

# Adopting of E- Transactions in Palestine: the legal Issues and Challenges

Yahya Yousef Falah

*Assistant professor of law, Palestine*

Date of Submission: 08-06-2024

Date of Acceptance: 18-06-2024

**ABSTRACT:** E-commerce is increasingly popular globally, including in Palestine and major Arab countries. It is a very effective business model which enables any buyer to purchase goods or services from practically anywhere in the world. It creates a global market of goods and services in which business and consumers contract with each other electronically. However, this phenomenon has caused many concerns and legal problems to parties which need for radical legal solution especially in Palestine. This paper will examine the legal issues and challenges of adopting e-transactions in Palestine. In addition, this paper seeks to clarify the role of the Palestinian laws in regulating and adopting the legal remedy and solution of these issues and problems. This study mainly used the analytical and library research to examine the issues of Adopting e- transactions in Palestine. The laws of Palestine are used in this study to clarify the legal positions on the relevant issues above. It is found from this study adopting of e-transaction in Palestine requires the legislations that remedy the legal problems arising such as consumer protection; the privacy issues; electronic payment; admissibility of electronic document in court; fraud; applicable law and identity of parties involved and their legal capacity. Therefore, the legislator in Palestine must promulgate the laws that regulate and remedy these problems and to develop e-transactions in Palestine in general. The benefit of this paper is to propose some recommendations to develop the Palestinian laws in order to address the issues of adopting e-transaction in Palestine which contribute in the development of e-commerce in Palestine.

**KEYWORDS:** E-Transactions laws in Palestine, Consumer Protection, Privacy, Electronic Payment, Electronic Documents, Fraud, Applicable Law, Legal Capacity.

## I. INTRODUCTION

Towards the end of the 20<sup>th</sup> century, the world witnessed a huge revolution in the field of

information and communication. This technological revolution has also had an effect on commerce [1]. It led to the innovation on electronic commerce in particular. This novel way of commerce had significantly revolutionized the traditional way of doing business. This new mode of commerce is carried out by means electronic systems like the Internet or computer networks[2] to communicate the intentions of parties.

Using the Internet in electronic commerce makes it different from other using modes of electronic communication, and certainly ordinary way of communicating. The Internet allows businessmen to showcase and sell their products and services online at minimal cost; to develop and adopt an efficient marketing and promotional strategy; to reduce costs associated with advertising, marketing and customer care; and to increase the market share and to expand to new markets.

E-commerce[3] is increasingly popular globally, including in Palestine and major Arab countries. It is a very effective business model which enables any buyer to purchase goods or services from practically anywhere in the world [4]. It creates a global market of goods and services in which business and consumers contract with each other electronically[5]. However, this phenomenon has caused many concerns to consumers which are peculiar to E-commerce and is to the disadvantage of those who are not well-versed in it [6].

The Palestinians are comfortable to use the Internet for e-commerce, and they are open mind to online transactions and payments. Regarding this, the percentage of households that have Internet service in the Palestinian territory was 79.6% in 2019: 83.5% in West Bank and 72.7% in Gaza Strip. In addition, the percentage of the Palestinian households who have the Internet line whether they are living in urban, rural areas or camps, reached to 79.8% in urban areas, 80.9% in rural areas, and it reached to 74.5% in camps in 2019 [7].

Furthermore, the percentage of individuals aged 18 years and above in the Palestinian territory who used the Internet was 15.2 % in 2019: 74.1% in the West Bank and 65.2% in Gaza Strip. Moreover, the percentage of individuals aged 18 years and above in the Palestinian territory who used the Internet in urban areas was 71.3% in 2019 and it reached to 69.7% in rural areas, and it was 65.4% in camps [8]. These statistics reveal that most of the Palestinian people attend to have the Internet access in their homes whether they are living in cities, villages or camps.

In addition, these statistics show a high rate of people who are using the Internet in Palestine which reflect that they are friendly with the Internet whether they use the Internet from their homes, friend's home, mobile, or work.

On the other hand, the percentage of individuals aged 18 years and above in the Palestinian territory who purchased the goods or services through the Internet was 8.1% in 2019 [9].

In fact, the consumers in Palestine purchased many types of goods and services through internet such as: clothes, shoes, sportswear or accessories, cosmetics, and household goods [10].

It can be concluded from these statistics that the percentage of the individuals aged 18 years and above in the Palestinian territory who purchased goods or services through the Internet was lowest than an expected due to e-commerce creates many concerns to the Palestinian users and they need for new legislations that provide high level of legal solutions.

In fact, there are several issues that arise from sale of goods through Internet such as unfair practices and unfair dispute resolution [11], product safety and quality, problems with the delivery of goods, goods that present health or safety risks, or failure to supply the goods after payment. Besides, there is the temptation of fraud and unethical conduct, such as identity deception, false advertising as well as receiving payment without intending to supply and problems with privacy issues. Several problems also exist relating to online payment methods such as loss, errors and unauthorized transactions [12].

Regarding to this, it was reported that the percentage of the individuals aged 18 years and above in the Palestinian territory who are threatened by hacking and illegal access into their data was 2.6% in 2019. In addition, the percentage of individuals who are exposed to spam and related threats was 22.6%. On the other hand, the percentage of individuals aged 18 years and above in the Palestinian territory who are exposed to

illegal interception (e-mail, chat or VoIP communications) was 2.0% in 2019[13].

As a rule, these problems have a real effective on the Palestinian users including their financial loss, and it also effects on the development of e-commerce in Palestine that needs for radical solutions by using a high level of legal and technology solutions.

