

RESEARCH ARTICLE		The Nature of E-Commerce Contracts and Methods of Proof	
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Abstract E-commerce contracts are one of the most prominent manifestations of the digital transformation in modern commercial transactions. They are characterized by the complete elimination of traditional paper-based documents, which have been relied upon in traditional commercial environments. These contracts are based on electronic media, such as the internet, for their existence and implementation. This gives them an international character stemming from the idea of globalization and global economic openness. Transactions are no longer confined to a specific geographical area, but rather transcend national borders, connecting parties from different countries. It is noted that most commercial activities in this context are conducted online, including negotiation, contracting, payment, and delivery of products or services, indicating an increasing reliance on electronic means for concluding and implementing these contracts. This major transformation is attributed to the tremendous development in modern communication methods and technologies, which have contributed to the emergence of new and innovative methods for promoting and distributing products and services, leading to a qualitative leap in the methods of conducting commercial activities. This shift in the technical nature of e-commerce contracts has impacted the methods of proof, posing legal challenges related to how to prove actions and agreements concluded electronically, especially in the absence of a written signature or direct meeting between the contracting parties. Hence, the importance of establishing clear legal frameworks regulating the means of proof in this type of contract, ensuring the protection of the rights and obligations of the contracting parties and ensuring confidence in the digital environment.			
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Introduction

In recent decades, the world has witnessed unprecedented technological developments, radically changing the patterns of relationships and interactions between individuals, particularly in the legal and commercial fields. This development has brought about a qualitative shift in the way contracts are concluded. These contracts no longer rely solely on traditional means of meeting parties and exchanging paper documents. Instead, contracts can be concluded remotely using modern technological means, most notably the internet. This has led to the emergence of what are known as "electronic contracts" or "e-commerce contracts."

The electronic sales contract is one of the most important forms of these contracts, gaining widespread popularity, especially in light of the increasing reliance on e-commerce as an effective alternative to traditional trade, both within the borders of a country and within the framework of international trade relations. This type of contracting has enabled individuals and institutions to conclude commercial transactions quickly and efficiently without the need for travel or direct contact, reducing costs and facilitating access to global markets.

However, this modern form of contracting has raised numerous legal issues, especially in countries that are still new to this phenomenon, such as Algeria. E-commerce contracts have posed legal challenges related to the validity of the contract, identifying the parties, ensuring the integrity of the contractual process, and, most importantly,

proving the contract and its content in the absence of traditional means of proof such as paper documents and handwritten signatures.

Given the continued expansion of the use of e-commerce, the Algerian legislator hastened to establish a legal framework regulating this activity. Law No. 18/05 of May 10, 2018, was issued. This law constituted the first comprehensive legislative attempt to regulate the conditions for practicing e-commerce in Algeria, clarifying the rights and duties of the parties to an e-commerce contract, and providing legal protection mechanisms for consumers and stakeholders in this field.

Given the importance of this topic, this study aims to shed light on the nature of e-commerce contracts and the methods of proving them, by posing the following question:

What are e-commerce contracts? What are the legal mechanisms adopted to prove them?

To address this problem, we adopted a research plan based on a legal analytical approach, presenting and analyzing the various legal texts regulating this type of contract, as follows:

- 1- **The Legal Framework for E-Commerce Contracts**
 - 1.1. The Concept of E-Commerce Contracts
 - 1.2. Conditions for Concluding an E-Commerce Contract
- 2- **Parties to an E-Commerce Contract and Methods of Evidence**
 - 2.1. Parties to an E-Commerce Contract
 - 2.2. Methods of Evidence in E-Commerce Contracts
- **Conclusion:** Includes the findings and proposed recommendations.

It is worth noting that the importance of this topic is increasing with the accelerating pace of digital transformation and the increasing reliance on the internet for conducting commercial transactions. This requires legal systems to adapt to these transformations and keep pace with global economic developments by updating legal frameworks to ensure legal and economic security for all parties involved.

1. The Legal Framework of E-Commerce Contracts

E-commerce, as a phenomenon, emerges from the adoption of modern electronic means in commercial activities. This digital transformation affects how contracts are formed, performed, and enforced. Consequently, understanding the foundational legal framework regulating e-commerce contracts is essential for ensuring legal certainty and protecting the rights of the parties involved. This chapter explores the essential legal concepts related to e-commerce contracts, focusing on Algerian law while referencing broader international legal principles.

