

International Sale Contract Practices Through the Internet and Influencing Factors: A Comparison between Oman and The International Sale Contract

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Abstract

International trade is defined as the process in which goods and services are exchanged, but across different borders and regions, and between the countries in which they are located and the countries that need them. That is, there is an exporting country and an importing country, which constitutes a large share of the gross domestic product in various countries, and differs from local trade, which takes place entirely within one country. International trade may sometimes be called global trade or foreign trade. The research problem is: How can the information contract for the international sale of goods be organized? What are the provisions for concluding it and the mechanisms for implementing it? What is the nature of the media used in this? The descriptive analytical approach was used in analyzing the relevant legal texts, as well as the comparative approach in comparing Omani legislation with international laws in this field. The results concluded that, given the risks related to the trust provided to contractors, especially those to which the consumer may be exposed, to which the legislator has given special protection, we therefore propose to explicitly stipulate in the Civil Code the explicit recognition of the message of data in expressing the will and its regulation, as comparative legislation has done and the establishment of explicit rules. It would provide special protection for the consumer in the electronic contracts he concludes. The study concluded that it is necessary to expand the rules of conflict through more freedom for the judge to estimate the most appropriate law governing the international contract in the absence of the law of will.

Keywords: International Sales Contract, Applicable Law, International Agreements.

Introduction

The contract for the international sale of goods is one of the most important topics in international trade law, as it is the basic legal instrument through which international trade is carried out. In view of this importance, its problems have become complex, and it has

become in dire need to regulate its provisions and guarantee the rights of both parties. The differences in the systems of each country are a source of concern for contractors. Therefore, the efforts of researchers and international organizations that have been exerted at the international level for a long time have turned to working to unify the provisions of the international sale of goods, with the aim of developing commercial dealings between countries (Al-Haija, 2022)

The problem of the article is that the contract for the international sale of goods in accordance with the Vienna Convention is distinguished by its specificity in terms of its contract and its effects, as it is distinguished by its international character, which makes it subject to more than one legal system. Hence, the problem raised is: What is the legal framework that regulates the most complex international sale of goods in accordance with the laws? International and national? From this problem emerges a number of sub-questions, mainly centered on how is the contract for the international sale of goods concluded?

The importance of the study lies in the specificity that characterizes the contract for the international sale of goods compared to internal sales contracts, given the role it plays in building the national economy of countries on the one hand, and on the other hand the problem raised by international contracts as they include a foreign element, which results in a difference in the legal status of the parties. Contracting, and this issue relates to an important matter in people's practical lives, which is money to which souls are attached, and strive to acquire and preserve it, especially in this time (Al-Mutalqa, 2009)

The most important motivation for studying this topic lies in the importance of the Vienna Convention of 1980, and what I saw of countries ratifying and acceding to it, as well as the interest of a large number of international organizations in the contract for the international sale of goods, and the existence of many international agreements regarding it, which gave rise to our personal desire to study this topic.

To address this issue, we used both the analytical approach and the descriptive approach. As for the descriptive approach, we discussed through it what the contract for the international sale of goods is, how to conclude it, as well as the most important obligations that fall on both the seller and the buyer, in addition to the penalties that are imposed on both parties in the event of a breach. One of them follows one of his obligations. As for the analytical approach, we relied on an analysis of a number of articles of the Vienna Convention of 1980 related to the international sale of goods, and also an analysis of some articles and legal texts found in the general rules and in comparison, with the Omani Civil Transactions Law related to the subject of the sales contract.

First: Subjecting the international electronic sales contract to the law of will

Before addressing the definition of the law of will that governs the international electronic sales contract, we must stand on the exact definition of this new type of contract, and then discuss defining the concept of the law of will that governs the international electronic sales contract.

A/ The concept of the electronic sale contract:

In this element, the regulation of the electronic international sale contract is dealt with through a study on comparative laws, in addition to defining the content of the law of will that governs this type of new contract and the basis for that.