On the issues of payment methods, there are many methods of payment which used by the Palestinians in purchasing the goods and services through the Internet, and the statistics reveal that the highest percentage was cash payment on delivery which was reached to 86.5 in 2019. In addition, the percentage of individuals aged 18 years and above in the Palestinian territory who paid by the credit cards through the Internet was 15.2 % in 2019. Furthermore, the percentage of using a direct debit card or electronic banking transferring through the Internet was 7.5 % in 2019. However, the percentage decreased when they using the payment services through the Internet which was 3.7%. Finally, 1.9% was the percentage of payment through mobile account [14]. These statistics show that cash payment was the most preferable in e-transaction by the Palestinians to avoid the problems which may occur in using the other methods of payment. These problems are represented in loss, errors, unauthorized transactions, and the security and privacy threats.

In Palestine there are many laws that regulate the electronic transactions including the Presidential Decree No. 15/2017 relating to the electronic transactions [15]. This decree regulates many issues of electronic transactions such as the electronic money transferring and the admissibility of electronic documents. However, this decree failed in regulating many important issues such as: consumer protection and privacy issues.

In addition, the Presidential Decree No. 10/2018 relating to the electronic crimes [16] regulating many issues relating to the electronic crimes such as: unlawfully entering electronic networks and websites, disable access to the service, software, or data sources, disable the electronic network and forgery of electronic means of dealing.

Furthermore, the Palestinian Council of ministers issued the decision No. 3 of 2019 regarding the personal data of citizen [17]that prohibited using the personal data in the commercial purposes by the companies and institutions without a prior permission.

On the other hand, the Palestinian Presidential Decree No. 9/2010 on Banking Law

[18] regulates the issues of banking and protecting the privacy of the users during of dealing with the banks in Palestine.

Moreover, the Palestinian Monetary Authority regulates many issues of electronic payment in e-transactions by issued many instructions such as the Instructions No. 1/2018 regarding of licensing the payment service companies, the Instructions No. 3/2020 regarding of organizing the relation of payment service companies with the users, the Instructions No. 5/2010 regarding of automated connectivity and outsourcing, the instructions No. 5/2009 regarding of security and safety requirements, and the Instructions No. 1/2020 regarding of the provision of service provider companies for electronic wallet service.

In fact, these instructions are essential in regulating the issues of payment in Palestine especially in e-transactions that leads to encourage the Palestinians to purchase their goods and services through the internet and pay the price electronically

The government in Palestine tries to provide many online services, aiming to save time and effort, but it needs to be carefully studied to reduce risks by publishing important information pertaining to electronic dealings. Moreover, experience in the field is needed to ensure that e-government is best managed at minimal costs. Therefore, in 29/12/2022 the Palestinian government released my government system to provide the services of government electronically by a smart system. This new system aims to provide the governmental services in effective manner and achieving the administrative and finance governance in Palestine [19]. In addition, the Presidential Decree No. 11/2023 relating to the electronic government services system[20]regulates the electronic government services system by establishing the electronic platform to provide the government services electronically in the latest technical and administrative specifications and standards.

In fact, there are several legislations that regulate the issues of e-transactions in Palestine, and these legislations contain a remedy for some issues that effect on opinion of the Internet users in Palestine to purchase goods or services through the Internet. On the other hand, these legislations do not provide full legal solutions for all issues of e-transactions in Palestine. Therefore, the researcher will study the legal problems which may occur in e-transactions in Palestine to examine how the Palestinian laws remedy these issues, and to find the affect and legal solution for every issue in

Palestine to increase the confidence of Palestinians in e-transactions and to encourage them to purchase the goods and services electronically.

## II. CONSUMER PROTECTION

The Palestinian Consumer Protection Law No. 23 of 2005 defines the consumer, as anyone who purchases or benefits from goods or services” [21]

Consumer is the person who concludes the contracts for providing his needs from goods or services without intending to re-market them, and who intends to satisfy his daily needs without any intention of making a profit[22].

It is argued that the consumer is different from the merchant who purchases the goods for gain. The merchant has an experience about the price and the specifications of goods; as he knows how to purchase the goods and sell them to the consumer. Therefore, the consumer needs protection in e-transactions since he purchases the goods for consumption without any intention for trading. However, the merchant intends to profit by trading these goods, and every time he gains experience on the price and the specification of goods.

With the development of the Internet and the spread of e-commerce in the world, consumers are not protected by time or spatial barriers. They are able to buy any product or service from anywhere at any time by clicking on the keyboard of a computer. However, this phenomenon has its concerns for the consumers as cyberspace exposes the risks to those who do not have sufficient knowledge of computers, thus leading to exploitation and unfair practices [23].

The Internet eliminates borders, and now consumers are capable of purchasing goods from anywhere around the world via e-transactions. The consumer needs to be protected in an e-transaction, because they are regarded as weaker than the merchants, who are more experienced in these matters. The contracts are biased against the consumers, as they can only see a photo of goods they are purchasing, without actually being able to examine the goods itself. The regulation of commercial advertisement and its legality is an important issue in terms of factors such as the types of information inside the commercial advertisement, and the protection of consumers against misleading advertisement.

There are several problems which confront consumers in purchase of goods on Internet. These include unfair practices and unfair dispute resolution, product safety and quality, problems with the delivery of goods, goods that

pose health or safety risks, and failure to supply the goods after payment. Besides, there is an imminent threat of fraud and unethical conduct, such as identity deception, false advertising as well as receiving payment without intending to supply the goods or services, and problems with privacy issues. Several problems also arise due to the online payment methods, including loss, errors and unauthorized transactions [24].

