

Consent Through the Internet Under Jordanian Legal System

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Abstract

E-contracts as with any other kind of contract are required to apply and negotiate a number of stages or steps, whether they are legal or technical steps, in order to reach a legal conclusion. Such stages are deemed to be the legal mechanism by which e-contracts are concluded in general. A contract is legally based for its formation, on later steps and conditions that are set and stated by the related laws, which cover and regulate the parties' consent, 'contractual expression of contract parties', its legitimacy, the subject-matter, and the cause of the contract. These steps and conditions are set under the formation stage because they are treated as the fundamental grounds that the conclusion of contracts through the internet are based on, as, after applying them, the contract shall be legally concluded. The current study attempted to explore and highlight Consent through the Internet under Jordanian Legal System. In the regard of formulating the contracts, consent is required and proves to be a very significant characteristic while when contracting takes place through the medium of internet, it prerequisites a particular status creating a difference in the traditional contracts such that the subject is regarded to be very critical and the nature like its legal entity and consent existence is demonstrated.

Keywords: Consent, E-contract, Jordanian law.

1. Introduction

Many of the legal authorities have defined contract in different ways where Khater and Sarhan have stated that a contract refers to an obligatory agreement framed within legal structure among the concerned parties in order to including the obligations and rights of the contractual parties whether in the form of verbal or written agreement.

¹ Another individual, Al-Sanhuri has defined a contract as it is an assimilation of two or more wills for creating obligations or relocating them. ²

It is believed that an e-contract comes into existence with the contracts founded on a free frame because the e-contract is arranged and administrated as per the principles of will authority even it was aforementioned. ³ An e-contract can be elaborated in terms of the Article 102 of the Civil Code, it is a sort of contract formulated among two or more absentee parties in regard with place and in regard with time, and it is formulated among attendant parties.

Another law studying individual, Dodeen has elaborated the relevant consent as the form of joining parties' wills, expressions, or assents in order to formulate and engender the effects of law, being the primary perceptions of contacting where expressing the identical wills are referred to as the materialization for the joining's existence. ⁴ In addition, it is considered that the assent of the parties has to be accomplished excluding any sort of consented variances so that the parties' consent can be referred to as a rightful consent while it is believed that the parties' consent is not adequate in this regard. ⁵

2. Existence of Consent through the Internet

The subsistence of consent by means of the internet is reliant on the will of the contractual parties in the form of contractual expressions; therefore the contracts which are formed through the internet are founded on the primary principle of the authority of an informed will as it is prescribed above.

As per the traditional rules of the Civil Code as mentioned by the lawful provisions of legislation are required to be put into practice at the time when the parties have not elaborated the occurrence of their permission during their contracting time period. Therefore, expression of the will is the most important characteristic upon which the parties' consent subsists. ⁶

The substantiation of the consent by means of the internet through a legitimate way which has to be clarified, where this matter is proportioned into two major sections i.e. the first section comprises of the

¹ Adnan Sarhan and Noury Khater, *The description of Civil Law, the origins of personal rights* (1st edn, Althaqafa publisher Amman 2005) 26.

² Abdulrazak Al-Sanhuri, *Alwasiet in the description of Civil Law, the origins of obligation* (1st part 2nd edn, Alnahda Cairo 1964) 127. Also see: Anwar Sultan, *The origins of obligation* (1st edn, Althaqafa publisher Amman 2005) 10.

³ Mohammad Abo alhayja, *Electronic commercial contracts* (1st edn, Althaqafa Amman 2005) 41.

⁴ Bashar Dodeen, *The legal firm of the concluded contract through the internet* (1st edn, Althaqafa Amman 2006) 106.

⁵ Dodeen (n4) 106-107; Abo alhayja (n3) 78-80.

⁶ Dodeen (n4) 107; Abo alhayja (n3) 78.

illustration of the expression of the parties' wills while the other section illustrates the assimilation of the parties' wills.

3. Expression of Parties' Wills in Contracts Concluded through the Internet

The expression has been defined through various prospects, but as per the thoughts of Al-Sanhuri, the expression is referred to as the outside discernment of the party will indicating that expression is referred to as the acknowledgement of parties' wills formulated for the intention of originating lawful effects, by means of issuing a lawful status like single will, offer or acceptance.¹

Consent is referred to as a very crucial factor but it does diverge from the other crucial factors in relation with the contracts as specified by means of the internet even if they were all swathed and administered through the Civil Code in the structure of traditional rules where the consent by means of the internet has a particularity where it is not referred to as any substantial element in contrast with other traditional elements.²

As a part of contracting, the expression of party's will is considered as a crucial factor in regard of contracting when the offer and acceptance is interchanged between parties where there's no difference perceived among the contacts made on internet and the traditional one by means of this crucial factor.³ The law is founded on the accurate presence of the expression which is the main rotator that grants the assent. When the material presence of the parties' assent does not exist then the vital specialties contrasting the traditional contracts and those formulated on the internet which are supposed to be joined for a substantive lawful matter.⁴ The parties' expressions are amended by means of a word processor (requiring internet facility) or the programmatic language for assimilating the offer and the acceptance.

The expression of parties' will is illuminated through the lawful contracts by means of the internet facility which needs scrutinizing of its forms where silence is referred to as one of the basic indications required for the expression in such sort of contracts along with segregating the contract place and time as mentioned below:

3.1 Legal Forms of Contractual Expression through the Internet

The latest communication tool, internet has made the perception and kinds of contract very convenient which are actually founded on the nominal nature of this new tool. The contracting purposes are performed via web, e-mails and most commonly, web-contracting. The legal bodies of Jordan symbolized the real worth of the matter under the ETL policy of which the Article 13 was utilised where it was believed that the data message is an appropriate form utilised for the expression of parties' will.⁵ As per the Article 13, the parliament exceeded the impediments related to the appropriate ways essential for indicating parties' will present in the Civil Code⁶, which further supported that electronic tools are more apposite in regard of expressing parties' will.⁷

In the articles 14 and 15 of the ETL policy, the parliament illuminated the provenance of data message i.e. issuance and receipt whereas merely the article 14 describes that the parliament is accountable for evaluating the lawful issuance of the data message and e-message as stated below:

*It should be believed that an electronic message is transmitted by an originator or a person who is working in pace of the originator, by means of his account, originator's name or by an electronic intermediary.*⁸

These are statuses categorized by the parliament in order to identify the data message sent by the originator⁹ on the following conditions:

- i) The originator is responsible for sending it.
- ii) If the originator does not send it instead another individual working on his place sends it on account of the originator's name and account then it will be considered as the originator himself, has issued it.
- iii) If the data message is transmitted via an electronic medium like an electronic agent then there may be certain

¹ Al-Sanhuri (n1) 149-150; Dodeen (n4) 107.

² Dodeen (n4) 108.