1 Definition of electronic sales contract in comparative laws

The electronic contract is distinguished from the rest of the other contracts, as it is a contract that belongs to the category of contracts concluded remotely, and what is meant by contracts concluded remotely are those contracts that are concluded between two parties located in distant places, and this is done by using one or more means of remote communication, and by returning to the Omani civil law We find that the legislator touched on defining the sale contract as a contract in which the seller is obligated to transfer ownership to the buyer of the thing or another financial right in exchange for a cash price without addressing the electronic transaction, contrary to what was in the comparative legislation in this field. Article 2 of the Electronic Transactions Law was defined Omani electronic contract as: "the agreement concluded by electronic means, in whole or in part" (Al-Marri, Cairo)

The same article added to that a special definition of the electronic means through which the contract is concluded as: any technology for the use of electric, magnetic, optical or any similar means in the exchange and storage of information. It concludes with it, considering that it is sufficient to complete one stage of concluding the contract by electronic way, so that the entire contract is considered electronic, as his definition of the electronic means was open to the results of future technical developments (El-Ahwany, 2015)

In France, a special committee was formed under the chairmanship of the Minister of Economy in order to organize the issue. Where is electronic commerce defined as a set of digital transactions related to commercial activities between projects, between projects and individuals, and between projects and management? This definition includes contracts concluded between projects among themselves, as a relationship One company to another and the relationship of projects to individuals, as well as commercial contracts to which the administration is a party, expanding the circle of the means by which it is concluded, and made it include all digital means. In addition, we find that the legislator referred in Article 16/121 of the Consumption Law No. 88-21 to a contract The electronic sale is under the heading of the distance sales contract de vente engine, which is intended to sell via communication networks, especially the Internet (8).As for the electronic sales contract (concluded) via the Internet, according to the jurist Bashar Mahmoud Dudin, it is characterized by the same features as the traditional sales contract. It is a reciprocal consensual contract that is binding on both sides and transfers ownership, just as the electronic sale contract takes place without verifying the physical presence of the seller and buyer We do not find a special definition with regard to the electronic sales contract, but there are special approaches to electronic commerce contracts in general, but by going back in particular to Article 16 of it, we find that its content is mainly related to electronic commerce in specific areas, as reference was made in the content of the article to international sales contracts related to goods and their transfer Also, in the context of the texts related to the method of concluding and receiving electronic data messages in the contractual relationship, we find in them a permanent reference to the law of will. (Shanab, 2010)

As stipulated in Article 2 of Directive No. 97-07 of May 20, 1997 issued by the European Parliament, related to distance contracting and consumer protection in this field, that what is meant by distance contracting is: every contract related to goods or services concluded between a supplier and a consumer within the scope of a sales or The provision of remote services organized by the supplier who, for this contract, uses one or more remote communication techniques to conclude or implement the contract." The remote communication technology was defined in the same text as: "every means without the

physical and immediate presence of the supplier and the consumer that can be used to conclude the contract between its two parties.” This directive defines remote contracts that include electronic contracts in their concept.

The Rome Conventions on the law applicable to contractual obligations and Vienna on the international sale of goods also dealt with the international sale contract without referring to the method of concluding the contract, as it was in a traditional or electronic way, which makes the scope of its application contained in the international electronic sales contract in addition to the provisions of the United Nations Model Law on Trade (El-Din, 2003)

B. The content of the international electronic sales contract subject to the law of will:

In view of the characteristic of international contracts that depart from the legislative field of states, the parties to the contractual relationship find themselves in front of a legal vacuum because their contract is not necessarily subject to the law of any country, unlike the contract in which all its elements are national as it does not raise any problem about its conclusion or implementation as it is subject to The authority of the law of the country in which it was concluded and the disputes resulting from it are within the jurisdiction of national courts. Therefore, the international electronic sale contract is in the category of contracts that depart from the authority of the law of the state due to its international character, and then the problem of conflict of laws arises, although the contract must be subject to its conclusion, conditions and effects to a specific law, so the parties In addition to their agreement (conditions of the contract), they have to specify the law that governs this contractual relationship, and this determination is by their agreement and it is what is called the principle of the authority of the will in determining the law of the contract (El-Ahwany, 2015)

