

## THE LEGAL SPECIFICITY OF ELECTRONIC MARRIAGE CONTRACTS IN SAUDI LAW

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### Abstract:

This study examines the electronic marriage contract from both Islamic jurisprudential and legal perspectives, considering it a modern form that has emerged due to the increasing reliance on digital technologies for documenting official transactions. Given that marriage is among the most sacred contracts in Islamic law, with profound implications for family structure and societal stability, its transition to an electronic environment raises essential questions regarding its legitimacy, validity, its unique nature, and compliance with both Sharia and statutory regulations.

The research aims to identify the unique characteristics of electronic marriage contracts and assess the fulfillment of their fundamental elements and conditions, including the presence of a guardian (wali), witnesses, the exchange of offer and acceptance (ijab and qabul), the dowry (mahr), and other legal prerequisites. It further explores associated legal and technical challenges, such as identity fraud, data manipulation, and the lack of formal Sharia-based documentation.

Employing an analytical methodology grounded in Islamic jurisprudence and contemporary legal concepts, the study proposes a comprehensive model for electronic marriage contracts that balances Sharia requirements with technical safeguards. The paper concludes with a set of legal and technical recommendations aimed at regulating and facilitating the secure and reliable adoption of such contracts.

**Keywords :**Electronic marriage, digital documentation, personal status law.

### INTRODUCTION

The marriage contract is regarded as one of the most sacred and consequential contracts in Islamic law, playing a foundational role in the establishment of the family and the stability of society. Accordingly, jurists and legislators have paid significant attention to its essential elements, conditions, and legal implications. With the advent of modern technological tools, new forms of transactions and contracts have emerged—most notably, the "electronic marriage contract," which is concluded through modern means of communication without the physical presence of the parties involved. This development has raised numerous jurisprudential and legal questions regarding the legitimacy, evidentiary value, privacy, and need for regulatory safeguards to protect such contracts from misuse, impersonation, or forgery.

#### Significance of the Study:

The significance of this study lies in its focus on the unique legal characteristics of the electronic marriage contract, which represents a critical intersection between Islamic legal rulings and modern technological applications. The study also gains additional importance due to its potential impact on guiding religious and judicial institutions in how to regulate and manage such contracts in a manner that fulfills the objectives of Islamic marriage within a digital framework.

#### Research Problem

The central problem addressed by this study is encapsulated in the following research question: What are the defining legal and jurisprudential features of the electronic marriage contract, and what regulatory frameworks are necessary to ensure its validity and integrity?

#### From this main question, several sub-questions arise, including:

- Does the electronic contract fulfill the legally recognized pillars and conditions of a valid Islamic marriage?
- To what extent is it legitimate to conclude a marriage contract via electronic means without a traditional in-person session?

- What are the legal and technical challenges associated with the electronic marriage contract, and how can they be addressed?

## LITERATURE REVIEW

While a number of jurisprudential and legal studies have examined the concept of electronic contracts in general - focusing on their formation and legal effects - specialized research on electronic marriage contracts remains limited. The review of existing literature reveals the following:

- Some studies focus primarily on theoretical jurisprudential issues, without addressing the technical or procedural aspects.
- Others limit themselves to listing advantages and disadvantages without offering practical solutions to overcome the challenges.
- There is a noticeable lack of comprehensive research that integrates the jurisprudential, legal, and technical dimensions of electronic marriage contracts within the context of contemporary legal practice.

## RESEARCH STRUCTURE

**This study is divided into two main sections:**

### **Section One: The Legal Specificity of the Electronic Marriage Contract**

- **Subsection 1:** The Concept of Privacy
- **Subsection 2:** The Concept of Marriage
- **Subsection 3:** The Concept of Electronic Contracts

### **Section Two: Key Features of the Electronic Marriage Contract**

- **Subsection 1:** Advantages and Disadvantages of the Electronic Marriage Contract
- **Subsection 2:** Legal Safeguards for the Electronic Marriage Contract
- **Subsection 3:** A Proposed Model for the Electronic Marriage Contract

## **Conclusion**

The study concludes with a summary of key findings and practical recommendations related to the regulation of electronic marriage contracts, ensuring their compatibility with both Islamic law and national legal systems.

### **Section One: The Legal Specificity of the Electronic Marriage Contract:**

This section addresses the legal specificity of the electronic marriage contract. It is divided into three subsections: the first discusses the concept of *privacy*; the second explains the concept of *marriage*; and the third explores the concept of an *electronic contract*. These are outlined as follows:

#### **Subsection One: The Concept of Specificity:**

Linguistically, the Arabic term *khususiyyah* (specificity) is derived from the root *khassa*, which stands in contrast to generality. It is said in Arabic: “I specified something for someone with exclusivity (*khususiyyah*)”; i.e., to single out a matter for oneself without sharing it with the general public (Al-Farahidi, n.d.; Ibn Faris, 1979). Al-Zabidi (2001) further explains that *khassa* refers to something designated for a specific person, implying exclusivity.