³ Dodeen (n4) 107.

⁴ The legislature defined data message under the ETL in Article (2) as: "*Information generated, sent, received or stored by electronic or similar means, including Electronic Data Interchange (EDI), or the exchange of electronic mail, telegram, telex or telecopy*". And it has defined the information system within the same Article as: "*The electronic system used to generate data messages or sending or receiving or storing saving or preparing by other means*".

⁵ Dodeen (n4) 112.

⁶ These complications relate to the difference between straight expression and tacit expression. For more details see: Dodeen, (n4) 111.

⁷ Younis Arab, *The law of information technology and e-commerce* (1st edn, Jordanian bar association Amman 2003-04) 24.

⁸ It is to be noted that the legislation defines information in Article (2) of the ETL as: "*Data, texts, pictures, illustrations, sounds, symbols, databases, computer software and the like*".

⁹ The ETL defines the originator in Article (2) as: "*A person, who by himself, or deputizing for another person, generates or sends a data message before the message is received or stored by the addressee*".

Also, it defines the addressee as: "*The person who is intended by the originator to receive the data message*".

considerable changes in contrast with the external human interference. Even if the electronic intermediary is utilised for issuing the data message then it does not demonstrate any difference as issued by the originator and therefore, comprises of a legal entity.

While these procedures were going on, the parliament decided to regulate the conditions of receiving data messages by the addressee where it was also issued by the originator in the Article 15 of the ETL.¹ The primary remark of this rule was that it is considered favourable for proving these kinds of material consequences and limitations through some sort of evidence also encompassing the electronic tools as the parliament is not accountable for granting any particular form to confirm these kinds of consequences.²

As per the author's observations, there were certain lawful limitations in the rules set for the attribution of data message which were prescribed in the articles 14 and 15 of ETL upon which the subsequent elucidation and investigation can be illustrated including the justifications for it.

As per the first hypothesis or the assumption, the researcher has emphasized over the regulations demonstrated in the recent articles given which demonstrate certain kind of incoherence along with missing the direct and understandable relationship among the regulations involved in the receipt and issuance of a data message as per the manner insisted on through the law.³

Therefore, it is considered that if a data message has a legal entity indicating the parties' consent in the ETL then the ways prescribed for the receipt and the issuance of data message are required to be regulated indicating or comprising of the assent and those should be the subject to principles of coherency and unanimity.⁴

The author has the right to validate this assumption along with the references which are given below:

> In the Article 15, the subparagraph 1 of paragraph A states the consequences in which the addressee and the originator, both have concurred for pertaining in the information system with an intention of substantiating the data message because it was formed by the originator. On the contrary, the Article 14 does not fulfil the requirements of an agreement illustrating a kind of legal difference as per linking the regulations of law in regard with the provenance of this sort of point.

> In the Article 15, the subparagraph 2 of paragraph A is written for standardizing the covering up the modes of the receipt of the data message mentioning a relationship among the modes of the issuance of that message. But nevertheless, the author has recognized a flaw in the system which is actually evaluated through the provision of these regulations and states: the outcomes of procedures are obtained through the data message conducted through an individual inferior than the originator or any other individual working in place of the originator. As per the notice, the parliament is responsible for regulating and validating the deeds of an individual working in place of the originator, where this notice is not illustrated in the Article 14 which also standardizes the issuance of the data message whereas the Article 14 does not cover this aspect in its place, it states the operations and activities given by an e-intermediary and his originator.

As per the second hypothesis or assumption, which is also emphasized by the author, is utilised for moving around the consequences upon which the parliament of Jordan has formulated some obstructions that are lawful along with excluding the basic regulations differentiating the contracts by means of the internet which is actually known to be one of the principles of free will authority. Furthermore, if the principle of data message is considered to be a mode of substituting contractual expression; where this mode is considerable for implementing the regulations and principles of contracting in which one principle is, free will authority, constrained by the law and order conditions of the country.

The third assumption in relation with the Article 14 demonstrates that the parliament has stipulated the connection between the originator and the person who acts as a substitute on his behalf and states that "...by means of an individual acting as a substitute in place of the originator, utilising his name and account..."

Furthermore, the parliament has created certain situations according to which the data message or the e-

¹ Which states: "*A-The addressee is entitled to regard the message as issued by the originator and shall act on such if one of the following conditions is met: 1- If the addressee uses an information system, which he has previously agreed to with the originator for that purpose so as to verify that the electronic message was issued by the originator*". In fact, by using the information system for that purpose, the receiving and the issuance procedures will be confirmed by it, as the originator thereafter cannot disclaim that the e-message was not sent or issued by him. "*2- If the message received by the addressee was the result of procedures carried out by a person subordinate to the originator or a person acting on his behalf, provided that this person is authorized to have access to the electronic method used by either one to determine the originator's identity*". According to this part, the legislature legalised the use of electronic methods, as the Article prescribed on the condition that it should determined the originator's identity. "*B- The provisions of Paragraph (A) of this Article shall not apply in the following two cases: 1- If the addressee has received a notice from the originator informing him that the electronic message was not issued by him. The addressee shall act on the grounds that the message was not issued by the originator. The originator shall be liable to any claims prior to the notice. 2- If the addressee knew or had the capability to know that the message was not issued by the originator*".

² Dodeen (n4) 114-115.

³ By analogy to the traditional rules of contract.

⁴ Where, the provisions of any law should be harmonised.

message has been acknowledged; therefore, the addressee is required to concede the originator if he has made the acceptance as a condition or if the originator asked for it whereas on the contrary, the addressee is required to recognize the receipt of an e-message¹, with the obligations of Article 16 of the ETL. , Which states:

“A- Where the originator has requested in the electronic message or has agreed with the addressee to acknowledge receipt of that message, the addressee’s sending of such acknowledgement through electronic means or any other means or taking any action or measures thereby indicating the receipt of the message shall be deemed as fulfilment of that request or agreement. B- Where the originator has stated that the consequence of the electronic message is conditional to his receipt of acknowledgement from the addressee that he has received that message, the message shall be treated as though it has never been sent until the acknowledgement is received. C- Where the originator has requested from the addressee an acknowledgement of receipt and has not specified a time limit for such and where the originator has not made the consequence of the electronic message conditional to his receipt of such acknowledgement, the originator may, if he has not received acknowledgement within a reasonable time, give notice to the addressee to send the acknowledgement within a specified time. If the originator does not receive acknowledgement within the specified time, the message shall be deemed null and void. D- The receipt of acknowledgement does not in itself constitute proof that the content of the message received by the addressee corresponds to the content of the message sent by the originator”.

When the Article 16 was examined, the author discovered certain limitations and weaknesses in the principles set for the acknowledgment of receipt where the basic grounds for believing that it tends to be a flawed regulation in regard with the legal entity of the receipt where these are founded on the following conditions.