1.1 The Concept of E-Commerce Contracts

This section aims to elucidate the meaning of e-commerce contracts and highlight their distinctive features compared to traditional contracts.

1.1.1 Definition of the E-Commerce Contract

The Algerian legislator did not explicitly define the e-commerce contract until the introduction of Law No. 18-05 of 2018, which regulates e-commerce activities comprehensively. Article 6, paragraph 2, of this law provides a legal definition, stating:

“The electronic contract, as defined by Law No. 04-02 dated 23 June 2004, which determines the rules applicable to commercial practices, is concluded remotely without the physical and simultaneous presence of the parties, using exclusively electronic communication technology.”

(Article 6 of Law 18-05, 2018)

This reference to Law No. 04-02, enacted in 2004, shows the evolution of Algerian commercial law adapting to digital realities. Article 3, paragraph 4 of Law No. 04-02 defines a contract as:

“Any agreement or arrangement aimed at selling goods or providing a service, prepared in advance by one party with the other party’s consent such that the latter cannot make real changes to it.”

This type of contract, often known as a standard form contract, is prevalent in e-commerce, where consumers usually accept pre-drafted terms. Accordingly, an electronic contract can be understood as a pre-prepared agreement designed to sell goods or provide services, concluded entirely by means of modern electronic communication tools. This legal acknowledgment is crucial for granting such agreements the same binding force as traditional contracts, thus providing a legal foundation for resolving disputes and enforcing obligations.

The recognition also facilitates the application of consumer protection laws, electronic signature regulations, and dispute resolution mechanisms specific to the digital environment.

1.1.2 Characteristics of E-Commerce Contracts

The unique nature of e-commerce contracts lies in their formation, execution, and scope, which differ significantly from traditional contracts.

1.1.2.1 Remote Contract Formation

The defining characteristic of electronic contracts is their remote nature—the parties do not meet physically or simultaneously when concluding the contract. Instead, agreements occur through electronic platforms such as websites, mobile apps, or email (Gharbouj, nd, p. 5). This remoteness means there is no face-to-face negotiation or paper-based exchange of signatures, raising legal concerns about the certainty and authenticity of consent. The legislator highlights this by explicitly stating:

"...concluded remotely without the physical and simultaneous presence of the parties..."

The remote nature also implies increased reliance on technology, where secure communication, reliable servers, and data encryption become pivotal in ensuring the contract's validity and protection against fraud.

1.1.2.2 Reliance on Electronic Communication Technologies

The contract's formation and execution exclusively use electronic communication technology. This reliance demands legal acceptance of electronic evidence, such as emails, digital timestamps, and electronic signatures. The definition includes: "...exclusively using electronic communication technology," which underlines that without such means, the contract would not qualify as electronic (Gharbouj, nd, p. 5).

This exclusivity shapes many regulatory frameworks worldwide, pushing legislators to establish electronic signature laws, data protection regulations, and online dispute resolution systems.

1.1.2.3 International Dimension of Electronic Contracts

Because parties may be located in different countries, electronic contracts often have an international character. When the buyer and seller have different domiciles, the contract is considered international, which introduces complex questions of jurisdiction, applicable law, and enforcement of judgments. This international scope results from the contract's digital nature, which allows it to transcend traditional geographical boundaries and calls for harmonization of laws through treaties or regional agreements.

1.2 Conditions for the Formation of an International Commercial Contract

Like traditional contracts, electronic contracts require three essential elements for validity: consent, subject matter (object), and cause (consideration). Nevertheless, the electronic environment introduces practical challenges in proving these elements, which this section analyzes.

1.2.1 Consent in Electronic Contracts

Consent, the agreement of wills, is fundamental to any valid contract, including electronic ones. Parties express their intention via electronic means, requiring special attention to timing, place, and the accuracy of consent (Samira, nd, p. 178).

1.2.1.1 Offer

The electronic offer represents the expression of willingness to contract remotely and must include all essential elements, such as price and product description. According to Article 65 of the Algerian Civil Code, the offer must be clear, serious, and definitive (Civil Code, 1975). In electronic commerce, offers often appear as product listings, terms and conditions, or service descriptions on websites or platforms, with potential buyers initiating acceptance by clicking or otherwise indicating consent.

