of electronic transactions in the future.

It is expected that as electronic trade transactions become more widespread, both in terms of how they are completed and how they are implemented online, they will cross national and cultural boundaries. This creates a fertile ground for legal disputes and conflicts of jurisdiction. Furthermore, because they rely on sluggish and intangible data, the conventional approaches to court dispute resolution—regional physical processes and procedures based on geographical links—do not adapt to the needs and characteristics of electronic commerce. Because of the nature of the electronic world, these approaches will need to be reevaluated when used in trade disputes.

**The difficulty of resolving e-commerce disputes is due to several reasons, perhaps the most important of which are:** the nature of the disputed rights, such as intellectual property rights related to domain names registered on the first level of Internet sites, whose laws differ from the nature of the environment through which the disputed transaction is carried out, which is an intangible electronic environment. There are several nations

that have not passed legislation in this specific area. However, other factors, some of which have to do with the scope of each national or foreign court's jurisdiction to hear the case, also highlight the inconsistency between the extent of intellectual property rights' regional and international protection and the level at which those rights are addressed. International regulation of these rights for e-commerce dealers is therefore necessary in the e-commerce environment.

The difference between the traditional and electronic environments in which the dispute and the parties to the dispute occurred makes it clear that the traditional methods of dispute settlement, represented by submitting the dispute to the national courts to consider, will open the door to many issues arising when using these methods to settle e-commerce disputes, whether with regard to the work of the criteria for determining the competent court or with regard to the limits of its authority and the effectiveness of what its rulings or orders provide. Defense of disputed rights is connected to such context.

Due to these challenges and issues with establishing state court jurisdiction over disagreements over transactions made online, it is necessary to develop new mechanisms for resolving these disputes in order to avoid conflict with regional jurisdiction for judicial dispute resolution standards and to guarantee an affordable, efficient, and successful settlement on a global scale, which is what some of the commonly used mechanisms provide. Lately, in a method that fits this setting, such as electronic arbitration and other procedures that are predicated on the parties' unrestricted choice (Sharaf El-Din: 2013, p. 12).

**The rule in determining the competent court and the law is applicable in examining the dispute**, except in the case of a special clause in the contract specifying the courts or the competent authority to hear its disputes. According to the Saudi legal system, a contract must have a connection or points of contact with a specific nation in order for its courts to have jurisdiction over it. Examples of such connections include the fact that the contract was concluded or executed on the nation's territory or that one of the parties has a legal presence (such as a domicile) in the region. The actual presence of persons or objects within a court's jurisdiction is the generally accepted method for determining that court's jurisdiction. On the other hand, in the absence of the aforementioned physical presence, and also the absence of the parties to the dispute accepting the jurisdiction of a particular court, litigation systems before the courts have traditionally stipulated the existence of an acceptable link between the transaction and the place in which it

exercises its jurisdiction, and this is what the Saudi litigation system has adopted (Awad, Al-Salami: 2023, pp. 2358 et seq)

**The Sixth Branch: The Code of Criminal Procedure Issued in 1422 AH:**

This is because cybercrime takes different forms from traditional forms of crime, in terms of its nature, the tools used, the people, the motives for committing it, and the place of its commission. The crime is intangible, based on data, and uses electronic funds. This necessitates changing the criminal process code in all areas pertaining to control mechanisms. This amendment will play a significant role in determining electronic criminal liability in a way that supports and provides protection, trust, and reassurance in electronic transactions and commerce, as well as achieves the protection required to support the regulatory structure of commerce. And follow-up, trial, penalties, and execution of judgment, are in a manner consistent with the nature of electronic crime (Generation Journal of In-depth Legal Research: 2018, pp. 27 et seq).

**The Seventh Branch: The Forgery Law Issued in 1382 AH:**

It is one of the systems that is indirectly related to providing protection to customers in the electronic commerce environment. However, the system in its current form does not provide the necessary criminal protection for electronic transactions and commerce, with regard to information crimes of forgery of information and data. We note that the texts of the articles of this system were developed to protect physical objects. In the case of infringement through traditional methods, which may not be applicable to forms of infringement in the electronic environment, that are non-material in nature, such as forgery of electronic documents and electronic signatures (Fawzi: 2008, p. 120).