The author examined for the mentioned regulations at first which are prescribed under the clauses of the Article 16, which do not tend to generalise the regulation of free will authority in which the parties have the privilege of admitting or selecting the best apposite mode utilised for identifying the receipt of a data message, specifically in B2B contracts.²

As a second section, one of the contracting methods is the acknowledgement in which the legal system is considered for the fulfilment of the main perception of the contract, holding technical nature on that procedure; even the regulations of law in regard with protection are also needed.³

3.2 Determination of Time and Place, for Expression of Parties’ Will, Whilst Contracting through the Internet

The separation holds a lot of significance in evaluating the jurisdiction and applicable law which has the intention to administrate and determine any conflict occurring in the future among the contractual parties.⁴ In this regard, if the contractual agreements which take place on the internet, specifically, the web contracting, is having a distinct entity from other matters in instructing and symbolizing the jurisdiction and the applicable law surrounded by its restrictions whereas giving such a significance is also one of the obstruction. This obstruction has been proportioned into different kinds of e-contracts, specifically, when the contract takes place in between two business parties, the B2B or in case of establishing this contract between the business party and the consumer, B2C.

For either organising or symbolizing this matter, the Civil Code regulations are required to be put into practice as the parliament of Jordan has not identified or symbolised the significance of the provisions of the ETL. In this regard, the Civil Code has specified a regulation under the section of Article 20/1. which states:

“1- Contractual obligations shall be governed by the law of the state of the common domicile of the two contracting parties if they are of the same domicile, but if they are different the applicable law shall be that of the state in which the contract was made, unless otherwise agreed by the two contracting parties”.

As per the regulation stated by the Civil Code, the parliament has illustrated the applicable law administering any sort of contract, and the contracts, as demonstrated in regard with the internet, are prescribed below:

- * The applicable law refers to that form of law which the parties consent to include in their contract whereas it can also be described as the kind of law having the parties’ will.
- * On the contrary, if the parties neglect with the inclusion of this law then their contract is required to be ruled with the conditions and regulations of the state government for the contractual parties if their domicile is similar.
- * As per the third condition, if the parties do not belong to the same domicile then the applicable is considered to

¹ Dodeen (n4) 115-116.

² Taking into consideration the principles of contracting as stipulated by the doctrine of contract law in Jordan.

³ General protection and consumer protection will be taken and examined in chapters four and five, where consideration is given to the legal-technical nature and impacts of this procedure.

⁴ The importance of this subject refers to the resulting impacts that may have an effect on the contract itself or its execution in future.

be a part of the state law where the contract was actually formulated.

The judicial authority tends to be a hypothetical authority where the jurisdiction submission is founded on the basis of the conditions present nearby at the time of formulating the contract.¹

The parliament has also elaborated and symbolized the place and time of the data message under the conditions of the ETL of which the Article 17 demonstrates the setting of time of the data message, since it states:

“A- Unless otherwise agreed between the originator and the addressee, the dispatch of a data message shall occur when it enters an information system outside the control of the originator or the person who sent the data message on behalf of the originator”.

According to this rule, the dispatch of the data message shall exist when it enters into an information system – electronic intermediary - over which the originator, or even the person who sent the data message on behalf of the originator has no control. Unless otherwise the parties – originator and addressee – agreed, thereafter their agreement should be applied in this case.

“B- If the addressee has designated an information system for the purpose of receiving electronic messages, the message shall be deemed to have been actually received upon its entry into such a system. However, if the message is sent to a system other than the designated system, the message shall be deemed to have been received upon the addressee’s retrieval of the message for the first time”.

This paragraph focused on the situation of receiving an e-message – data message - as the message shall be considered to be received when it enters into an information system which has been distinguished by the addressee. But if the message is sent to a system other than the designated system, therein the message shall be considered as received when the addressee retrieves it for the first time. In other words, the legislature provides the retrieval of the e-message as a condition in order to legalise this situation.

“C- If the addressee has not designated an information system for the purpose of receiving electronic messages, the message shall be deemed to have been received at the time of the message’s entry into any information system belonging to the addressee”.

A law researcher, Dodeen, has evaluated the burden of proof indicating the channel of the message which has to be referred to as the electronic authentication service provider, or authorities, or the network manager, elaborating the correlation among the addressee and them.²

As per the obligations of the Article 18 of the ETL, the place of data message has been set up. Article (18) states:

“A- Unless otherwise agreed between the originator and the addressee, the electronic message shall be deemed to be dispatched at the place where the originator has his place of business, and shall be deemed to be received at the place where the addressee has his place of business. If neither one has a place of business his habitual residence shall be deemed to be his place of business. B- Where the originator or the addressee has more than one place of business, the place of dispatch or receipt shall be that which has the closest relationship to the underlying transaction. When it becomes impossible to be preponderant, the principal place of business shall be deemed to be the place of dispatch or receipt”.

The basic thing to be put light on is that the parliament has appended the location of the parties’ business and the location of the data message together such that it proves to a great regulation in the consequence of administering this condition, where the nature of e-transactions is considered by the parliament instead of pertaining the location of the EDI (Electronic Data interchange) while systematizing this consequence.

The time and date of the data message is not necessarily considered the place and time of the contract formed on the internet (Articles 17 & 18, ETL). The data message is treated in the form of substituting, not as the expression of the parties’ will by the parliament as these are founded on the elucidation of the data message and the way of its systemization by utilising the provisions given by the ETL. In this regard, the data message can be configured of having the legal entity of offer and acceptance (consent) for the purpose of forming a contract by means of the internet implying that the contract formed on the internet has dissimilar time and place of the contract in contrast with the time and place of the contract formed regularly. However, in this regard, the utilisation of Civil Codes should be made specifying the place and time of the contract.

3.3 The joining of parties’ will and consent, through the internet

A contract that is formed needs at least two wills which are assimilated and matched up together in order to formulate a contract with the joining offer with the corresponding acceptance.³ The primary policy is that the regulations of Jordan as per law believe that an offer is constituted while contracting with the first expression where the second expression refers to an acceptance.⁴

¹ Dodeen (n4) 119.

² Dodeen (n4) 121.

³ Dodeen (n4) 122-123; Abo alhayja, (n3) 78.

⁴ Dodeen (n4) 122-123; Algomaia and others (n26) 45.

Actually, the expressions of offer and acceptance were sanctified in the previous era, while they have chances to be sanctified in the present time if their basic intention in for occurring at the present time does not mattering the purpose of the intent. The Civil Code rules are put into practice for demonstrating the matter with the nature of the internet as the ETL has not prescribed regulations for how the wills may be able to assimilate by means of the internet.