The professional merchant and businesses through the Internet should assume that the weaker party on the Internet is the one that badly needs protection. This is related to the controversy regarding just how much the consumer is weaker than merchant. The consumer is often the weaker party, and he needs, a high level of mandatory protection [25].

The Palestinian Consumer Protection Law No. 23 of 2005 clarifies several issues relation to consumer protection in Palestine such as: describe all information of goods and services, [26] inform the consumer about the risks of products and the responsibility of merchant about the risks, [27] and determination of the merchant's identity, [28]. In fact, all these articles are important to protect the Palestinian consumers especially in e- transactions. However, many issues relating to consumer protection in e-transaction in Palestine needs for more attention by the law especially the issues of security and privacy, the consumer protection against misleading information, and the issues of the consumer protection about unfair terms of contract.

In general, there is a gap in the Palestinian laws regarding to consumer protection in e- transaction as these laws protect the consumers in general. The Palestinian Consumer Protection Law No. 23 of 2005 protects the consumer in general and it does not regulate the consumer protection in e- transaction as a special issue. In addition, the Presidential Decree No. 15/2017 relating to electronic transactions does not regulate the issues of consumer protection in e- transactions. Therefore, the consumer in e-transaction in Palestine needs for more attention and regulation by the Palestinian laws as it is an essential issue in Palestine.

### III. PRIVACY OF INDIVIDUALS

The progress of communications and speed of information has sometimes led to violation of the privacy of people abusing the computer in different ways such as giving false personal data, collecting real personal data, processing data without consent, creating data illegally and abusing personal data. For these reasons, it is important to

create the appropriate systems to keep the rights of individuals [29].

Information technology enables people to store, retrieve and analyze huge amounts of personal data collected from institutions and departments, government agencies and private companies. Furthermore, information technology enables one to compare the stored information in a file with another database, transfer it across the country in a very short time and at a very low cost. This shows the extent of the threat to one's privacy [30].

Privacy issues confront e-transactions because the contracting parties provide each other with personal information during e-transaction such as name, nationality, e-mail and credit cards numbers and of bank accounts. This creates concerns, especially if any contracting party uses the information in an unlawful manner. The purchaser provides the merchant or company with the information to achieve a specific aim that is, the e-transaction. The company is forbidden from using such information for any other purpose. Indeed, there is a need to identify the mechanism that preserves the information inside companies. The States should also cooperate by making laws that preserve the privacy of individuals.

There are many reasons for the protection of personal data from abuse by means of electronic media. This includes protection of privacy of data in computer memory and this secret data needs to be legally protected. There are some personal rights and freedoms which need protection. These are one's health, the intellectual, political and social dispositions, and all other things related to the human personality [31]. Despite the international efforts to provide legislative protection to private life during the use of computers and data banks, there are many fears and concerns about private life. One of these concerns is that information about private life can be easily collected and stored away using electronic tools [32].

In fact, the privacy violations for the Internet users are a matter of concern in Palestine. The percentage of the Internet users who suffered from stolen their personal data in Palestinian was 6.7 in 2014 [33]. In addition, the percentage of individual who are exposed to spy on their data was 1.7% in 2019 [34]. Therefore, there is a need for more laws to protect the consumer's privacy in using the Internet and protecting personal data from theft or improper disclosure.

Regarding to this issue, the Palestinian council of ministries issued a decision relating to citizen personal data that stipulates: "it is prohibited using the citizen personal data (direct/indirect) by the companies and the institutions provided with ,



in commercial purposes without a previously permission under the legal responsibility” [35].

This decision obliges the companies to protect the personal data, and the companies are prohibited from using the personal data without the permission of the owner. This decision is important to protect the personal data that stored inside the companies and institutions. On the other hand, this decision is not enough to regulate all issues of personal data protection in e-transaction in Palestine. Furthermore, the Presidential Decree No. 15/2017 relating to electronic transactions also does not regulate the issues of personal data protection. Therefore, regulating all issues of personal data protection in Palestine including collecting, processing, and using data by the companies and institution is an essential issue due to assaulting the personal data through the Internet is in a high level which effect on the development of e- transactions in Palestine.

#### IV. ELECTRONIC PAYMENT

One of the problems relating to electronic payment is the lack of security. Breach of confidential formation data may be the gateway for other crimes such as data theft, computer hacking and impersonation. Theft of credit card details that occurs during electronic payment is an increasingly common problem. There are many bogus companies on the Internet, and some purchasers provide these companies credit card numbers to pay for goods which leads to the illegal acquisition of credit card information.

As an example, the percentage individuals aged 18 years and above in the Palestinian territory who suffered from stolen their credit card numbers in Palestinian was 0.3% in 2014 [36]. Although the percentage of stolen credit cards numbers was low in Palestine, there is a need for more laws that protect the consumer in using credit cards.

Misuse of electronic payment cards by a holder is a problem with electronic payment. This includes providing false documents to get the credit card, using expired cards and cancelled cards [37]. Therefore, it is agreed that the holder should provide the bank with the correct documents to get the correct card. But the holder is considered in bad faith if he provided the bank with the wrong documents to get the credit card.