It is noteworthy that a subcommittee comprising multiple parties has been established to investigate credit card fraud and related issues. The subcommittee has also added an article about forging or counterfeiting bank cards and documents, as well as making unauthorized changes to electronic financial information in all its forms. Apart from the information provided in the Saudi cybercrime system and the electronic transactions system (Muhammad: 2011, p. 95).

### **Section (3)**

#### **E-commerce Regulators**

The system assigned the Ministry of Trade and Investment the responsibility of overseeing the e-commerce industry and releasing the required regulations to govern it in a way that preserves the integrity of its transactions and strengthens the sector's function. This includes regulating the electronic platforms that act as a middleman between service providers and consumers as well as e-store authentication bodies (Article “16” of the Electronic Commerce Law: 1440 AH). One such platform is the (Maroof) platform, an electronic service platform available to all e-commerce dealers, buyers or sellers. Its goals include fostering greater trust between buyers and sellers, facilitating the seller's expansion into new markets, and providing a transparent image of the caliber of the services provided by the online store.

The system stipulates that the Minister may establish one or more committees, with a majority vote required, to investigate system violations and penalize violating service providers. The committees must have a minimum of three members, including a statutory advisor, and their decisions must be made by the committee. The Minister will make a determination about the committee's operating guidelines and members' compensation (Article “19” of the Electronic Commerce Law: 1440 AH).

In accordance with the rules of the Board of Grievances' procedural system, the system also gave them the ability to contest any ruling made against them based on the system before the Administrative Court. (Article “20” of the Electronic Commerce Law: 1440 AH)

A clause stating that the statement be published at the violator's expense in one or more local newspapers published in his place of residence, or by any other appropriate means, depending on the nature, gravity, and impact of the violation, may also be included in the decision outlining the penalty. As long as the publication occurs after the decision has been affirmed as having passed, this is acceptable. The time frame allowed by law or if the decision made in this case is final (Article “21” of the Electronic Commerce Law: 1440 AH)

In addition to the committee responsible for looking into violations of the provisions of the system; the regulator has assigned the competent court, which is the Commercial Court, to decide on disputes existing in e-commerce contracts in accordance with the provisions of the system, including claims for compensation arising from the application of the provisions of the system (Article “22” of the Electronic Commerce Law: 1440 AH).



The existence of two specialized bodies designated by the regulator may give rise to concerns. Some may argue that the Commercial Court and the competent committee, which was established by the Minister of Trade and Industry, have jurisdictional and explicit conflicts. The researcher is of the opinion that there is neither a jurisdictional conflict nor a conflict of interest between them. According to the regulator, these two organizations have the authority to investigate service provider violations, whether as a result of a consumer complaint or from workers who oversee and inspect e-commerce transactions, and to impose the system-specified penalties without going over (Article “23” of the Electronic Commerce Law: 1440 AH). The commercial court system hears cases involving complaints brought by the customer against the service provider or by the service provider against the consumer. These cases include claims for damages resulting from systemic violations.

It aims to regulate and stimulate the e-commerce sector in the Kingdom. The (E-commerce Council) was established by a decision of the Council of Ministers based on the recommendation of the Council of Economic and Development Affairs on Dhul-Qi'dah 5, 1439 AH, to undertake the tasks of proposing e-commerce policies and legislation, supervising the program to stimulate e-commerce and coordinating with relevant authorities. The relationship is to prevent duplication and eliminate obstacles facing e-commerce, and to ensure the effective implementation of the projects and recommendations of the “E-Commerce Stimulus” program. The E-Commerce System for the year 1440 AH is considered one of the initiatives of the E-Commerce Council.

### **Conclusion and Recommendation**

After discussing the idea of e-commerce and the Kingdom of Saudi Arabia's legislative framework, we need to clarify the structural flaw that would prevent e-commerce from flourishing in the Saudi context. With the limited regulation of electronic contracts in the Kingdom due to their lack of comprehensiveness and rules governing the contract in the Saudi electronic transactions system, it has become evident that subjecting electronic transactions and contracts to traditional rules is inappropriate.

Thus, in order to achieve the necessary protection and confidence in trade, it is necessary to look for more flexible systemic solutions that are compatible with the nature of electronic commerce and in which the contractors' will is clearly evident. Through them, we are able to overcome its problems, beginning with the establishment of the website and its system and how to keep it safe from attacks, as well as safeguarding other parties involved in the contractual process. Electronically, this means reevaluating the development of a new legal framework for a few pertinent Saudi systems in order to prevent infringements on rights like as trademarks, intellectual property, and copyright, among others.