The demonstration of this subject has been divided into three segments for illuminating and administering this subject in an appropriate legitimate way. In the first part, the issuance of the offer by means of the internet for the purpose of codifying has been evaluated and attempted. In the next part, the issuance of acceptance by means of internet has been evaluated and demonstrated. While in the last part, the effects of losing capacity or death on the offer and acceptance by means of the internet has been realized.

3.4 Issued Offer through the Internet

Mojahid has contributed by elaborating the issued offer as the issued offer refers to any sort of distance connection established through the network comprising of the required elements which are required for the traditional offers in order for accepting the contracting directly by the person or any other individual interested in this offer or the one who can pertain the connection.¹ In this regard, there is no need of any advertisement even the lawful conditions favourable for the offer on behalf of contracting by means of the internet are similar as the traditional offer² along with the contracting nature by means of the internet.³ These obligations are given as under:⁴

- i) The offer is required to correlate with the knowledge of the other party with an intention of accepting or refusing.⁵
- ii) The offer is required to be assured for distinguishing any treat from the invitation as given by the Article 94/2.⁶
- iii) The nature of the offer is required to be fixed and accomplished by comprising all the substantive factors of the goods or services, or contracting the important details.⁷

Many of the researchers feel a distinction between the offer made by the internet and the tradition offer as their features are distinctive which include:⁸

A) To attain various particular intentions, there is required to have disrespect for the condition as it serves to be an obligatory offer where the offerer has disrespected the condition during the issuance of his offer as per certain tools that he utilised for issuing the offer by means of the internet.⁹

If the offerer has utilised the medium of internet and has sent the offer through an e-mail message then the offer is made for a particular person as it is sent particularly to that person; this offer has the entity of being a private offer made to a particular person and not for many other individuals. It can be also thought that the main intention of the e-mail is to issue an acknowledgment of the person who tends to be interested in availing this offer ascertaining his protection through any probable consequences arising in the future times also by adding up certain preventions releasing from any sort of accountability in order that the presentment is required to be behaved as an invitation, advertisement but not any offer. In case the person accepts the previous offer (presentment), this sort of acceptance does not imply the conclusion of the contract as there seems the absence of any offer which can be assimilated with the acceptance even this activity of the offerer then seems like an advertisement or any invitation to behave and not to continue with the obligations of an offer.¹⁰

If the offer has been with the medium of internet by the offerer then he has the privilege to safeguard himself by means of announcing in the form of any invitation or advertisement to treat,¹¹ whereas the offerer also holds the right to withdraw or cancel the offer at any time following through the probable obligations arising

¹ Osama Mojahid, *The specialty of contracting through the internet* (without edn, Alnahda Alarbia Cairo 2000) 69.

² Basing on Article (3/a) of ETL, whereas the legislation does not provide these conditions under the ETL.

³ Mojahid, (n28) 69; Abo alhayja, (n3) 85.

⁴ For more information see: Dodeen (n4) 125.

⁵ Ibid.

⁶ Mojahid, (n28) 69; Algomaay A. and others, *Alwasiet in the description of Jordanian Civil Law* (3rd part without edn, Alarabia for cyclopaedia publisher Cairo 2001)54-56.

⁷ Mojahid, (n28) 69.

⁸ For more details see: Mojahid (n28) 70; Dodeen (n4) 126-134.

⁹ For more details see: Dodeen (n4) 127-132.

¹⁰ For more information see: Dodeen (n4) 127-132; Abo alhayja, (n3) 83-86; Matalga M., *The impact of electronic commercial contracts* (1st edn, Althaqafa Amman 2006) 59-63.

¹¹ The offer or advertisement may present via the web as follows:

- a- via a specialist site for advertisements or selling;
- b- via a part of the using site; or
- c- briefly on the home page of the used site.

For more information see: Dodeen (n4) 127-131; Matalga (n37) 61; Abo alhayja, (n3) 85.

in the future like when the services or goods are not any more available in the stock, if the offerer become insolvent or any other conditions of this form. The offerer is also required to clear his position and the status of his offer or advertisement and his intention earlier than issuing the other party's intent.¹

In the same manner, if the previous offer has been created by means of an invitation or any advertisement then the offer has to be created by the individual engaged in selling the goods or services whereas the right of accepting rests with the owner. Therefore, if the owner has created an offer for supplying his goods or services with his privilege of withdrawing it as well then he needs to clarify this condition earlier than the issuance of acceptance or otherwise his offer will have the obligatory entity.²

B) With the globalisation of the internet, the national language is required to be used while creating an offer.³ In such a case, the offerer is required to restrict any of the subjects, as internet has the global access then it constrains the creation of his contract in his mother tongue in order to prevent him. Anyhow, the offerer is required to illuminate his intention by utilising the same tool for creating the offer by means of internet or e-mail so that his intention of contracting can be attained conveniently.⁴

The offerer is required to designate the perception of utilising his language along with the offer even he can provide various translated versions of it seeming it obligatory or by formulating any translating programme on the same web. This option will not be constraining the offer to one language instead it can be seen globally and availed as per need.⁵

C) The offer tends to have segregation for an offer via internet medium.⁶

The offerer has constraint the locative extent of the offer which can be identified in the structure of a preventive measure, or based on the kind of the contract where the extent can be availed throughout the globe.⁷ Dodeen, the researcher, has demonstrated two ways by which offerer has the ability to apply to limit the extent of his contract and the offer, including:

I) this should be clarified that the offer is limited for a specific time, place, or locative extent.⁸

ii) The limitation is needed to be identified through the methodology in which the contract is concluded as per the delivery place. For instance, the formulation and implementation of the contract is limited to a particular place as provided by the offer in regard of his offer.⁹

As the ETL did not designate the cessation or termination of the offer by means of the internet and thus the regulations of Civil Code are pertained for such an intention. The regulations are of terminating the offer at the time when the offeree has repelled the offer, or at the time when he has either accepted, or refused (Article 96). While the offer that is made by the internet serves to be of the analogous or traditional entity, has the privilege of being expired or terminated in relation with the consequences like:¹⁰

i) When the offerer has created an obligatory offer where this sort of offer can be finished up with the time period stated by the offerer finishes even if any acceptance is not attained.¹¹ In these cases, the offerer can either end up or continue his offer without being accountable for it but when any acceptance is illustrated after the time period has been finished then this will be considered as a new offer but not as an acceptance (Article 98).

ii) In case, the offerer has issued a non-obligatory offer or as an imperfect offer, then the offer will be ended up in relation with the actualisation of the aforementioned consequences:¹²

b1) when the offerer departs his offer before any acceptance is demonstrated as the offer is made via internet and it will also be ended up.¹³

B2) when the offerer renews his offer earlier than the acceptance is assimilated,¹⁴

In such cases; the previous offer will be cancelled and regarded as refused. The new offer will be considered as the efficient one (Article 97).), which states: "*The repetition of the offer before acceptance*

¹ Dodeen (n4) 127-131; Matalga (n37) 61; Abo alhayja, (n3) 85.