Misuse of a credit card by third party is another problem. This includes using a stolen card and stealing the PIN number [38]. For example, it was reported that the police in Gaza strip caught a person because he theft 500 \$ and 1000 IIS and a credit card that contains inside 13500 \$ from a house of other person [39]. Another example, it

was reported that the police in Dobai caught four persons because they theft the information of 16975 credit cards, they seized of \$62 million and they used the information in withdraw of money through the websites and purchasing the goods from markets[40]. As such, the holder should notify the bank directly to invalidate the card. The owner should also, publicize make known that his card was stolen so that merchants are aware that he is not anymore liable for any new transaction with this card.

Manipulation of the card by merchants is also a problem. This includes using cards which do not have sufficient funds available for payment or accepting false cards from customers [41]. Abuse also occurs when merchants use the machines that read and copy the details of the credit card used in gaming transactions, and then the merchant prints the data on other cards to facilitate fraudulent transactions. For example, in 1999 it was reported that a merchant in Jordan abused the saved number of the credit card from the machine after using the credit card to discount the price of goods. The merchant printed these numbers on other credit cards and gave them to other persons to do fraudulent purchases from merchants. The latter got the value of purchases from the issuer of the credit cards [42].

The manipulation of credit cards on the Internet may also occur through breaking into the lines of global communication networks, accessing PIN numbers or the information about sites and creating fake sites to receive requests for e-commerce transactions [43]. For example, it was reported that the police in Gaza caught three persons because they theft the databases with millions of USD from foreign and neighboring Arab countries. The investigations revealed that the methods of breakthrough were by stealing the accounts of credit card, or purchasing airline tickets, paying state fines, electricity bills, tourist hotel fees, and paying the value of purchases in shopping centers. Some criminals obtained money from the owners and transfer it to themselves through suspicious methods. In addition, some of accused used a “hacking” program to steal thousands of minutes, transfer balances to other customers, and then transfer money via goods or exchange offices [44]. Therefore, there is a need for “immunizing” websites against breaking through from hackers, especially these websites that belong to banks and the global communication network.

Stealing of a card’s password or PIN may occur by creating the pin numbers of credit cards by using mathematical and statistical equations in

order to collect the pin numbers of others credit cards [45]. In 1999, the police arrested three persons because they had many forged credit cards for purchasing goods. They collected these cards from a bank on the West Bank, and they purchased goods to the tune of 340 JD [46]. Another example, the Jordanian police arrested a person who used a forged card which is belong to a foreign owner, and used this card in withdraw money and purchase of goods. Furthermore, the police found that he had of 33 forged credit cards, and computers containing stolen credit cards information [47].

This problem requires law that can deal with forged credit cards used in overseas purchase. Therefore, effective cooperation between merchants and banks is essential. Moreover, the role of government, especially the police, is essential in arresting anyone who tries to engage in theft or forging credit cards. However, the problem becomes more complicated when fake credit cards are used in other countries; if the holder tries to purchase goods online from many countries, or escapes to a third country. The role of laws and international agreements is important in reducing such problems.

In addition, to the above situations, several other problems also exist during online payment such as loss, errors and unauthorized transactions [48]. In fact, hackers also conduct many experiments to access the true and used number of cards. They make many transactions and provide the merchant with false numbers. The problem for the owner of the cards is that he would be liable to pay the price of goods while he finds difficulty in proving that he did not deal with those transactions. To prevent this abuse, merchant should ensure that the holder is the owner of the card, or he has permission to use it.

By returning to the Presidential Decree No. 15/2017 relating to electronic transactions, it regulates the issue of electronic money transferring that is admissible method of electronic payments. In addition, this decree mentions to electronic payment card, and it transfers the regulations of this issue to the Palestinian monetary authority by releasing the necessary instructions and procedures. Therefore, the Palestinian monetary authority released many instructions such as the Instructions No. 1/2018 regarding of licensing the payment service companies, the Instructions No. 3/2020 regarding of organizing the relation of payment service companies with the users, the Instructions No. 5/2010 regarding of automated connectivity and outsourcing regulated the contractual terms between the banks and outsourcing service provider, the instructions No. 5/2009 regarding of

the security and safety requirements , and the Instructions No. 1/2020 regarding of the provision of service provider companies for electronic wallet service.

In fact, these instructions are important in regulating the issues of electronic payment in Palestine and encourage the development of e-transactions due to regulating the electronic payment is a critical issue.

## V. ADMISSIBILITY OF ELECTRONIC DOCUMENTS

There are many legal problems which arise from the absence of legal regulations for electronic documents. One is non-admissibility of the electronic documents in the courts. This precludes the individuals from submitting the necessary evidence to prove their contracts. The court has a choice to accept the electronic documents that are consistent with the electronic age that imposed significant changes in the conventional documents. Therefore, introducing new laws that ensure the admissibility of computer documents as proof is necessary [49].

There are transactions achieved by communications conducted by electronic means, and they depend on electronic documents. The contracting parties have to prove their contracts by using electronic documents because they do not use paper documents. Therefore, governments have to create the legal mechanism for electronic documents and have to provide for the admissibility of electronic documents in courts [50].