In jurisprudential terminology, *Specificity* is defined as: “a characteristic found in something and not in others” (Qala’ji & Qanibi, 1988, p. 196). In legal usage, the term “specificity” is used in expressions such as the *specificity of a trademark*, referring to the exclusive use of a mark in relation to the goods or services listed in the filing.

The principle of *specificity* is inherent to the nature of legal entities. It dictates that the activities of such entities are limited to the areas and objectives for which they were established. For example, the scope of action for administrative legal persons is determined by their geographical mandate (in the case of regional entities) or by the founding statute (for public institutions) (Cornu, 1998, p. 754).

Accordingly, the *specificity of a contract* may be defined as: the unique set of provisions and procedures that distinguish a particular contract from others, such that these characteristics are not required or found in other types of contracts.

### **Subsection Two: The Concept of Marriage**

Linguistically, the Arabic term for *marriage* (al-zawaj) is derived from the verb *zawwaja*, meaning to join or to pair. It denotes the union of a husband and wife. This usage is supported by the Qur'anic verse: “*And We will marry them to fair women with large, [beautiful] eyes*” (Qur'an 44:54), which indicates a pairing or coupling. Over time, the term has come to be commonly used to refer exclusively to the permanent union between a man and a woman for the purpose of forming a family (Ibn Manzur, 1994; Al-Fayruzabadi, 2005).

In Islamic jurisprudence, marriage has been defined in several ways. According to some scholars of the Hanafi school, it is “a contract that grants lawful sexual enjoyment” (Al-Hasakafi, 2002, p. 177). Another definition describes it as: “a contract that permits each spouse to lawfully enjoy the other” (Hussein, 1988, p. 15).

The *Unified Arab Law on Personal Status* (Kuwait Document) defines marriage as: “a Sharia-based covenant between a man and a woman, aimed at chastity and the establishment of a stable family, under the guardianship of the husband, founded on mutual affection and compassion” (Unified Arab Law on Personal Status, 1988, art. 5).

In the Saudi Personal Status Law, marriage is defined as: “a contract with specific pillars and conditions that establishes rights and obligations between spouses, with the objective of chastity and the creation of a stable family, maintained by mutual affection and mercy” (Saudi Personal Status Law, 2022, art. 6).

Thus, marriage in Islamic law is both a *covenant* and a *contract*, intended to protect both spouses and to establish a harmonious family built on love and compassion. The legitimacy of marriage is supported by numerous textual evidences from the Qur'an and Sunnah. Among them are:

- “*O mankind, fear your Lord, who created you from one soul and created from it its mate and dispersed from both of them many men and women*” (Qur'an 4:1).
- “*Then marry those that please you of [other] women, two or three or four. But if you fear that you will not be just, then [marry only] one*” (Qur'an 4:3).
- “*And marry those among you who are single and the righteous among your male and female slaves. If they are poor, Allah will enrich them from His bounty*” (Qur'an 24:32).

### **From the Sunnah, the Prophet Muhammad ﷺ said:**

“*O young men, those among you who can afford it should marry, for it is more effective in lowering the gaze and guarding chastity. And those who cannot afford it should fast, for it will be a shield for them.*” (Muslim, 1955, Hadith No. 1400, Vol. 2, p. 1018)

### **Subsection Three: The Concept of the Electronic Contract**

#### **1. Definition of “Contract” in Linguistic Terms**

The Arabic root of the term *'aqd* (contract) consists of the letters *'ayn*, *qaf*, and *dal*, which convey the meaning of fastening, binding, and tightening. Ibn Faris defines it as a fundamental root indicating firmness and connection, as in the phrase *'aqd al-bina* (to bind a structure), and its plural is *'uqud* (Ibn Faris, n.d., Vol. 4, p. 86). In the Qur'an, Allah says: “*O you who have believed, fulfill [all] contracts*” (Qur'an 5:1), where *'uqud* is interpreted as binding covenants. The term also denotes firmness and confirmation, as in: “He tied the rope,” or “He confirmed an oath” (Ibn al-Azharī, 2001, Vol. 1, p. 134). Thus, the linguistic meaning of a contract refers to the act of fastening or binding.