² Mojahid (n28) 71; Dodeen (n4) 131-132.

³ See: Dodeen (n4) 132-133; Abo alhayja, (n3) 86-87.

⁴ Dodeen (n4) 132-133; Abo alhayja, (n3) 87; Mahmoud Alshraifat, *The consent of contracting through the internet* (1st edn, without publisher 2005) 122-123.

⁵ Mojahid (n28) 74-75; Dodeen (n4) 132-133.

⁶ Dodeen (n4) 133-134; Alshraifat (n42) 122-123; Abo alhayja, (n3) 86-87.

⁷ Dodeen (n4) 133; Alshraifat (n42) 122-123.

⁸ Dodeen (n4) 133.

⁹ Ibid.

¹⁰ For more information see: Dodeen (n4) 134-135; Matalga (n37) 63; Sultan Aljwari, *Contracts of e-commerce and the applicable law* (1st edn, Alhalaby 2010) 59-61; Fadi Twakol, *Contract of e-commerce* (1st edn, Alhalaby 2010) 79-80.

¹¹ Dodeen (n4) 134; Algomaïy and others (n33) 79-85.

¹² Alhakeem A., *The compact of Civil Law description, the origins of obligation* (1st part 5th edn, Alnadeem printing office Baghdad 1977)

162; Dodeen (n4) 134; Twakol F., *Contract of e-commerce* (1st edn, Alhalaby 2010)80.

¹³ Dodeen (n4) 134.

¹⁴ Dodeen (n4) 135; Algomaïy and others (n33) 79-82.

renders the first offer void and effect shall be given to the second offer”.

3.5 Issued Acceptance through the Internet

The researcher, Dodeen has elaborated the connotation of acceptance in the words, an acceptance is that sort of expression, for party will, created from any person who has shown interest in contracting distantly, by utilising an international medium for communication i.e. internet, along with specifying the intention of contracting, along with specifying the attachment of the expression in such a form that is entirely reliable with all the factors including the issued offer for the perception of terminating the contract even when this consistence is acquired and afterwards fulfilled.¹

When acceptance needs to be provided through the internet, the legal conditions remain the same and must be applied in an efficient manner. The ETL has not presented a separate legislature or special conditions for the purpose.² Hence, the regulation and organization of the conditions is carried out according to the Civil Code. The Civil Code Articles (99) and (100) state the main condition as follows.

The evidence of party will should be brought forward and the acceptance must be:

** The evidence of party will should be brought forward and the acceptance must be applied after the requisite conditions have been satisfied. The legal impact of the acceptance is highly affected by the party will which is why its existence is extremely essential.³

** The offer must remain existent when the acceptance is issued.⁴

** When the complete achievement of the contracting party consent is to be done, the offer and the acceptance must correspond.⁵

The characterization of the traditional and internet acceptance has been differentiated on the following basis.

3.5.1 When Using the Internet, Special Form of Acceptance is used⁶

When a user accesses the internet he makes most use of the email and the web. Therefore, using these instruments, the process of acceptance is carried out over the internet in the following manner.

* It is possible to carry out the acceptance process through the e-mail since it can be issued as an email message after being created and sent out by the offeree. The conclusion of the contract can be carried out through this method and must be issued in a positive manner. The email message joins the offer and carries out correspondence during the acceptance process.⁷ In a negative process, acceptance is unable to understand the concept of silence unless the parties have had an agreement upon such an activity. The acceptance is issued based on specific rules organized and governed by the e-messages exchanged based on ETL.

* When acceptance is carried out using the web, there are 3 main forms through which it could be done. At first, the offeror could send out an e-message for the acceptance where the will of offeree's must be present. This message is organized and governed under the ETL provision provided for all e-message exchange.⁸ Secondly, a dedicated icon could be present for the purpose of issuing acceptance. This icon is available on the website page to carry out the acceptance process. Lastly, the acceptance icon could be pressed on twice to issue the acceptance. The pressing would represent that the procedure has been conducted to achieve the affirmation of the parties.⁹

B. The Offerer Must Become Cognizant of the Acceptance Process and the Assurance should be Presented. This Would Help Provide a Conclusion to the Acceptance Process Through the Internet.¹⁰

The offeree must send out a corroborative reply to the offeror in this process. This reply is sent out in the form of an email message which takes into account all essential aspects of the contract. The evidence, formation and execution of the contract for the assurance are however subjected to certain legal standards.¹¹

C. The Acceptance through the Internet Must Consist of a Time Which is Differentiated.¹²

The differentiation of time is an essential aspect when the contract start time is to be determined. The

¹ Dodeen (n4) 136.

² However, these conditions should be included and applied by the issued acceptance through the internet, in order to be considered as a legal act, acceptance, under the Jordanian laws.

³ Al-Sanhuri (n2) 179.

⁴ Al-Sanhuri (n2) 180.

⁵ For more details see: Al-Sanhuri (n2) 181-183; Algomaia and others (n33) 86-96.

⁶ For more details see: Dodeen (n4) 136-140.

⁷ For more details see: Dodeen (n4) 137-138.

⁸ Provided that the offeror should indicate a specific mechanism for that purpose.

⁹ For example, by using an information programme for this purpose, or by ticking a specific icon, which could indicate that the offeree has read and agreed on the issued offer and contract terms, then after that by pressing on the acceptance icon. However, this form has been created in order to resolve the criticism that the previous form faced. Ibid, 84-85

¹⁰ According to Article (16) of the ETL. For more details see: Mojahid (n28) 89-90; Dodeen (n4) 141.

¹¹ The execution and evidence – as legal values - will be illustrated in a later position within this chapter.

¹² This demarcation connects, and it shall continue the demarcation of the expression of parties' will through the internet.

traditional rules being applied are to be analyzed for their correspondence with the provisions regarding extant parties' capacity.¹ The offer and acceptance legitimacy can be determined when the specific time period has ended, the obligations have been met and the offerer continues his offer based on the Civil Code Articles (96) and (98).²

The acceptance time under ETL has not been brought forward by the legislature. The time of data message is to be presented according to Article (17) but it does not require the stating the offer and the acceptance.³ Hence, it is essential to apply the Civil Code rules for the purpose.

According to the legislation, the acceptance process is usually carried out when the contract is being concluded. As Article (101) of the Civil Code states:

"If at the time of contracting the two contracting parties shall not be present the contract shall be deemed to have been made in the place and at the time of acceptance unless there is an agreement or legal provision to a different effect".