1- The basis of the law of will

The basis of the law of will in the field of international electronic sales can be deduced through the jurisprudential trends that were said in the method of selecting and defining the law applicable to the international contract, as we find two directions affected by the internal legislation of countries, among the countries that released the freedom of the parties to the contract In defining the law of the international contract (the personal theory), therefore, the agreement of the parties prevails over the law, given that the chosen law derives its binding force from the agreement, and the specific law is part of the contract, given that the provisions of this law merged with the terms of the contract. On the contrary, we find other countries affected by the objective theory that The freedom of the parties to the international contract is restricted (objective theory), so the parties to the international contract may determine the law that governs the contract, but not in an absolute manner, as this will is bound by the need to choose the law that is related to the contract, meaning that there is a link or relationship between the chosen law and the contract (Al-Sada, 2020)

2- The conditions for choosing

The law that applies to the international electronic sale contract by referring to the provisions of the rules of conflict in the Omani civil law, especially the text of Article 20 of it, which states: (The contractual obligations are subject to the law chosen by the contracting parties if it is related to the contracting parties or the contract ... Therefore, it can be said that the legislator requires the fulfilment of the will law to fulfil the following conditions

That the contract be international: and it is so if it includes a foreign element.

Expression of the law applicable to the international contract: The principle is that the expression of the will is in traditional or electronic international contracts explicitly by taking one of the written forms provided for by domestic law, and by returning to Article 20 of the civil legalization, the legislator did not specify the method of expressing the will or the form in which Therefore, it can be said that the legislator took one of the two cases in expressing the will, whether it was explicit or implicit (especially by referring to the general rules, and the Rome Convention recognized that the expression of the will to determine the applicable law) applied to the contract can be expressly or deduced from circumstances Contracting, and the same approach we find in the Vienna Convention on the International Sale of Goods. As for the electronic international sales contract, the expression of the applicable law is usually in an explicit way through the inclusion in the contract of a clause that defines the applicable law, or by including this clause in a separate agreement subsequent to an electronic document, and it can also be implicit from the circumstances and circumstances of reality (El-Din, 2003)

The existence of a real link between the law of will and the contracting parties or the contract with the Omani legislator is a restriction on the freedom of individuals in determining the law applicable to the international contract through its use in the aforementioned Article 20 of the term (real link), as it obliged the parties to choose a law related to them or to the contract, unlike What was the case before the amendment of Article 20, then even in the field of electronic sales contracts, the parties must specify the law that has a real connection to them (for example, joint nationality) or the contract.

Second: The scope of the will law and the limits of its application to the electronic international sale contract

The field of application of the law of will is the contractual obligation in general, in the event that the contracting parties agree to choose the applicable law, whether explicitly or implicitly, and the chosen law is applied to the contract in all its aspects except for eligibility and the form of the contract in addition to the electronic sale contract related to the real estate. It is determined and applies to the general elements of the contract, the conditions for the validity of its proof, and the implications of this contract. The will of the contracting parties in the electronic international sale contract is like that enshrined in the traditional pharmaceutical contracts, and it is broader than the internal contracts, because the will in the internal contracts is restricted by peremptory rules, especially as it is limited to the rules. complementary and explanatory. We also find that the law of will is excluded in the event of a violation of the general system of the state of the judge to whom the dispute is presented or the existence of fraud towards the national law of the judge, and there are some international electronic sales contracts in which the seller determines all the terms of the contract without the buyer's intervention in that (model contracts) (Al-Haija, 2022)

The scope of application of the law of will: The actions resulting from the will are multiple and varied in international contracts, as jurisprudence and comparative legislation settled on the adoption of the law of will as a general rule within the framework of the applicable law and all objective conditions related to the contract concluded electronically (the Internet), so the international sale contract is concluded The electronic is available on its pillars to produce the desired effects after achieving all its pillars

1-Consent: Consent is the basis for any contract concluded and is a result of an agreement of the will of the contract by both parties. Therefore, the offer and acceptance in the electronic

international sales contract are identical through the exchange of electronic messages, despite the fact that the parties to the contract are not present in one council. In order for the contract to take place, it must be issued. An offer from one of the contracting parties is followed by an acceptance from the other contracting party, and the offer must be accompanied by acceptance. Related to these issues is the issue of the place and time of their association, which has an important and distinguished place in contracts concluded by electronic means (El-Din, 2003)