The methods of proof in Palestine are governed by civil laws especially the evidence lawNo. 4/2001 [51]. This law does not allow the electronic documents as full proof in courts. In fact, introducing new laws that give admissibility to the computer documents as a method of proof in Palestinian courts is necessary. Therefore, the Presidential Decree No. 15/2017 relating the electronic transactions regulates the issue of admissibility of electronic documents and it comes up with many provisions in article 1. It defines the electronic record: A set of information that is established, sent, received, or stored by electronic means and form together a description of a situation related to a person or a thing. In addition, it defines the electronic document as: The document that is generated, signed, and circulated electronically. Furthermore, it defines the electronic signature: A set of electronic data whether it is letters, numbers, symbols, or any other similar form incorporated with an electronic transaction that enables the identification of person

who signed it and distinguishes the signatory from others in order to accept the content of transaction[52]. Moreover, this decree regulates the electronic transactions in article 9 that stipulates: the electronic transactions, records and signatures shall have a legal effect, and shall be valid and enforceable as the written documents under the provisions of legislation in force in terms of binding the parties thereto or their validity to serve as evidence. A paper copy of Electronic Data Message shall be binding on all parties unless if one party disputes in, then the image is reviewed with the original [53]. This article contains the provisions of acceptance the electronic documents and records in proof that is full evidence according to this law, and the parties can submit it to court that accept it.

In addition, article 13 stipulates: the electronic records derive its legal effect, and it has the status of hard copy under these conditions: a. The information contained in the record is a subject to received, stored, and may referred it at any time. b. The possibility of preserving the electronic record in form which was made so that it is easy to prove the accuracy of information contained in when it was created, sent, or delivered. The conditions set out in paragraph (1) from this article shall not apply on information in record intended to facilitate sending the message and receiving it[54]. This article regulates the provisions of the electronic record that has a legal effect under the conditions if many terms are available, and the electronic records is accepted a full proof as same of document in hard copy. Furthermore, articles (22, 23) of this law grant the electronic document holder the same rights of hard document holder. It stipulates: The Electronic document holder shall be deemed entitled to all rights and defenses enjoyed by the holder of hard document, pursuant to any legislation in force if that instrument meets all the relevant conditions. The creditor and the debtor by an electronic document shall enjoy the rights and defenses enjoyed by the creditor and the debtor by hard document [55].

These articles indicate that, the electronic documents and recording have the legal effect and they are full proof as a hard document. The holder has all the rights of hard documents if the electronic documents and records fulfill all the legal requirements in this law.

After that, article 34 indicates the admissibility of the electronic signature as full proof. It stipulates that: 1. the signature shall be exclusive to the signatory and proves his identity. 2. It is created by the means which are maintained

by signatory under his exclusive control. 3. To ensure that there is a link to document related to signature and discovers any subsequent change after the time of signing [56]. Therefore, the electronic signature has the legally authentic if the terms and conditions are available, and the court must accept it as a full proof.

## VI. PROBLEM OF FRAUD

Fraud is a big concern for consumers in e-transactions due to the Internet being an open network that facilitates fraudulent activities. In addition, fraudsters can conduct these activities from different countries, which lead to difficulties in stopping them.

Al-Majallah (The Ottoman Courts Manual based on Hanafi jurisprudence). MejjallatulAhkam Al-'adlyyah defines fraud as: "Deceit is cheating" [57]. The fraudster deceives the person to believe in false things by using fraudulent methods to encourage him to conclude a contract. Silence about a thing intentionally is a form of fraud if the victim proves he would not have concluded the contract if he had known this fact [58]. Fraud is the use of unlawful ways by one of the contractual parties to encourage the other party to sign a contract depending on these ways or untrue statements.

There is a massive and inevitable threat of fraud and unethical conduct in Internet transactions. These wrong practices include identity deception, false advertising as well as receiving goods /payment? without intending to pay, advertising goods that do not exist, untrue statements about the goods, selling dangerous goods, failing to tell customer about import or cost of transport, wrong delivery of goods, failing to deliver goods on time and failing to deliver goods at all [59].

In fact, the Internet contains many fraudulent activities, and there are many consumers who have suffered from such activities. Therefore, protecting the consumers against fraud on the Internet is an important issue. In addition, the consumers are obliged to protect themselves against such activities, and ascertain the existence of any website to purchase goods on the Internet. Furthermore, legislating to protect consumers on the Internet is another important issue. Moreover, protecting the consumer against fraudulent activities on the Internet requires international cooperation since the Internet is an open network and the fraudsters are sometimes from different countries.

The Palestinian Civil Draft Law No. 4/2012 provides: "Is it fraud if the seller by

intentional silence tries to hide something which he should have declared before it is exposed? Yes if it is proven that the deceived person would have never concluded the contract if he knew about that matter” [60].

Unfortunately, the Presidential Decree No. 15/2017 relating the electronic transactions does not regulate the issues of fraud in electronic transaction as it is an essential issue in Palestine. Therefore, the researcher suggests an addition of some articles in the Presidential Decree No. 15/2017 relating the electronic transactions to classify the types of fraud on the Internet and the penalty for such activities to protect the consumers in e-transactions. In addition, such articles are essential to prevent the dealers from practicing illegal activities on the Internet especially when they aim to promote their transactions online, and fail to fulfill their contractual obligations.

## **VII. CONFUSION OVER THE APPLICABLE LAW**

There are some questions about the applicable law in disputes between the parties in electronic contract especially when the parties belong to different legal jurisdictions. Is it the law of the buyer or the seller? Is it the law of the mediator? Is it the law of execution of the contract or independent law that includes rules which resolve the disputes in the electronic contract? [61].

The Palestinian Civil Draft Law No. 4/2012 regulates the issues of applicable law in article 25: The applicable law in the contractual relations is the law of contractual parties' homeland. If their homeland is different, the law of the state that contract is concluded in, is applied, unless if the parties agreed, or appear from the circumstances that other law is intended to apply [62]. This article regulates the scope of applicable law that depends on the homeland of the parties. This article is important in the traditional contracts and some difficulties may occur if the contract is concluded by the electronic means and actual place of contract is unclear due to the contract being concluded through the Internet.