Conversely, energizing the role of international organizations operating in this domain—like the WIPO regarding the Protection of Intellectual Property (issued in 2000), the Lugano Convention regarding judicial jurisdiction in 1988 AD, the Rome Convention regarding the law applicable to contractual obligations issued in 1980 AD, and the Brussels Convention regarding judicial jurisdiction and the enforcement of judgments issued in 1968—some of which the Kingdom is a member of—to establish a clear framework in conflict of systems and determine jurisdiction in e-commerce transactions.

Since the Kingdom of Saudi Arabia established a national center for electronic commerce, it is imperative that we discuss this crucial step in terms of the Kingdom's role in facilitating electronic commerce. This center is in charge of all matters pertaining to electronic commerce, including organization, systems, and procedures, as well as the development of strategies for handling it, given that it is a new source of development, and financial commitment.

Following the presentation of this study and its most significant findings, it is necessary to make the following recommendations, which we really hope the Saudi regulator would consider:

1- Reconsidering the wording of most of the texts of the Saudi electronic transactions system in particular due to the inaccuracy in wording and

ambiguity at other times, and amending some texts that are not compatible with the electronic commerce environment.

2- Rewording Paragraph (1) of Article Four of the Saudi Electronic Transactions System, as its wording raises a problem in terms of the scope of application of the Electronic Transactions System and suggests that its application requires a prior agreement between the contractors to use electronic means in contracting.

3- Adapting the legal status of electronic media as an agent for the contractor, similar to other legislation, and addressing the issue of technical errors that result from contracting with electronic media, and granting the contractor with the electronic media the right to cancel the transaction in the event that he falls into a technical error if the electronic mediator does not allow this error to be amended, Provided that this contractor immediately informs the owner of the electronic intermediary of the error via electronic message.

4- The importance of the Saudi regulator adopting the theory of receiving acceptance in determining the time and place of convening the electronic contract because it is the most appropriate theory for the nature of dealing via the Internet as it provides practical and technical solutions to the defects that have been directed at other theories in addition to the fact that this theory is fair in dealing with the will of both parties, as it takes Taking into account the interest of both parties in the contract.

5- Reconsidering the provision contained in Paragraph (1) of Article Nine of the Executive Regulations of the Electronic Transactions System, which includes obliging the addressee to consider that the data message was not issued by the originator as soon as he receives the latter's notification stating that, since in the event that the addressee uses A means agreed upon with the originator to prove that the data message was issued by the originator. How can the organizer allow an established person to deny that this message was issued by him despite proving that it was issued by the originator!?

6- Amending the text of Paragraph (1) of Article Ten of the Electronic Transactions Law by expanding the concepts of offer and acceptance to include, in addition to verbal expression, other means of expressing will, including electronic information messages.

7- We support what the regulator has said in electronic transactions, that contracts concluded via the electronic network are subject to the law of the place where the supplier's domicile (provider) is located when concluding the electronic contract, due to the large number of consumers who enter the site to purchase from various countries, which is difficult for the owner The

site must know its laws and regulations, provided that the site mentions any unfamiliar provisions in its law, such as guaranteeing hidden defects, for example, and the rights of the parties.

8- The difficulty of applying traditional attribution rules to actions that take place over the Internet and determining the applicable law, which drives us to the importance of developing a joint international regulation in which countries and organizations contribute to formulating unified legal texts to determine the applicable law for private international electronic disputes.

9- Paying attention to cybercrime and establishing a clear codification of it in all its stages, including description, follow-up, investigation, trial and punishment, especially since the Saudi cybercrime system came to monitor crimes and state the prescribed punishment only! Without clarifying the above, and raising awareness of this crime, the features of which disappear in an intangible environment that is difficult to track.

10- Creating a special system to protect the consumer in general and in electronic transactions in particular, and clarifying the consumer's statutory status, rights and obligations in the electronic environment before contracting by setting the conditions that must be met in the offer and acceptance and after contracting by determining the consumer's right to have recourse against the second party and how to exercise that right and protect him from fraud (Email, scam and fraud).

11- Reconsidering the wording of most of the texts of the Commercial Court System, the Trademark System, the Commercial Data System, the Trade Name System, the Pleadings System, the Protection of Intellectual Property Rights, and what is related to the credit information of the parties to the relationship, and other systems related to electronic commerce so that they are more appropriate. With e-commerce transactions and the future needs they require, according to the shortcomings in these systems explained in the explanation.