Returning to the Omani legislation, we find that in the rules of conflict, it did not address electronic contracts, but it was mentioned in general in the text of Article 20 the subject of contractual obligations in international contracts, and implicitly the electronic international sales contract that generates obligations for the contracting parties is subject to this rule that recognizes the jurisdiction of the law of will, and then as well The opposite of offer and acceptance is subject to the law of will, except for the eligibility of the contracting parties, but it is subjected to the law of the person's nationality, on the basis that the availability of consent is an essential pillar for concluding the contract, and since consent is based on the person's actions, it is essential that the person be fully competent (El-Din, 2003)

2-Subject and reason for contracting: Exceptions that must be taken into account, as is the case with regard to the subject matter of the contract, as some mentioned an exception if it was related to money or work, so they decide to subject it in the first case to the law of the location of the money, and in the second case to the law of the place of execution of the work, and as for contracts related to funds, a distinction must be made between contracts related to real estate and those related to movables, so the first is subject to the law of the location of the property in accordance with the exception contained in Article 20 of the Omani Civil Transactions Law, and as for those that are in place of movable funds, they are subject to the law of will, and as for the reason, the most correct jurisprudence agreed Subjecting it to the law of the contract, but taking into account the restriction related to public order, the law of will applies in general, but with some

3-The effects of the contract: There is no doubt that the main objective of the contract is to achieve the expected results from that and to arrange all the legal effects, so it has become necessary to subject it to the law of will that responds more to the interest of the contracting parties, but this delivery is subject to some exceptions that subject these effects to a law other than The law referred to by the will of the parties, and this will be clear to us through the effects related to persons, as well as the ratio of the effects related to the subject.

4-Effects of the contract for persons: The effects of the contract with respect to persons are subject to the contract law in general, as the latter is the one who determines who has the right to benefit from the contract, as well as who is bound by it, whether they are contracting parties or third parties, and from there this law determines the extent of The effects of the contract are to the general successor and to the special successor, and to the beneficiary of the stipulation in the interest of third parties, but it may be excluded with regard to the transmission of the effects of the contract to the general successor all matters that fall within the scope of inheritance, as the law of the perisher at the time of his death applies to them (Al-Layl, 2003)

Effects of the contract in relation to the subject matter

The parties to their contract rarely agree on all the conditions and details of the effects of the contract and its implementation and the consequences of non-implementation in international electronic contracts, which requires referring to the relevant law to supplement

the deficiency by means of its imperative and complementary provisions. The contract over which the legal systems differed. In countries that adopt the inward will, such as the French system, the Anglo-Saxons, and the Arab countries, it is necessary to search for the real common intention of the contracting parties, and this contrasts with the Germanic system that takes the apparent will and stops at the will declared in the contract with regard to determining the scope of the contract, i.e. A statement of the rights and obligations it generates, whether it is deduced from the intention of the contracting parties or the nature of the obligation, and after identifying all these issues, the contracting parties may be obligated to implement it. If the prevailing trend is to subject such obligations to the law of the contract, however, in their implementation they are subject to the law in place of implementation, which determines the method and modalities of implementation, because implementation is often governed by rules that fall within the scope of civil security regulation and are outside the scope of the contract, and in this capacity, they are territorial and applicable. On execution, whatever the law that governs the obligation specified by the will, as is the case in the peremptory provisions related to execution procedures or the statute of limitations, they are applied with priority in the country of implementation and must be respected and observed, and they cannot be avoided by invoking the provisions of the law agreed upon, and these provisions are originally established in contracts. However, international electronic commerce contracts can be subjected to these general provisions as long as the electronic sales contract is theoretical when it is concluded but real and material when it is implemented, as well as that as long as there are contractual obligations that must be fulfilled (Shanab, 2010)

Limits of applying the law of will to the international electronic sales contract (exceptions)
The possibility of defining the parties to the international electronic sale contract of the law freely applicable to the contract, in addition to defining the corresponding obligations between the two parties is based on the principle of the will power, that the parties have complete freedom in that but This freedom collides with some exceptions approved by domestic legislation as well as international agreements (Al-Sanho, 2018)

1- Excluding the law of will because it violates public order or cheats towards the law of the judge: One of the most important restrictions facing the chosen law is the idea of public order, and this idea, although it does not conflict with the principle of the freedom of the parties to the international contract in choosing the law applicable to their contract, is possible in Some cases lead to waste of the will of the parties to choose.

The principle of applicable law. The idea of public order according to internal law is used to limit the power of the will according to the agreements concluded and subject it to restrictions.