Unfortunately, the Presidential Decree No. 15/2017 relating to electronic transactions does not regulate this essential issue. Therefore, specifying the applicable law in e-transaction helps to solve many problems that may arise in the future between the contracting parties. Every contracting party in an e-transaction wishes to apply his law because it is the best to achieve his special interest. Therefore, the contractual parties should specify the mechanism that solves the disputes which may arise between them in the future and specify the

applicable law on this dispute whether the law of seller or purchaser or any independent law. The State should also specify the applicable law on electronic contracts that regulates the relations between the contracting parties while maintaining the sovereignty of the States.

## **VIII. IDENTITY AND LEGAL CAPACITY OF THE PARTIES**

One of the fundamental problems in electronic contract is the identification of persons who are the contracting parties and their legal capacity because under the law of contract which applies to e-commerce achieved via the Internet it is not valid without full legal capacity of the parties. There is no binding contract without the parties having full legal capacity. The legal capacity according to article 53 of the Palestinian Civil Draft Law No. 4/2012 is eighteen years, and the person has a legal capacity to exercise his civil rights and exercise the legal disposals. This article clarifies the legal capacity of the person who has permission to conclude the contract after his age reaches eighteen years. Therefore, the person can conclude the electronic contract and he is obliged to fulfill all his obligations in this contract. In general, the execution of the obligation of each party requires knowledge of the others' legal personality. In many online transactions, the parties do not have prior information about each other. It is not easy to verify the identity of contracting person on the Internet or his legal capacity because the parties are in different places. Therefore, it may happen that, one of the contractual parties lacks legal capacity, or a person claims that he is the agent of a commercial company but he in fact does not have any authority to enter into a contract [63]. The Palestinian Civil Draft Law No. 4/2012 clarifies the legal disposals that is concluded in Palestine and their effects in Palestine. If one of the parties is a foreign and he does not have a legal capacity according to his nationality law, and other party cannot know the reason, this reason does not effect on validity of legal disposal of a foreign person [64]. This article protects person of good faith in the contract if another contractual party is a foreign and he does not inform about his legal capacity intending to fraud. In addition, this article clarifies the legal capacity of the parties in the contract that is concluded by the traditional means. In general, the problem arises and becomes more difficult in electronic contracts especially if the parties do not know each other's and they are from different nationalities. Furthermore, the Internet contains many fraud activities, and the parties do not have the methods to verify the legal capacity of



each other. So, the law should play a role in providing a means to ensure legal capacity of every contracting party especially in e-transactions e.g. by means of a declaration Every contracting party in an e-transaction should also make the effort to ascertain the identity and legal capacity of other party

## IX. CONCLUSION

There are some legal problems that arise from sale of goods on the Internet: consumer protection; privacy issues; electronic payment; admissibility of electronic document in court; fraud; applicable law and identity of parties involved and their legal capacity. Therefore, the government and parliament in Palestine should introduce laws that regulate e-transactions and protect the consumers in Palestine to encourage them to make full use of the electronic commerce.

Privacy is one of some challenges that confronts the development of e-transactions because the contractual parties provide each other with their information during an e-transaction in formation such as the name, nationality, e-mail and the credit card numbers and of bank accounts. Indeed, there is a need to identify the mechanism that preserves this information inside the companies. The states should also cooperate by making laws that preserve the privacy of individuals during an e-transaction and payment of goods.

There are problems that may occur during an electronic payment. This includes the theft of credit card information, misuse of the electronic payment cards by the holder, manipulation of the card by sellers and misuse of the card by a third party. In fact, these problems have a discouraging effect on the development of e-transactions and will restrain individuals from making online payments. Therefore, the laws arguably play an essential role in reducing these problems and punish anyone who tries to manipulate credit cards or electronic payment methods.

There are many risks which may occur when making an online payment of goods in an e-transaction. The security of systems is another risk of electronic banks; in case it leads to breaking into the systems of the banks' computers, endangering the information of the clients and its exploitation by others or the employees of the bank.

On the other hand, the risks sometimes come from the clients when they do not have sufficient knowledge about the procedures of using electronic banks or when they allow unknown parties who intend to commit crimes through the electronic banks such as thefts or breaking into

security system of clients. The risks also arise when the means of protection of a client's data inside the electronic banks is inefficient; this leads to breaking into the systems of the electronic banks by hackers. Therefore, the banks should take the utmost caution and care to protect their electronic systems from being broken into and maintain personal data of clients such as their credit cards and personal information saved by the bank. In fact, these risks deter people from using the electronic bank to pay for goods in an e-transaction, and it has a substantial effect on the development of e-banking in Palestine. As a result, introducing the new laws regulating e-banks and reducing such risks is an essential issue in Palestine.

Generally, the law plays an essential role in regulating electronic contracts. Therefore, studying e-transaction law in Palestine is important in regulating issues pertaining to e-transaction and finding the best manner of developing these laws in regulating issues and legal problems pertaining to e-transaction in Palestine.