12- Creating a mechanism for resolving e-commerce disputes that suits the nature of speed and the circumstances of the parties in e-commerce. Perhaps electronic arbitration and settlement by electronic means are the best means in this field, and urging the establishment of a unified international framework for settling disputes.

13- Holding more national and international forums and conferences in the field of e-commerce topics; and support international cooperation in this field to produce a unified law for it.

14- Spreading the regulatory culture among those dealing with e-commerce and clarifying the rights and obligations in their dealings through it.

## References

1. Abdel Aziz, D. (2018): Criminal Liability for the Crime of Electronic Blackmail in the Saudi System, a Comparative Study, research published in the Journal of In-depth Legal Research, Issue 25.
2. Abu Al-Ezz, A.M.A. (2008): Electronic Commerce and its Provisions in Islamic Jurisprudence, 1st edition, Jordan, Dar Al-Nafais, 2008 AD.
3. Abu Al-Ezz, A.M.A. (2008): Electronic Commerce and its Provisions in Islamic Jurisprudence, Dar Al-Nafais for Publishing and Distribution, Amman.
4. Abu Al-Lail, I.A. (2011): Legal Aspects of Transaction via Modern Means of Communication, research presented to the Law, Computer and Internet Conference at the United Arab Emirates University, Volume Three, Third Edition.
5. Abu Muqli, M.A., Al-Sarayrah, M.A.(2014): The Law Applicable to Electronic Consumer Contracts of an International Nature, Journal of Sharia and Law Sciences, Volume 41, Issue 2, 2014 AD.
6. Al-Arari, A. (2018): Sources of Obligations, Book One, Contract Theory, Dar Al-Aman Rabat, sixth edition.
7. Al-Farshi, Z.B.A. (1440 AH): Saudi Commercial Law (Commercial Business-Merchant-Commercial Companies), second edition, Jeddah, Hafez House for Publishing and Distribution.
8. Al-Haj Hassan, A.A.M. (2012): Commercial Competition in Islamic Jurisprudence and its Impact on the Market, Master's Thesis, College of Graduate Studies, An-Najah National University, Palestine, 2012 AD.
9. Al-Janabihi, M.M., Al-Janabihi, M.M.(2006): The Legal Nature of the Electronic Contract, Dar Al-Fikr Al-Jami'i, Alexandria.
10. Al-Jaridali, G.Z. (2008): Electronic Selling of Counterfeit Goods via the Internet, a Comparative Jurisprudential Study, Dar Al-Fikr Al-Jami'i, Cairo.
11. Al-Nakas, J.F. (1996): Contracts and Agreements Preparing for Contracting and Its Importance of Differentiating between a Contract and an Agreement in the Stage Before the Contract, Journal of Law, Kuwait University, twentieth year, first issue, 1996.
12. Al-Rawadi, O. (2016): The legal and technical requirements of electronic contracting and their validity in proof, thesis for obtaining a master's diploma in private law, Faculty of Law, Abdelmalek Saadi University, Tangier, 2015/2016.

13. Al-Roumi, M.A. (2004): Electronic Contracting via the Internet, University Press House, Cairo.
14. Awad, H.M., Al-Sulami, S.K.(2023): Controls of International Jurisdiction in Considering Electronic Contract Disputes in the Saudi System, "A Comparative Study," research published in the Journal of Jurisprudential and Judicial Research, Issue 42.
15. bin Salman, M.B.Y. (2008): The Legal Framework for Online Contracting, Journal of Arab Studies, Faculty of Dar Al-Ulum, Minya University.
16. Craig S. Wright, Electronic Contracts in an insecure world, GIAC Legal Issues(GLEG), SANS legal issues in information technology and information security, LEG-523,2018.
17. El-Derby, A. (2012): Mohamed Sadiq Ismail, Electronic Crimes "A Comparative Judicial Legal Study," National Center for Legal Publications, Cairo.
18. El-Hayani, I., Anjoum, O. (2006): concluding an electronic contract according to general rules and in light of the draft law on electronic interchange of legal data, published article, Moroccan Journal of Business and Contracting Law.
19. Fawzi, I. (2008): The Crime of Forgery in Electronic Documents, New University Publishing House, Alexandria, Egypt.
20. Gamal, S.H.A. (2005): Contracting through Modern Communication Technologies, Cairo, Dar Al-Nahda Al-Arabiya.
21. Gharib, S. (2007): The Electronic Contract in Arab Legislation (A Comparative Study), New University Publishing and Distribution House, first edition.
22. Greg L. Berenstein, Cristopher E. Campbell, Electronic contracting: The current state of the law and best practices, intellectual property & technology law journal, 14(9), 2002.
23. Hegazy, A.B. (2005): Introduction to Intellectual Property Rights and Consumer Protection in E-Commerce Contracts, first edition, Cairo, Dar Al-Fikr Al-Jami'i, 2005 AD.
24. Ibrahim, K.M. (2006): Concluding the Electronic Contract, Dar Al-Fikr Al-Jami'i.
25. Ibrahim, K.M. (2008): Proof of Contracts and Electronic Correspondence, University House for Printing and Publishing, Alexandria.
26. Lamari, J. (2014): Al-Wajeez in the Sales Contract, Ikhwan Tangiers, first edition.