1.2.1.2 Acceptance

Acceptance electronically typically occurs through clicking an acceptance button or ticking a consent box. Although this seems straightforward, it raises concerns about the sufficiency of such acts as binding acceptance. Some jurists argue for a double confirmation mechanism to prevent accidental acceptance, such as requiring the consumer to click "Accept" and then "Confirm" to manifest their clear consent (Samira, nd, p. 179). Electronic acceptance triggers the contract formation, but legal debates continue over the exact time and place of acceptance, impacting dispute resolution and jurisdiction.

1.2.2 Validity of Consent

For consent to be valid, both parties must have the legal capacity to contract. Verifying this in electronic contracts is complex due to remote interaction, where identity authentication is not as direct as in traditional contracts. To address this, legislations like the European Directive 97/7/EC on Distance Selling (Council Directive, 1997) mandate identifying contracting parties' capacity when concluding remote contracts. Article 4(1) requires traders to disclose their identity and ensure the parties' capacity to contract, thus safeguarding the contractual process. Algerian law similarly emphasizes this aspect to prevent fraudulent contracts and protect vulnerable parties in the digital marketplace.

1.2.3 Subject Matter and Cause in Electronic Contracts

The subject matter of the contract must be lawful, possible, existent, and determinable. In e-commerce, this can involve:

- ✓ Tangible goods, like electronics or clothing,
- ✓ Intangible digital goods, such as e-books, software, or digital music,
- ✓ Services, including consulting, digital marketing, or travel agency services.

The cause (the legal reason for the contract) must be lawful and real. Contracts based on fictitious causes or illegitimate objectives are void. This principle applies equally to e-commerce contracts and traditional ones (Samira, nd, p. 180). For instance, if a contract's cause is fraudulent, such as selling counterfeit goods online, the contract is null and unenforceable under Algerian law and international standards.

2. The Parties to the Electronic Commercial Contract and Methods of Proof

This section addresses the essential participants in electronic commercial contracts and the evidentiary mechanisms applicable to such contracts. Understanding who the parties are and how their agreements are proven is critical in the digital commerce environment, where traditional face-to-face interactions are replaced by electronic communications.

2.1 The Parties to the Electronic Commercial Contract

In any commercial transaction, identifying the involved parties is fundamental. This is even more critical in electronic commerce, where the interaction is mediated through digital platforms. The legislator has defined the main actors in this domain as the electronic supplier and the electronic consumer.

2.1.1 The Electronic Supplier

The electronic supplier plays the role of the seller or service provider in the electronic marketplace. Unlike traditional markets where the seller's presence is physical and direct, the electronic supplier operates via electronic communication tools.

Legislative Origin:

The Algerian legislator formally introduced the term "electronic supplier" in Law No. 18-05 governing electronic commerce. This law was necessary to regulate the new market realities and provide legal certainty to participants in the digital economy.

Definition:

According to Article 6, paragraph 4 of Law 18-05, an electronic supplier is any natural or legal person who markets or offers to provide goods or services through electronic communications. This broad definition includes individual entrepreneurs, companies, and any entity that uses electronic means to conduct commercial activities (Law No. 18-05, 2018).

Implications:

This means that anyone engaging in selling or service provision via websites, mobile applications, or other electronic communication channels falls under this category and is subject to the rules and protections established by electronic commerce legislation.

2.1.2 The Electronic Consumer

The electronic consumer is the recipient of the goods or services offered by the electronic supplier. Defining the consumer in the electronic context is essential because consumer protection laws often impose special rights and obligations on suppliers.

General Consumer Definition:

Law No. 09-03 on Consumer Protection defines a consumer as any natural or legal person who acquires goods or services, whether for payment or free of charge, intended for final use. This use may satisfy personal needs or those of others, including animals under care (Gharbouj, n.d., p. 14).

Specific Electronic Consumer Definition:

Law No. 18-05 expands this to specify that the electronic consumer is any person who acquires goods or services through electronic communication from an electronic supplier, again for final use (Law No. 18-05, 2018).

Significance:

This distinction emphasizes the digital nature of the transaction but maintains the consumer's role and protections consistent with traditional commerce. It ensures that electronic consumers receive appropriate legal safeguards when purchasing goods or services online.

Practical Example:

A customer buying a software license via a company's website or a family member purchasing an online subscription service on behalf of the household would both qualify as electronic consumers under this definition (Gharbouj, n.d., p. 14).

