

DIGITAL EVIDENCE AND THE AUTHENTICITY TO PROVE IT

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ABSTRACT

Modern communications tools have facilitated financial dealings by easing quick transactions. The current technological means of communication have led to a new type of proof technique called digital evidence. The digital guide has become vital because of its accessibility to everyone. It has provided ease and speed of transactions. It has necessitated resolving its authenticity in civil evidence for financial transactions between individuals through social media. Besides, it is essential to realize the extent of their use in modern civil proofs. The study aims to explain the digital evidence concept. It has listed the digital evidence characteristics, highlighted the legality of the digital evidence presence, and clarified digital evidence's authenticity in civil evidence before the court. Furthermore, it has explained digital evidence forms and described the legal document for the digital proof. After reviewing the digital guide's concepts and the law's position, it has been concluded that the Evidence Department has expanded in the Saudi legislator's view for all logical and convincing evidence. It has incorporated digital proofs and relied upon in some cases pending in its court. Digital evidence has been reflected as the contemporary means of civil proof before the Saudi courts. It is suggested to illuminate the public about the worth of digital evidence. It may require the contribution of media to educate the community regarding the importance of digital evidence.

Keywords: Digital Evidence, Authenticity, Civil proofs.

INTRODUCTION

It has been possible to use modern communication means such as WhatsApp messages, email, and text messages in financial dealings between individuals. It makes it easier for them to complete transactions between them quickly. Due to these technical means' benefits, immediate contracting can be made between two absent persons and can cause various legal actions. Using a computer and the information explosion has led to a new type of proof or evidence method called digital evidence. It is a modern technological means of communication between society members and concludes a sale contract between absentees by WhatsApp message. The digital guide is one of the essential services emerging from the internet service. It has become a crucial one, as it has become accessible to everyone due to the ease and speed of transactions through it. These are the features achieved by this service.

It is needed to resolve the authenticity of financial transactions between individuals taking place through social media, like WhatsApp messages, emails, or Snapchat, in civil evidence when a dispute is placed before the Saudi courts. It is crucial to realize the extent of the use of these modern civil proof means. This research's importance is highlighted by shedding light on the scientific perspective of digital evidence on the one hand and the necessity for it on the other hand. It significantly contributes to establishing facts and revealing crimes &

violations. Besides, it facilitates the difficulty of manipulating or changing their merits. The concept of digital evidence, its legitimacy, and its validity in proof before Saudi courts also carries the awareness aspect of the need to draw people's attention to digital evidence attention and not neglecting it. The aim of the study lies in several points. It includes learning the digital evidence concept, listing the digital evidence characteristics, highlighting the legality of the digital evidence reality, and standing on the authenticity of digital evidence in civil evidence before the court.

This topic is chosen due to the recency of proving digital evidence ideas of all kinds in civil evidence before Saudi courts. Besides, there was a lack of research in the civil evidence system in general. Furthermore, there was a lack of a study that singled out the authenticity of digital evidence in civil proof according to the researcher's knowledge and research. It scientifically self-benefits by studying the digital evidence in civil evidence. The research is comprised of responding few queries. It includes the meaning of digital evidence. It characterizes the digital evidence and explains the forms of digital evidence. Furthermore, it describes the legal document for digital evidence and digital evidence's authenticity in civil evidence. Research issues and topics have required everyone between the analytical and the inductive methods. These may coincide with their existence in the same position. The research is divided into two sections. The first section deals with the concept of digital evidence for civil proof. Moreover, the second section clarifies the authenticity of digital evidence in civil evidence.

The First Section: The Concept of Digital Evidence for Civil Proof

Definition of Evidence

Talking about the concept is an introduction that shows the connotations of the main terms on which the research is based: evidence, proof, and argumentation. It deals with the linguistic and idiomatic aspects. In language, it is defined by Ibn Faris. He has cautioned that the word (show) could be traced back to two origins in its meaning. The first is explaining something with an emirate that someone learns, and the second is disturbing the thing (Faris, 1979). Linguistic dictionaries investigate many meanings of (show) and its derivatives. The most prominent are trustworthiness, repayment or guidance, good form, boldness, knowledge of something, and movement (Saliba, 1971). According to the first principle mentioned by Ibn Faris, the meaning is the stickiest in this study and the definitions of trust, guidance, and knowledge, all of which are for purposes of proof.