The declaration rule as been presented as the vital rule for the time of contract demarcation based on the information presented in this Article. However, the issue present is that the nature of the contract concluded upon the internet cannot be matched to the rule in a practical manner. Hence, it is believed by the researcher that the Jordanian legislature must be applied which helps reveal the contract time in an efficient manner based on the ETL when using the internet. Through this legislature, the nature and kind of contract is taken into account and the appropriate rule is adopted.⁴

Hence, at contracting time, the most essential rules must be stated, which would help choose the appropriate theory or rule to be adopted at the conclusion time of the contract. The Arabic scholars present the following essential theories:

* Declaration Rule⁵

Within a contract, there must be a correspondence of wills, which is achieved when the offeree issues his acceptance to the offer. This is the main assumption behind the presence of this rule.⁶ With this acceptance, the wills are corresponded and the contracts can be concluded without resending the acceptance to the offeror or even providing the information to him. The rule clearly states that the conclusion of the contract is done when the offeree receives the offer through web or email, reads it and acceptance it without conducting any practical activity. This practical activity may include the pressing of the acceptance icon, sending out an email or conducting web activity to state the offeror the acceptance.⁷ There also may be no acknowledgement of the offerer regarding the acceptance of the offer.

However, an uncertainty period is spent by the offeror where he is uncertain regarding the conclusion of the contract.⁸ Without the knowledge of the offeror, the offeree has the opportunity to withdraw his acceptance. It is due to this reason that the rule has been subjected to certain criticisms.

* Expedition Rule:

The expedition rule is a complimentary rule to the above mentioned rule. If acceptance is declared, the conclusion must also be made and cannot be withdrawn after being declared. If the acceptance is sent out, the offeree is unable to withdraw it at any point of time and it is not considered obligatory to carry out the activity.⁹

The present rule is practically applied when the conclusion of contract is carried out through an email sent out by the offeree. This email must consist of the acceptance of the offeree which is sent out to the offeror. At this point of time and for the time period ahead, the offeree does not have any control upon the message and no withdrawals are allowed to be made. Hence, it is believed that the acceptance has been concluded. If the web has been used for carrying out the contract process, the acceptance would be practically issued by the offeree pressing the acceptance icon.

However, based on the acceptance, the offeree maintains the contract but he does not consider receiving or acknowledging the acceptance from the offeror during the acknowledgement process.¹⁰ It is due to this fact

¹ As the legislature has not organised these conditions under the provisions of the ETL.

² Algomaiy, and others (n32) 103; Bashar Momany, *The obstacles of contracting through the internet* (without edn, the new world book Irbid 2004) 71.

³ Twakol (n48) 121.

⁴ Dodeen (n4) 141-142.

⁵ As already mentioned, the Jordanian legislature has adopted this rule for the instance of contracting generally, based on Article (101) of the Jordanian Civil Code.

⁶ Al-Sanhuri (n2) 257; Alhakeem (n101) 92.

⁷ Alshraifat (n36) 154; Dodeen (n4) 142.

⁸ Sultan (n48) 68; Twakol (n48) 116-117.

⁹ Al-Sanhuri (n2) 257.

¹⁰ Alshraifat (n 42) 156-157; Twakol (n48) 118.

that the rule has been subjected to several criticisms.¹

* Reception Rule:

When the offeror did not receive the acceptance, several issues took place which is why the reception rule was brought forward. The offeror, knowingly or unknowingly would not be able to conclude the acceptance if it was not received. If the acceptance is received, it would be regarded as being known to the offeror as being issued.²

When being issued upon the internet, the practicality of this rule can be viewed clearly. If the parties make use of email for the exchange of acceptances, offers and wills in this rule are efficiently applied. If an acceptance email is sent out to the offerors mailbox, the contract is concluded. This activity does not take into account if the offeror has checked his email or not, the acceptance has already been sent and has arrived into the system of the offeror. He needs to check his mail box and be knowledgeable regarding the sent email. If the email is not checked within the correct time, he would be regarded as negligent and the entire irresponsible situation would be considered as part of his negligence.³

No legal significance was present within this rule which is why it is subjected to several criticisms. This rule is very much similar to the previous rule mentioned. The place and time demarcated of the contracts using the internet would begin when the data message was sent to the offeror's system in the form of the acceptance.⁴

* Information Rule:

According to this rule, the acceptance declaration is not sufficient or enough to carry out the time acceptance demarcation. In this rule, it is required that the offeror must have knowledge regarding the acceptance along with any other legal impacts which he may be subjected to. The knowledge present in this case is the proof that the knowledge of acceptance is present with the offeror. Hence, it can be stated that this rule is like any other judicial evidence which could or could not be used as evidence as it may be able to prove itself in any circumstance.⁵

When applying this rule in the case of the internet, it can be stated that the offeror has viewed the message being sent and is knowledgeable regarding the information present within the acceptance message. The message being sent is not the only thing being used for the formation process. If the web was being used by the parties, the acceptance time of the contractor would be taken into account of when the acceptance was actually viewed and the acceptance icon was pressed. Hence, the formation process does not simply depend upon this activity as it is considered insufficient.⁶

Limited presumptions and evidence was present for this rule which is why it was subjected to criticism. To prove the contrary, any party could quote this issue. It could also be claimed by the offeror that the acceptance knowledge was not present but he needs to provide proof regarding this aspect. He is responsible to provide proof for what he claims. However, if he is unable to provide proof regarding the aspect, the contract is not considered as legally concluded.⁷

To summarize all rules it can be stated that The Civil Code⁸ Jordanian legislation being used as part of the declaration rule proves to be unsuitable for the nature of contracts carried out over the internet. This is mainly because the contracts can be concluded by the parties that are absent based on the place. The reception rule is believed to be the most suitable rule that would be applicable to this nature of contracts. This is mainly because the time and place of the contract would be demarcated. The internet contracts must make use of this rule to avoid all legal issues. It is the closest to being applicable and with the lowest number of criticisms present. Many of the other rules consist of technical issues, procedure problems or online requirements which is not present in this case. Another issue which may be present is the conclusion of the email messages being exchanged or the web being used. In this case, if justification of the reception rule is to be presented, the following points can be stated for the purpose.

The contracts which are formed in the traditional manner, off-line, are regulated by the Civil Code. They have kept into account the development of technology all over the world and its use in an indirect manner. Contract conclusion cannot be carried out using the declaration or expedition rule if the process is carried out over the internet. There are two absentee parties present within the process who need to conclude the process

¹ Alshraifat (n42) 156-157; Twakol (n48) 118.

² Al-Sanhuri (n2) 257-258; Nasif (n3) 112.

³ Alshraifat (n42) 158-159.

⁴ Alabody A., *Contracting by direct communication instruments and its legality in evidence* (1st edn, Althaqafa Amman 1997)157-161; Matalga (n37) 71.

⁵ Al-Sanhuri (n2) 258; Alhakeem (n50) 92; Nasif E., *International Contracts: Electronic Contracts in Comparative Law* (1st edn, Alhalaby 2009)113.

⁶ Alshraifat (n42) 162.