“It is not permissible to apply a foreign law according to the previous texts if it is contrary to public order or morals in Oman, or if it has been proven to have jurisdiction by cheating on the law (Al-Haija, 2022)

Omani law shall be applied in place of foreign law contrary to public order or morals ». Through this article, it becomes clear to us that the Omani legislator took the idea of public order in its modern sense, represented by the exclusion of foreign law in order to protect some imperative legal rules that aim to protect public interests, as well as some private interests that the legislator organized in an imperative manner.

Thus, in the electronic international sales contract, the general system limits the application of the law of will if it is contrary to it. This appears especially in the elements of eligibility and the form of legal dispositions, in addition to the element of protecting the weak party in the

contractual relationship, as the judge resorts to applying the rules of law that are necessary to apply because of their protection of the parties. Contract (Al-Junbihi, 2015)

With regard to the element of eligibility, the contractual relations in the field of electronic sales contracts are subject to the law of the nationality of the person, due to the special protection it decides with regard to the actions issued by those who lack or lack the eligibility, and the exceptional nature of these contracts in which it is difficult to estimate the eligibility of the parties to the contract when concluding it through means Modern technology (electronic means of communication), prompted the jurisprudence of conflict of laws to request that the eligibility of persons in electronic commerce contracts be subject to the nationality law because the law of the place cannot be decided as long as the contract is concluded on the air by electronic means. More than that, it is not possible to verify the eligibility of the contractor unless As long as the data related to the contract and the contractor are written on the websites by filling out the forms related to the contract without his presence in the contract council (Al-Sada, 2020)

As for the element of the form that the electronic international sales contract takes, we find that the form of the contract can be subject to the law of will (the law that governs the objective conditions), but given that the origin in the form of international contracts is subject to the law of the place of conclusion (the *locus regit actum* rule), Also, in view of the exceptional nature of electronic contracts that do not have a specific spatial focus, it is difficult to apply the rule of the local law, but this rule is developing towards the adoption of the home countries of one of the contracting parties, and the Rome Convention recognized that the international contract is valid in terms of its form if the stipulated conditions are met. In one of the home countries of one of the contracting parties, however, some jurists questioned the feasibility of this proposition with regard to international electronic contracts, given that this type cannot be included in the official contracts of the state, so we find that some jurisprudence went to say that the best solutions to determine the law applicable to Electronic international contracts in terms of their form and the problems raised by the divergence of legal systems, is represented in the conclusion of international treaties (El-Din, 2003)

We also find an exception to the law of will in the field of international electronic contracts when the subject of the contract is real estate. Therefore, the contractual relationship is subject to the law of the location of the real estate, given that the real estate is attached to the legal system of the law of the state of its location. It is also a protection for the stability of transactions and the rights attached to this real estate. The contract must be subject to site code (Rushdi, 2019)

2- Excluding the law of will to apply the rules of necessary application: The rules of necessary application are applied directly without consulting the rules of conflict, so the judge has full power to exclude the applicable law whenever it becomes clear to him, and this is through what he analyzes the rules to which he belongs for the purpose of extracting their objectives And the search for the extent of its will in application, and if it becomes apparent to him, then he applies it, so the implementation of the rules with the necessary application and the exclusion of the law referred to by the will is no longer controversial whenever this violation affects the imperative rules in the state of the judge, whether those that aim to protect the national economy In general, or those that aim to protect the weak party in the contractual relationship, if we refer to Omani law, we find there a set of legal rules with necessary application, such as those contained in the Competition Law, where its provisions are peremptory as they aim to regulate competition between economic agents Therefore, it is

necessary to exclude all actions that may affect fair competition, which stipulates the following: (Selim, 2004)

«This order aims to define the conditions for the practice of competition in the market and to avoid all practices restricting competition and control of economic groupings, in order to increase economic efficiency and improve the living conditions of consumers and always within the framework of competition-related laws that show the importance of this aspect in organizing the national economy, we find what was stated in the order as well No. 02/04 which defines the rules applicable to commercial practices and this is according to the first article of this order which states