## REFERENCES

- [1]. John E. Murray, Jr., Harry M. Flechtner. (2000). Sales, Leases and Electronic Commerce: Problems and Materials on National and International Transactions. St. Paul, Minn: West Group. 7
- [2]. Thomas O'Daniel, Electronic Commerce, Management Economics Marketing and Technology, (Malaysia: CetakrapiSdn. Bhd, 2000). 37
- [3]. The researcher will use e- commerce and e-transaction interchangeably in this research
- [4]. Do'a', "Electronic Commerce," manshor.net, <http://www.manshor.net/forum/showthread.php?143305-Electronic-commerce> (accessed, 15 May, 2016).
- [5]. Lorna E. Gillies, (2008). Electronic Commerce and International Private Law, (USA: Ashgate Publishing, 2008), 26.
- [6]. Georges Decocq, "Cyber Consumer Protection and Unfair Competition", Electronic Journal of Comparative Law, vol. 11. 3 (December 2007): 1. EJCL, ><http://www.ejcl.org/113/article113-18.pdf><.
- [7]. Palestinian Central Bureau of Statistics. (2019). Household Survey on Information and Communications Technology, 2019. Main Findings Report. [https://www.pcbs.gov.ps/PCBS\\_2012/Publications\\_AR.aspx?CatId=21&scatId=287](https://www.pcbs.gov.ps/PCBS_2012/Publications_AR.aspx?CatId=21&scatId=287)

- [1]. accessed on 22/2/2024. At: 21
- [8]. Ibid. At 21
- [9]. Ibid. At: 22.
- [10]. Ibid. At: 22
- [11]. Cristina Coteanu, *Cyber Consumer Law and Unfair Trading Practices*. (USA: Ashgate Publishing, 2005), ix.
- [12]. Abu BakarMunir and Sonny Zulhuda, "Becoming E-cities: Legal Issues and Challenges," [https://www.unapcict.org/sites/default/files/2019-01/e\\_cities.doc](https://www.unapcict.org/sites/default/files/2019-01/e_cities.doc) (accessed 22 May, 2024).
- [13]. Palestinian Central Bureau of Statistics. (2020). *Household Survey on Information and Communications Technology, 2019 Main Findings Report*. [http://www.pcbs.gov.ps/PCBS\\_2012/Publications\\_AR.aspx?CatId=21&scatId=287](http://www.pcbs.gov.ps/PCBS_2012/Publications_AR.aspx?CatId=21&scatId=287). Accessed on 22/2/2024. At: 23.
- [14]. Palestinian Central Bureau of Statistics. (January 2020). *Household Survey on Information and Communications Technology, 2019. Main Findings Report*. [http://www.pcbs.gov.ps/PCBS\\_2012/Publications\\_AR.aspx?CatId=21&scatId=287](http://www.pcbs.gov.ps/PCBS_2012/Publications_AR.aspx?CatId=21&scatId=287). accessed on 22/2/2024. At: 23
- [15]. This decree was published in the Palestinian Official Gazette No. 0, on 19/07/2017, 2.
- [16]. This decree was published in the Palestinian Official Gazette No. 0, on 3/05/2018, 8.
- [17]. This decision was published in the Palestinian Official Gazette No. 156, on 16/06/2019, 21.
- [18]. This decree was published in the Palestinian Official Gazette No. 0, on 27/11/2010, 5
- [19]. State of Palestine: Council of ministers. (30/11/2022). <http://www.palestinecabinet.gov.ps/portal/news/SecretaryGeneralNewsDetails/53245>. (accessed, 21 February 2024).
- [20]. This decree was published in the Palestinian Official Gazette No. 0, on 13/04/2023, 347.
- [21]. The Palestinian Consumer Protection Law No 23/2005. Article 1. This law was published in the Palestinian Official Gazette No. 63, on 27/4/2006, 29
- [22]. Khalid, Ibr  m..., Ibr  m al-  qd al-Electr  n  . Al- Iskand  ry  h: D  r al-J  mi  h al-Jad  dah. .2006. 335.
- [23]. Decocq, I. See also, Coteanu, x.
- [24]. Coteanu, ix, xiii. See also Abu Bakar and Sonny, 57
- [25]. Winn, J. k. *Consumer Protection in the Age of Information*. USA: Ashgate Publishing, (2006). 2. See also Gillies, 17.
- [26]. The Palestinian Consumer Protection Law No. 23 of 2005. Article:6/3
- [27]. The Palestinian Consumer Protection Law No. 23 of 2005. Article: 9 and 11
- [28]. The Palestinian Consumer Protection Law No. 23 of 2005. Article: 21
- [29]. Sa  ed Salem Joweli, "Al-haqf   al-Kho     yahlel-Mustahlik fi al-Tij  rah al-Eliktron  h," *Proceedings of Al-m'tamar ad-Da  l   le-Q  n  n al-Internet: Nah  aAl  q  tQ  n  n  yawa-  dar  yahwa-Iqt   d  yahwa-Ijtima   yahJad  dah*, edited by al-Monathamah al-  rab  yah le-Ttanm  yah al-Idar  yah (Ma  r, 2005), 234
- [30]. Younes Arab, "al-Makha  erAllatiTatahadad al-Kho     y  awaKho     y  at al-Ma  l  mat F   al-  ira al-Raqam  ," Alyaseer, <http://alyaseer.net/vb/showthread.php?t=19032> (accessed 10 May, 2016).
- [31]. Abdul-Fattah B     Hijazi, (2006). *Mok  fahatJar   im al-Komputerwal-Internet fi al-Q  n  n al-  rab   an-Nam  thaj  *, (Al-Iskandary  h: D  r al- Fiker al-J  m    , 2006), 616.
- [32]. Qazit, Mofitah Muhammad. *Al-Makh  ter al-Lat   ta-Tahaddad al-Kho     yahwaKh     yat al-Ma  l  m  tf   al-  srArraqam  *, (Unpublished research submitted for the workshop in Sharm El-Shaikh, 25 February 2006), 2.
- [33]. Palestinian Central Bureau of Statistics. *Household Survey on Information and Communications Technology, Main Findings Report* (2014) ,[https://www.pcbs.gov.ps/PCBS\\_2012/Publications\\_AR.aspx?CatId=21&scatId=287](https://www.pcbs.gov.ps/PCBS_2012/Publications_AR.aspx?CatId=21&scatId=287). 20. Accessed on: 6/3/2024.
- [34]. Palestinian Central Bureau of Statistics. (2020). *Household Survey on Information and Communications Technology, 2019 Main Findings Report*.
- [35]. The Palestinian council of ministries. *Decisions No. 4. Date: 6/5/2019*.
- [36]. Palestinian Central Bureau of Statistics. *Household Survey on Information and Communications Technology, Main Findings Report* (2014) , [https://www.pcbs.gov.ps/PCBS\\_2012/Publications\\_AR.aspx?CatId=21&scatId=287](https://www.pcbs.gov.ps/PCBS_2012/Publications_AR.aspx?CatId=21&scatId=287). 20. Accessed on: 6/3/2024.
- [37]. Ahmad Kurdy, "Mashakel Al-Tig  rah al Eliktron  h," <http://kenanaonline.com/users/ahmedkordy/posts/277458> (accessed 15 may, 2024).
- [38]. Abdul-Fattah Ba     Hijazi, *Al-Tig  rah al-Eliktron  hwa   im    tuha al-*