⁷ Sultan (n48) 69.

⁸ Some, such as Matalga, went to say that the Jordanian legislature has adopted the rule of expedition under the provisions of Civil Code. Matalga (n37) 72.

which have been stated as exception to the process when considering the traditional principles of contract.

Also, the Council of contract for the internet conclusions has been analyzed by several scholars divided into 3 groups.¹ The nature of the internet is the main aspect which needs to be taken into account for the case. Electronic media is used for the conclusion of contracts in this case which is why it is absolutely necessary. The contracting unity of time is essential to be considered in this case which is why the actual communication time is stated. Several legal considerations also exist which show that the contracts to be concluded between parties must state the place. Hence, if the will, consent of determination is delayed due to any reason, there would be rules present to govern the contract concluded between the parties. The information rules, receipt or the contract times are some of the areas which have been covered within the rules.

Justice and equity protection are two major aspects to be present when any legal rule is to be applied. The nature of internet contract must be kept in mind to adopt the most suitable rule for the purpose. There must be equity and treatment justice between the parties and their right and obligations must be considered at all points. The contract council takes into account the above mentioned rules and considers the nature of the contracts. Each rule consists of some kind of issue or criticism which must be considered and weighed against its benefit of application. Both parties are subjected to a responsibility in the receipt rule which is why it is considered suitable for application in internet contracts. There exists a balance between the contractual obligations and the rights. The parties are held cognizant and responsible for their activities and obligations and reduce the occurrence of negligence or inferiority of any party. Justice would be provided to the contracting parties if the infractor is able to state the responsibilities of the individuals beforehand.

3.5.2 The Right to Withdraw the Issued Acceptance through the Internet

Several contracts were conducted upon the internet where the contract between the absentee parties with respect to place, description of offer and exact manner has been presented. The offer has been described in a complete and exact manner in this kind of contract. For such kind of contract, the right of withdrawal was created. However, it is still not possible for the offeree to present his consent even after the goods or service description has been clearly presented in the subject matter of the contract. The right has been provided to the offeree to manage this issue and assure him that the acceptance being provided is in a conscious manner. The right of withdrawal consists of a specific time period which starts when the subject matter is received from the offeree.²

If any defects are observed by the offeree, regarding the subject matter being different from the description or any other substantive reason, there can be a withdrawal of the contract. The subject matter would be returned and the contract would be terminated based on the valid reason being presented.³

Hence, it is observed by the researched that the issues present are highly essential to be considered. It is essential that the Jordanian legislature takes into account these problems and clearly organizes their solutions based on the Jordanian laws. The Civil Code must be maintained as the mother law or the main guiding principle for the purpose. The information rule has been used for the Islamic Law which has also been considered the aspect. The general opinions present have not taken into account the declaration rule and the legislature being used is under the Civil Code. The contracts covered by the jurists in the case of consumer contracts include the C, C2B, B2B, C2G, B2G, or G2G when the internet is taken into account.

The different kinds of contracts must have their own legal rules which would take into account the specific considerations present. This includes the internet contracts or even the distance contracts present. The declaration rule has been adopted by the legislature to manage the balance between the rules being adopted at declaration time and the issues present within the Civil Code. The Islamic law on the other hand has adopted the information rule for the purpose. The conclusion carried out by any legal person must also consider the loss or death influence which is caused on the contract. This company or government department would be highly affected to such kind of losses or death as compared to an individual or natural being.

4. Legitimacy of Consent through the Internet

Legal impacts created by contracts require a certain amount of stability and purpose. This stability is known as the consent legitimacy which is highly essential to make sure the purpose is achieved. When the consent of the parties is present, the wills have been joined and all matters are managed, there is also the need to form a legitimate and legal condition present. There are two main conditions present for the purpose. Firstly, the consent must be provided from the person consisting of a legal capacity. Secondly, there should be no defect present in

¹ According to Nasif, the council of internet contracts is seen to be a contract that concluded between two, or more, present parties; or to be a contract that concluded between absentee parties; or to be concluded between absentee parties as to its place and present parties as to its time. Nasif (n79) 118-119.

² Dodeen (n4) 143; Mahmud (n37) 202.

³ Dodeen (n4) 143; Mahmud A., *Consumer protection in electronic contracting* (1st edn, Althaqafa 2012) 202.

the consent and the defects to be considered are those which are part of the party's will.¹

The Jordanian legislation is observed to have no specific rules regarding the ETL which would help organize the entire process being carried out using the latest technology and electronics.² Hence, it is essential that the Civil Code rules are applied and the organization and governance of contracts are concluded when using the internet.

5. Capacity through the Internet

The legitimacy of a contract along with its execution is very much dependent upon the capacity of the party. This is an essential and substantial aspect that needs to be considered. The contract may be considered void if there is absence of such a capacity.³ The personality of the party would be very different from the personality of any other party.⁴ The natural capacity of a person is based upon the exercising capacity. At the same time, the capacity of a legal individual would be present within limits and based on the instruments created by law. Hence, under the Jordanian laws, the above mentioned capacity is highly essential to be observed.⁵

The distant contracts are the contracts which are made using the internet. The parties making the contract are not physically present at the place where the contract is made. The contracts made through the internet have the disadvantage cannot guarantee whether or not the parties involved in the contract can fulfil what is required of them. This is particularly the case for C2C contracts.⁶

Even if one of the parties does not have the requisite capacity, the legality of the contract becomes questionable. The solution is provided by the Jordanian laws related to the Civil Code. It differentiates the various legal situations in the following way:

* Contracts concluded by minors who are below seven years of age are not considered valid.

* Contracts concluded by minors who are of ages seven and above, but less than 18 years of age, can be partially valid. If the clauses of the contract are beneficial to the minor, they would be valid. However, if they can cause to the interests of the minor, then they would be void. The items which are neither harmful nor beneficial for the minor would be put on hold until the guardian of the minor gave his/her consent or until the time when the minor attains the age of maturity.

* The contracts concluded by a permitted minor shall be valid and they will have the same status as the contracts made by a mature person. This is in accordance with Article (120) of the Civil Code which allows the clauses of the contract made by a permitted minor to be equal to those made by a fully grown person. A minor with a diminished capacity is legally capable of requesting for the contract to be avoided. However, if his diminished capacity is not genuine and it has been faked by him, then he would be held accountable and he would likely have to pay compensation for his dishonesty.

* A contract concluded by a certified insane person will be given the same status as the contract made by a minor who is less than seven years of age. However, if his sanity does come back to him, he will be treated as a sane person. If the contract is made by a person with diminished intelligence, then it will be considered as being equivalent to the contract made by a person who is of seven years of age or above, but lesser than 18 years of age.

* A contract made by a 'prodigal' man or woman would be treated as being equivalent to the contract made by a minor who has attained the age of seven but is lesser than 18 years of age.