Idiomatically, it is defined by Al-Ragheb Al-Asfani. He has given an idiomatic definition of (Significance), where he said: Significance: what leads to knowledge of a thing, such as the meaning of words, the importance of signs and symbols, writing, and contracts in the arithmetic, and whether that is with the intention of someone makes it a character, or was not intended (Al-Isfahani, 1991). Furthermore, the one who contemplates it will find that it carries the same meanings as evidentiary evidence, indicating the incident intentionally or unintentionally. Here are other idiomatic definitions for evidence, including: "What knowledge is required to know about something else (Ahmad, 1994). The evidence is also defined as: "*Anything useful in proving or denying a particular issue in the case, or everything that is directly related to the conviction or acquittal of an accused, based on logic*" (Swanson et al., 2000). It is noted that these definitions have shared: guidance, reaching the truth, and uncovering the hidden. Hence, it approves everything that would achieve this, whether it is physical or digital evidence. The

phrase in it is so general that digital proof is part of the evidence, regardless of the judiciary's position on it as a consideration or revocation (Swanson et al., 2000).

It is necessary to define the legal meanings of evidence. There are some formal definitions of proof for legal scholars, and from those definitions: *"It is how the judge uses to reach the truth he seeks"* (Sorour, 1981). Other scholars have defined the evidence as: *"the incident from which the judge derives proof of his conviction in the verdict that he ends with"* (Salama). It is also defined as: *"whatever leads to the validity or invalidity of the fact or facts subject of investigation, whether it is a criminal or civil subject"* (Awad, 1971). The form of the phrase in these definitions (the means, the fact, and all that leads) requires the inclusion of all kinds of evidence, material and moral, so it is true of digital proof.

The definition given by Legislation's jurists is reinforced by the evidence that it is: *"What knowledge is required of knowledge of something else"* (Al-Shawkani, 1998). Moreover, according to this generalization regarding the nature of the evidence, the claimant can present all the information and facts that prove his right. If it is apparent and the judge is convinced of it, he can rely on it and issue a judgment. Regarding evidence, it is further said: *"Evidence is the name for everything that shows and reveals the truth, and whoever identifies it with the two witnesses or the four or the witness has not fulfilled his name, and the evidence has never come in the Qur'an by which the two witnesses are intended"* (Al-Jawziyyah, 1955).

There are two opinions in Islamic jurisprudence regarding the meaning of evidence. The first is the majority of jurists' opinion, which is based on the necessity of restricting evidence and adhering to it. It is known as a system of evidence limited to what does not deviate from acknowledgment, oath, testimony, knowledge of the judge, confusion, evidence, and swearing. The second opinion is the view of Ibn Taymiyyah and Ibn Qayyim al-Jawziya, who have given the opponents the freedom to present the evidence in their possession. They have deemed it worthy of a true statement, which is known as the free evidence system. They have also given the judge the freedom to take what he sees as indicating the truth and confirming the incident before him (Ahmad, 1994). Based on the preceding, the researcher can say that evidence reveals the truth and reveals it by any means, provided that it is sound, and logic and reason accept it to prove a disputed right before the courts.

Defining Digital Evidence

Digital evidence is defined as the evidence taken from computers. It is in the form of magnetic or electrical fields and pulses that can be collected and analyzed using application programs and technology. It is a digital component to present information in its form. It varies as written texts, pictures, sounds, shapes, and drawings. It is approved by law enforcement and enforcement agencies. This definition may be reproached because it limits the digital directory to what is taken only from computers. In contrast, telephones, cameras, and other devices that rely on digital technology in their operation are not less than computers. They are also a source of digital evidence. Some researchers have defined digital evidence as: *"Information or data stored in a computer or transmitted over communication networks, that can be used in proving or denying a crime"* (Raouf, 2011; Mustafa, 2010; Al-Qahtani, 2012; Hamo et al., 2015). It is a good definition because of its comprehensiveness and accuracy. It takes up all the devices used for digital systems simultaneously. Thus, it is more specific to the concept of digital evidence

than its predecessor. It is practical and provides the judiciary with a more comprehensive digital field that helps them reach the truth.

Digital Evidence Forms

Digital evidence has three primary forms: digital photos, audio recordings, and written texts. These are discussed in detail. Digital images are presented either in paper form or in visual form, using the graphic screen to embody the crime's visible facts. The digital image represents an alternative technology to the traditional photograph. It looks sophisticated, but it is not a best image than the conventional images (Abdulmutallab, 2005). Written texts are the messages via email, mobile phone, and data recorded with computers, etc. It includes texts that are written by a digital machine. Voice recordings are any voice conversations on the internet or the phone controlled. The digital machine stores it.

The Characteristics of the Digital Evidence

Digital evidence is a distinct type of proof because of its scientific characteristics and standard specifications that qualify it as modern evidence methods. It has particular features, which are explained in detail. It consists of circuits, magnetic fields, and intangible electrical impulses. These cannot be perceived with the human being's natural senses. It is, in the belief of some jurists, not less material than physical evidence only. Still, it is an advanced stage of tangible evidence. Its shape, size, and unspecified location can be visualized. Copies of digital evidence can be extracted identical to the original. These copies have the same scientific and authentic evidentiary value, which is not available in other evidence types. Digital evidence that has been forged or corrupted can be identified by contrasting it with actual evidence to the extent that there is no room for doubt. It is difficult to destroy digital evidence, as it can be retrieved from a computer after it is erased. It is distinguished from other types of evidence by its speed through communication networks. The courts have ruled that such intangible evidence may be adopted because it is distinguished from other physical evidence types as identical copies can be extracted, which have the same authenticity. Besides, appropriate scientific methods can determine whether digital evidence has been modified or corrupted.