- QÉnËnyÊah, (Masr: DÉR al-Kutub al-QÉnËnyÊah, 2007. 123.
- [39]. Palestinian police (Gaza). (11/11/2021). <https://m.facebook.com/GID.POLICE/posts/4183427691768895/>. Accessed on 7/3/2024.
- [40]. Alarabiya.net . 15/12/2008. <https://www.alarabiya.net/articles/2008%2F12%2F15%2F62094>. Accessed on 14/5/2024.
- [41]. Abdul-Fattah, Al-TigÉrah al-EliktronÊah..., 129.
- [42]. AmjadHamdan Al-jahni, (2010). Al-MasaËlyÊah al-MadanÊa ‘n al-IstekhdËmGhaÊr al-MashrË‘ leBeËaqÉt al-Daf‘ al-ElectrËnÊ, (Amman: DÉR al-MaÊsarah, 2010), 153.
- [43]. Abdul-Fattah, Al-TigÉrah al-EliktronÊah..., 131, 132.
- [44]. Sama news. (17/3/20216). <https://samanews.ps/ar/post/265150>. Accessed on 11/3/2024.
- [45]. Abdul-Fattah, Al-TigÉrah al-EliktronÊah..., 134.
- [46]. Amjad, 159.
- [47]. Jordan news agency. (2/8/2016). [https://petra.gov.jo/Include/InnerPage.jsp?ID=2176879&lang=ar&name=archived\\_news](https://petra.gov.jo/Include/InnerPage.jsp?ID=2176879&lang=ar&name=archived_news). Accessed on 11/3/2024.
- [48]. Abu Bakar and Sonny, 57.
- [49]. Abbas Al-‘bËdË, Al-HujÊyah al-QanËnÊyah li-WasÉ’il al-Taquadom al-‘ImÊfË al-IthbËt al-MadanÊ, (Amman: DÉR al-ThaqÉfah, 2002),132.
- [50]. Ibid., 144.
- [51]. The Palestinian Evidence Law No. 4/2001. This law was published in the Official Gazette No. 38, on 5/9/2001, 226.
- [52]. The Presidential Decree No. 15/2017 relating the electronic transactions. Article: 1.
- [53]. The Presidential Decree No. 15/2017 relating the electronic transactions. Article: 9.
- [54]. The Presidential Decree No. 15/2017 relating the electronic transactions. Article:13
- [55]. The Presidential Decree No. 15/2017 relating the electronic transactions. Articles:22,23
- [56]. The Presidential Decree No. 15/2017 relating the electronic transactions. Article: 34
- [57]. Al-Majallah (The Ottoman Courts Manual based on Hanafi jurisprudence). MejallatulAhkam Al-‘adlyyah. Article 164.
- [58]. LazharIbnSa‘ed, Al-NethËm al-QanËnÊ le-‘qËd Al-TejÉrah al-ElectrËnÊyah, (Al-IskandarÊyah: Dar al-Fikr al-Jame‘Ê, 2010),88.
- [59]. Coteanu, introduction. See also, Advice guide, “Fraud on the Internet,”[https://www.citizensadvice.org.uk/Global/Migrated\\_Documents/adviceguide/i-fraud-on-the-internet.pdf](https://www.citizensadvice.org.uk/Global/Migrated_Documents/adviceguide/i-fraud-on-the-internet.pdf). (Accessed 15 May 2024).
- [60]. The Palestinian Civil Draft Law No. 4/2012. Article 124.
- [61]. Reda MetwaliWahdan, al-Netham al-QanËnÊlil- ‘qd al-ElectrËnÊwa al-Mas’ËlÊyah ‘n al-T‘ÉqËdËt al-ElectrËnÊyah, (Al-ManÎËrah: Dar al-Fekrwa-AlqanËn, 2008), 99.
- [62]. The Palestinian Civil Draft Law No. 4/2012.Article: 25
- [63]. Mahmud Abd al –Rahim Ashrifat, At-TarÉËËfi at-T‘Éqod Abra al-Internet, (Amman: al-Maktaba al-WatanÊyah, 2005), 48.
- [64]. See the Palestinian Civil Draft Law No. 4/2012. Article: 15/2.