The contracts done over the internet are subjected to the laws of the Civil Code if any one of the above situations is applicable. The laws of the Civil Code regulate the contracts concluded through the internet and these contracts are given the same status as those done through traditional means.⁷

6. Consent Defects

The Jordanian laws do not cover the consent defects related to the transactions done electronically under the ETL. This area is covered by the laws of the Civil Code, including the contracts concluded through the internet and the contracts made through unconventional means.

¹ Dodeen (n4) 152; Twakol (n48) 94.

² Based on Article (3/a) of ETL.

³ Dodeen (n4) 153; Nasif (n79) 125; Twakol (n48) 95.

⁴ The legislative defined a legal person in Article (50), which states: "Legal persons are: 1- The state, the municipalities subject to the stipulations of the law and the public and other establishments granted legal personality by the law. 2- The religious bodies and sects whose legal personality is recognised by the state. 3- Al-Waqf (Moslem trust). 4- The commercial and civil companies. 5- The societies and establishments established by virtue of the provisions of the law. 6- Every group of persons or property who are proved to possess legal personality by virtue of the provisions of the law".

⁵ The legislative clarified this issue in Article (51/2/b), which states: "...2- Thus it shall have: b- Capacity within the limits prescribed by its creating instrument or by the law".

⁶ Dodeen (n4) 153; Nasif (n79) 125-127; Twakol (n48) 95-97.

⁷ Al-Sanhuri (n2) 108; Dodeen (n4) 154; Twakol (n48) 94.

The following consent defects are dealt with by the Civil Code:

*** Duress¹**

The Jordanian laws describe duress as a consent defect under the article (135) of the Civil Code. It says that a person is under duress when he is required to do a task without his consent being involved. Duress may be material or moral in nature. Duress has two types. The first is of a forceful nature and it invalidates the reasoning capacity of the individual under duress and the person's consent also. The second is of a non-forceful nature, but it only voids the consent and not the reasoning capacity of the individual.

Dodeen has briefly discussed this type of consent defect and there is hardly possible for it to happen for contracts made using the internet as the parties involved in the contract are not physically present in the same space. However, there is a possibility of economic duress occurring and the deals which are influenced by this kind of duress are treated in the conventional manner.²

***Mistake**

Mistakes refer to the image created in the mind of one of the parties involved in the contract about something which is unattainable and this image leads the party to go ahead with the contract.³ A party can make a request to void the contract if it feels that it has made a mistake. The regulation of this consent defect is done according to the laws laid down.

It is quite possible for these kinds of consent defects to occur in contracts made using the internet. The party making a mistake is usually an unprofessional one such as a consumer. To avoid making mistakes, the party needs sufficient experience relating to the subject dealt with by the contract. If two knowledgeable parties are involved in the contract concluded through the internet, such as the B2B contract, then the mistake which might occur is the same as that made by an unknowing consumer, especially if the necessary information is provided to the concerned parties.⁴

The mistakes which are consensually made in contracts made through the internet can be dealt with legally by requesting for an invalidation of the contract or by simply withdrawing from it during the period which is given. The contract can then be studied carefully so that a final decision can be reached on either fulfilling the contract or invalidating it.⁵

*** Deceit and Damage**

The deceit and damage consent defect is mentioned in Article (143) of the Civil Code. It states that the deception of any one of the parties involved in the contract by using deceptive words or deeds to cause him to consent to a task which he would not consent to without the use of the tricks, is called deceit.⁶ The law takes into consideration if the deceit may cause serious damage to the party and if it does the contract can be cancelled. However, if serious harm is not being caused by the contract, then the party which has been deceived may not cancel the contract. Article (146) describes serious damage of any kind of property as the damage which the estimators do not allow.

It is quite possible for these types of consent defects to occur in deals made through the internet.⁷ It occurs quite frequently in contracts made through the internet and it is quite similar to the deceit defects which occur in other forms of electronic contract. These include both positive and negative deceits.⁸

Conclusion

The above discussion shows that the contracts concluded through the internet can only be viewed as having the same status as conventional contracts if the legitimacy and capacity of the contracting parties can be guaranteed. The regular laws can then be used to sort out any problem associated with the internet based contracts.

The consent defects which are dealt with by the Civil Code can be used as a standard to handle problems related to the contracts which are done through the internet or other electronic means. The Jordanian laws fail to treat the possible defects, which could plague internet based contracts made under the cover of the ETL, in a different manner. There possibly are a few technical and legal attitudes and deeds which could

¹ Jordanian legislation organised duress in Articles (135-142) of the Civil Code.

² Dodeen (n4) 155.

³ Al-Sanhuri (n2) 289-290; Algomaïy and others (n33) 431; Dodeen (n4) 155; Twakol (n48) 97-98.

⁴ Dodeen (n4) 156; Nasif (n79) 129; Twakol (n48) 98.

⁵ Dodeen (n4) 156.

⁶ However, the legislature considered silence as a form of deceit in Article (144).

⁷ Dodeen (n4) 156; Twakol (n138) 104-106. However, for Nasif, if an e-contract contained such kind of defect then the traditional rules shall be applied, as there is no special character to such defect on contracts concluded through the internet. Nasif (n79) 138.

⁸ The solution to resolve this defect while contracting through the internet shall be by creating specialised sites which focus on informing, advising and warning the users of any person who used deceit instruments before, in order to exist and generate a clear knowledge about the other party, which, additionally will help a legitimacy consent to exist for concluding contracts through the internet. Dodeen (n4) 156-157.

influence the contracts which are concluded through electronic means. E-errors constitute one such example. The e – errors can be said to contain certain technical features which could, in a way, void the legitimacy of the consent of the contracting parties. The legal frame work must be provided to deal regulate these electronic based contracts and they need to be the focus of the laws which deal with such technical aspects of these contracts.

There is no doubt there the creation and proof stages of the internet contracts in Jordan are not effectively regulated and certain legal complexities are being experienced, especially when certain provisions of the ETL are considered. The ETL is the collection of private laws which deal with the transactions which are carried out electronically. There is also friction between the implementation of the ETL and the Civil Code as a whole.

The existing studies and laws have considered the legality of the electronic contracts as compared with the conventional contracts. The laws of the Civil Code are quite effective when it comes to dealing with such matters, but certain case cannot be effectively dealt with by the conventional rules of the Civil Code. It is necessary for the rules to recognize the technical aspects of electronic contracts and the different features associated with it.

The regulation of contractual expressions, the data message attributions, the confirmation of the receipt and the recording of the time of establishment of the contract need special laws which deal exclusively with contracts concluded through the internet as the existing laws do face so difficulties and complications. The Jordanian laws also do not effectively deal with the subjects of the conclusion of the internet based contracts or their legitimacy. The automated transactions and the electronic errors are also not dealt with the current Jordanian laws.

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