The following: «This law aims to define the rules and principles of transparency and integrity of commercial practices that take place between economic agents and between them and consumers, as well as consumer protection and information. More than that, there are some texts mentioned in this law that came in a peremptory form, so they are not subject to exclusion by the parties and they always have priority in application, and among the legislations that aim to protect the weak party in the contractual relationship, so that he is not subject to the unfair conditions that he can dictate The strong party, as stipulated in the consumption law Consumer protection is among the basic goals that the legislator seeks to achieve, without distinguishing between the national and the foreigner. The protection approved by the Consumer Protection Law, and what indicates that the Omani legislator has approved legal protection for consumers is what was stated in the text of Article 1 of the Consumer Protection Law: (Rushdi, 2019)

This law aims to define the general rules applicable in the field of consumer protection and the suppression of fraud. Accordingly, consumption contracts concluded through modern communications are in the status of sales contracts (netting contracts) between the seller and the consumer buyer that are generally subject to the law chosen by the contracting parties (law). (will), but with strong reservations from jurisprudence and jurisprudence, as well as what the legislation has settled on, which is that the parties' choice of the applicable law may not result in depriving the consumer of the protection provided to him by the imperative provisions of the law of the state in which he is located. The precedent taken from the Rome Convention and other agreements and legislation according to it on electronic contracts makes the application of the law of the consumer's place of residence acceptable, because the offer of goods is received through the screen, especially contracts concluded via the Internet and in the place of residence of the consumer who is related to the contract. He performs the necessary works to complete the contract when he accepts the offer announced by the seller on the internet pages (Selim, 2004)

Therefore, in electronic international sales contracts that have the nature of a consumption contract in which the commodity is displayed via the Internet screen to the consumer audience or through the seller sending electronic messages via e-mail, the offer in this case is received at the consumer's residence whenever the latter enters To the advertiser's website where the commodity is located (Selim, 2004)

Accordingly, electronic consumer contracts are closely related to the law of the country of the consumer's normal residence whenever the latter has carried out the necessary actions required to conclude the contract in this country, so what is important is the law of the country of the consumer's normal residence through the Internet, in order to prevent fraud or circumvention towards applying laws that do not serve and do not adequately protect the consumer buyer (El-Ahwany, 2015)

Conclusion

Through the previous analysis, it becomes clear to us that applying the principle of will power in choosing the law applicable to the electronic international sale contract is one of the basic principles that rely on in resolving the problem of conflict of laws existing between different legal systems, whenever the activity is related to international trade transactions, so it is for the parties The possibility of choosing one of the appropriate laws to govern the contractual bond. Despite the difficulties that face this type of contract, especially in view of its exceptional nature compared to the traditional sale contract, which takes place with the parties to the contract meeting in one council, it facilitates the contracting operations by bringing the contracting parties closer in view of the long distance, but what is wrong with the Omani legislator, especially that he It did not keep pace with the development in the field of informatics and modern means of communication (El-Ahwany, 2015)

Despite the absence of explicit provisions within the rules of civil law related to the legality of contracting by electronic means, the principle of consensual consent in contracting gives the parties complete freedom to choose the way in which they express their will, and therefore there is nothing that precludes the possibility of using the means established in the general theory of the contract in order to Contracting electronically, but the legislator's failure to regulate the electronic means of expressing the will raises many difficulties, given the risks related to trust that are provided to the contracting parties, especially those that the consumer may be exposed to, who has been given special protection by the legislator, so we suggest expressly stipulating in the civil law the express recognition The data message in expressing and regulating the will, as did the comparative legislation and setting explicit rules that would provide special protection for the consumer in the electronic contracts that he concludes.

There are also some legal issues that must be clarified before entering a contract on the Internet, especially with regard to the capacity available to the contractors, and the limits of the authority of each of the contracting parties. In the end, it can be said that the electronic international sale contract with all its legal circumstances that we have dealt with has already revealed the inadequacy of the current classical legal rules in the contract theory to solve it, and this is what researchers in the field of electronic commerce law hardly disagree with, and this is what calls for the enactment of either a law Independent join electronic transactions or modify the rules of civil law so as not to collide with modern technologies. Also, the Omani legislator should follow the path of the Tunisian, Jordanian, Bahraini (or) Arab countries legislators, especially when they issue special codes that regulate electronic commercial transactions, in addition to expanding the rules of conflict through a freer approval for the judge to estimate the most appropriate law that governs the international contract in The absence of the law of will.

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