2.2 Methods of Proof in Electronic Commercial Contracts

Proof and evidence are cornerstones of contract enforcement. Electronic contracts, by their nature, raise questions about how parties prove the existence and terms of their agreements, especially since the traditional physical signatures and paper documents are replaced by digital counterparts.

2.2.1 General Principles of Electronic Proof

Electronic proof functions largely like traditional proof but adapts to the technological medium.

Legal Equivalence:

International bodies such as the United Nations have clarified that electronic transactions and the associated documents should not be dismissed merely because of their electronic format. This aligns with modern legal thinking that substance should prevail over form.

Implication for Contracts:

Consequently, electronic documents and contracts created and transmitted over the Internet hold the same validity and enforceability as their paper equivalents, provided they meet certain legal requirements.

2.2.2 Electronic Signature

The electronic signature is a cornerstone of securing the authenticity and integrity of electronic contracts.

Legal Recognition in Algeria:

For the first time, Algerian law recognized the electronic signature in the Civil Code, specifically Article 327/2, which states that the electronic signature is valid if it complies with the conditions laid out in Article 323 bis. This was intended to confer legal evidentiary value on electronic documents (Civil Code of Algeria).

Definition and Requirements:

The secure electronic signature, per Executive Decree No. 07-162, is a method of signing that:

- ✓ Is unique to the signer,
- ✓ Is under their exclusive control,
- ✓ Is linked to the signed document to detect any post-signature alteration.

Additional Legal Clarification:

Law No. 04-15, Article 2, defines the electronic signature as data logically linked to other electronic data and used for authentication (Law No. 04-15, 2015).

Types of Electronic Signatures:

- ✓ **Graphic Signature:** This involves scanning a handwritten signature and embedding it digitally into a document. This method mimics traditional signatures visually but relies on scanning technology.
- ✓ **Digital/Code Signature:** This method uses a combination of letters and numbers created by the signer, often using encryption technology, ensuring only the signer can produce the signature (Said, n.d., p. 159).

Conditions for Evidentiary Value:

To ensure the signature is legally binding and proves the signer's intent:

- ✓ The signature data must be uniquely linked to the signer.
- ✓ The signer must have exclusive control over the signature data.
- ✓ Any alterations to the signed data must be detectable.
- ✓ The signature must confirm the integrity of the signed information (Samira, n.d., p. 183).

2.2.3 Electronic Documents

Electronic documents are the medium through which digital contracts are recorded and exchanged. Their legal status and definition have evolved with the rise of digital technology.

Definition by Legal Scholars:

Electronic documents are generally defined as data stored on electronic media that can be read or understood by machines or persons. This includes virtual representations, printouts, or any other meaningful data encoded electronically (Belkacem, 2013, p. 13).

Expansion of Writing Concept:

Algerian legislation has broadened the concept of “writing” to include all forms of electronic writing, acknowledging the shift from pen-and-paper to digital communication (Al-Koush, 2017, p. 72).

Three Stages of Electronic Documents:

- ✓ **Drafting and Storage:** Writing and saving the document in electronic form for later use.
- ✓ **Display or Printing:** Viewing the document on screens or producing physical copies.
- ✓ **Communication:** Exchanging documents either electronically (device to device) or manually (by sharing electronic links or files) (Al-Koush, 2017, p. 72).

These stages ensure that electronic documents can be effectively used as evidence and are accessible for inspection or review, fulfilling traditional documentary requirements in contract law.

Conclusion

From the foregoing study, it is clear that the Algerian legislator has introduced several provisions related to electronic transactions, with the most recent being Law No. 18-05 governing electronic commerce. This law aligns with similar legislations worldwide that regulate electronic signatures, granting them evidentiary value equivalent to that of traditional handwritten signatures.

Specifically, the legislator has established that the electronic signature holds validity in proof, provided it meets certain conditions. These include being created by secure and exclusive means, being uniquely linked to the identity of the signer, and clearly expressing the signer's consent to the content of the electronic contract. Moreover, the electronic signature must be uniquely identifiable and inseparably associated with the individual who is a party to the contract.

Thus, Algerian law has taken significant steps to modernize its commercial legal framework, ensuring that electronic contracts and signatures are recognized and enforceable. This legal adaptation facilitates the growth of electronic commerce by providing legal certainty and protection to both suppliers and consumers engaging in digital transactions.

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