The Second Section: The Authenticity of Digital Evidence in Civil Proof

The authenticity of digital evidence in civil evidence is dealt with here. It has two requirements: the first revolves around legality, and the second relates to the evidence's authenticity. These are discussed in detail.

The Legitimacy of the Digital Guide

It explains the legal recognition of this type of evidence. It considers it as a method of proof. In other words, it is the existence of a regular basis to base this recent evidence. In this regard, the world's legal systems differ in recognizing digital evidence based on two doctrines: the doctrine of free evidence and restricted evidence doctrine. According to free evidence, the judge has absolute power to refer in the formation of his belief in the dispute brought before him to all the evidence without restricting the numerical ones and others. The law does not oblige

him to provide specific evidence on which to base his conviction. Instead, he can establish his belief on any evidence, even if it is not provided. In such countries that adopt this system, the digital directory's legitimacy in terms of existence does not arise. As the matter depends on the judge and the extent of his conviction with this digital evidence (Al-Assaf, 2019). At the same time, the restricted evidence system restricts the judge and the opponents. So, the legislator in this system is the one who prescribes the types of evidence and limits them. Then the judge defines them, so it is not permissible for it to depart from it and resort to it in proof. Here, in this system, the judge's role is limited to examining the pre-determined evidence to ensure that the conditions that the law has considered to describe the integrity and validity of the evidence are met, without resorting to any evidence that the law has not explicitly stipulated in the evidence (Al-Assaf, 2019).

The Saudi Legislator's Position and the Authority of Digital Evidence in Saudi Courts

By referring to the Saudi legal pleadings system, it is noted that the Saudi legislators do not address the issue of including modern means of proof. They rely on the traditional standards of evidence, their details, provisions, and procedural rules (Law, 2000). Hence, the question arises about the extent to which these modern methods are used in civil evidence. Jurisprudence and Saudi Arabia's regulations have established that the judge has broad authority to assess evidence and draw out clues and the indications they bear, provided they are safe from symptoms. As the Decision No. (34) of the Supreme Court General Assembly No. (34) dated 4/4/1439 AH has stated that: *"The digital evidence is a piece of significant evidence in proof when it is delivered from the symptoms. Its strength and weakness vary according to the incident, its circumstances, and the evidence celebrated."* The General Assembly of the Supreme Court also has considered it in financial cases. It has stated that the electronic imaging of records and documents that banks keep in their devices and their assets could not be viewed. It is carried out under the conditions and restrictions specified in the electronic transactions system and implementing its regulations. It has made the instructions for keeping records and documents issued by the Saudi Arabian Monetary Agency. No response to these photos is considerable evidence, and it is valid evidence.

About the authenticity of electronic means in evidence, a royal decree is issued in the Kingdom of Saudi Arabia. It has required the adoption of electronic means in judicial notifications (Law, 2017). It is considered that the information through electronic means is a product of its legal effects. A report to the person of the addressee is assessed according to some rules. Regarding text messages, their sending to the mobile phone is authenticated by the competent authority. Similarly, the emails sent to the natural and legal person are considered authentic if the email domain belongs to the case. It is recorded in a contract between the parties to the issue on his website, authenticated by a government agency. It can be deduced here that the digital evidence is authentic in proof. It has been recognized as a means of judicial reporting between litigants.

CONCLUSIONS AND RECOMMENDATIONS

After reviewing the digital guide's concepts and the law's position on it in general, and the Saudi legislator in particular, the most noticeable results are identified. The Evidence Department has expanded in the Saudi legislator's view for all logical and convincing evidence.

It has included digital evidence and relied upon it in some cases pending in its court. The legal concept of evidence comprehends all proof. It keeps pace with its developments, which brings judges to establish the truth as it facilitates the claimants and contributes to preserving their rights. The prevailing opinion of Islamic law jurists has not limited the evidence to a limited extent. Instead, it provides the opportunity to make Ijtihad and receive all the evidence to lead to his conviction. He would issue his final judgment for the case under consideration. Digital evidence is considered one of the modern means of civil proof before the Saudi courts, provided it is safe from symptoms that may weaken its strength.

It is recommended to educate the community about digital evidence's interest. It emphasizes preserving its tools and not losing their rights. It requires a media and scientific effort which may inform community members regarding the importance of digital evidence. It guides them the ways to get benefited from it.

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