27. Muhammad, A.B.S. (2011): The effectiveness of the methods used in proving the crime of electronic forgery, Naif Arab University for Security Sciences, Riyadh, Saudi Arabia.
28. Mujahid, O.A. (2000): Privacy of Contracting via the Internet, Dar Al-Nahda Al-Arabiya, Cairo.
29. Siraj, M.A. (1998): The Theory of Contract and Arbitrariness in the Use of Right from the Point of View of Islamic Jurisprudence, University Press House, Alexandria.
30. Mansour, M.H. (2007): Electronic Liability: Electronic Transactions, Images and Applications of Electronic Errors, New University House, Alexandria.
31. Mansour, M.M. (2006): provisions for traditional, electronic and international sales and consumer protection. Dar Al-Hakam University Press, Cairo.
32. Matthew Hoffman, contract law-conspicuous Arbitration Agreements in Online Contracts: Contradictions and Challenges, 43 U. Ark. Little Rock L.Rev.499(2021).
33. Shalqami, S.G.M. (2005): Electronic Contracting in Arab Legislation, Dar Al-Nahda Al-Arabi, Cairo.
34. Sharaf El-Din, A. (2013): Rules for Forming Electronic Contracts and Arbitration Clauses, Dar Al-Nahda Al-Arabiya, 2013.
35. Sharifat, M.A.(2009): Consensus in Forming a Contract via the Internet: A Comparative Study, Dar Al-Thaqafa for Publishing and Distribution, Amman.
36. Zureiqat, O.K. (2005): electronic commerce contracts, online sales contract, Dar Al-Jami'ah for Publishing and Distribution, first edition.

**Websites:**

Electronic Commerce Council website, at the following link :

<https://ecc.gov.sa/>

The website for the “Maroof” service, at the following link:

[www.maroof.sa](http://www.maroof.sa)

The Arab Guiding Law for Electronic Transactions and Commerce approved by the Resolution of the Council of Arab Ministers of Justice under No.

812/D25 dated 11/19/2006 AD, website link: <https://carjj.org/laws>

<https://www.legislation.tn/detailtexte/Loi-num-2000-83-du-09-08-2000-jort-2000> -<https://www.bdl.gov.lb/files/laws/Law81.pdf> -

<http://www.dubaidded.ae/Arabic/DataCenter/BusinessRegulations/Pages/FederalLaw1of2006.aspx>

<https://www.arabruleoflaw.org/compendium/Files/UAE/60.pdf>-

<https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/uncitral-arbitration-rules-2013-e.pdf>

<https://mci.gov.sa/ar/ECC/Pages/default.aspx> -

The comprehensive dictionary of meanings - on the website:

<https://www.almaany.com/ar/dict/ar-ar>

- The European directive of May 1997 on remote selling, p.20, on the website:

<http://Eur-lex.europa.eu>

Journal of Sharia and Law Sciences - Volume 41 - Issue 2 - Year - 2014 AD, published on the website:

<https://ia903000.us.archive.org/30/items/ktp2019-tra8215/ktp2019-tra8215.pdf>

-UNCITRAL Model Law on Electronic Commerce with Legislation Guide 1996, United Nations Publications, 2000, on the following website:

[https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/06-57452\\_ebook.pdf](https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/06-57452_ebook.pdf)