#### **2. Definition of “Contract” in Legal and Juristic Terms**

In legal terminology, the *Majallat al-Ahkam al-Adliyyah* defines a contract as the mutual commitment and agreement of two parties upon a matter, characterized by the connection between offer (*ijab*) and acceptance (*qabul*) in a lawful manner, which gives rise to legal effects regarding the subject matter of the contract (Majallat al-Ahkam, arts. 103–104).

In modern legal theory, a contract is defined as “the concurrence of two or more wills to create, transfer, or terminate a legal obligation” (Al-Sanhouri, 1998, Vol. 1, p. 79). Accordingly, a contract does not arise from a unilateral will, such as a mere promise of reward. Another definition is: “the binding of offer and acceptance to create legal effects as recognized by law,” which aligns with definitions in Islamic jurisprudence (Abdel Baqi, 1984, p. 33).

Contracts are among the most widely utilized legal instruments, applied in transactions such as sale, lease, mortgage, partnership, insurance, and marriage - whether named or unnamed.

### **3. Definition of the Electronic Contract**

The concept of the electronic contract is closely linked to the development of e-commerce, with legislative efforts primarily focused on regulating electronic commercial transactions. As such, most Arab laws do not explicitly define the electronic contract. However, some legislative texts have provided clear definitions.

The Jordanian Electronic Transactions Law defines it as: “an agreement concluded entirely or partially by electronic means” (Jordanian Law No. 85 of 2001, art. 2). Similarly, Iraqi law defines it as: “the binding of an offer made by one party with the acceptance of the other party in a manner that produces legal effects on the subject matter, using electronic means” (Iraqi Law No. 78 of 2012, art. 1).

Legal scholars have described the electronic contract as: “an agreement where offer and acceptance meet through an open network of remote communication, using audiovisual means with real-time interaction between the offeror and offeree” (Abu al-Hasan, 2000, p. 39). However, this definition overlooks the legal effect resulting from the agreement. A more comprehensive definition states: “an agreement between two or more persons where offer and acceptance occur via electronic means of communication with the intent of establishing a legal relationship” (Ibrahim, 2016, p. 26). A simpler definition posits: “any contract concluded remotely through the use of electronic means in completing the agreement” (Bayoumi, 2007, p. 46).

### **Definition of the Electronic Marriage Contract**

The electronic marriage contract has been defined as: “the completion of marriage procedures by the spouses electronically through modern means of communication, with all elements of a valid marriage being fulfilled” (Dhabih, 2021, p. 235). Another definition describes it as: “a contract concluded between the husband and wife via modern electronic means, either in writing or orally” (Ḥafṣī, 2021, p. 688). A third opinion defines it as: “a contract where one party issues an offer and the other accepts via a modern means of communication, outlining mutual rights and obligations, provided that the specific conditions and characteristics of such a contract are met” (Riḍā & Fāḍ, 2021, p. 282).

In any case, while the electronic marriage contract does not fundamentally differ from other electronic contracts, it requires special conditions and procedures that align with the unique nature of marriage.

## **Section Two: Key Features of the Electronic Marriage Contract**

### **Subsection One: Advantages and Disadvantages of the Electronic Marriage Contract**

#### **Part One: Advantages of the Electronic Marriage Contract**

**The electronic marriage contract offers several notable advantages, which can be summarized as follows:**

#### **1. Simulated Real-Time Interaction:**

Contracts conducted via intranet-based applications that rely on direct communication methods closely resemble traditional face-to-face verbal contracts. These platforms facilitate real-time interaction between the parties, despite their physical absence from a single contractual session. Therefore, the electronic marriage contract is considered an immediate and contemporaneous agreement (Al-Mazrou', n.d., p. 6; 'Adhib, n.d., p. 651).

## **2. Efficiency in Time and Effort:**

Electronic contracts significantly reduce the need for physical presence or travel, as the digital intermediary facilitates the swift exchange of data and information. The internet bridges spatial gaps between the contracting parties, rendering them “present in law” while physically distant—absent in location, yet present in time (Rahmani, 2016, p. 88).

## **3. Legal Accessibility and Convenience:**

This method guarantees the rights of all parties, eliminates the need for paper documentation, and removes the necessity of appearing before a court. Furthermore, the contract can be accessed from any location at any time, enhancing flexibility and transparency (Hafşî, 2021, p. 690).

## **4. Practicality During Emergencies:**

The electronic approach facilitates contract formation during pandemics or emergency situations, thereby removing obstacles and allowing the parties to complete the marriage process easily and securely.

In light of these factors, authorizing electronic marriage contracts—when aligned with Sharia and legal conditions—represents a facilitative and accessible alternative for couples, consistent with the objectives of Islamic law and modern legal principles.

## **Part Two: Disadvantages of the Electronic Marriage Contract**

Despite its numerous advantages, the electronic marriage contract is not without potential drawbacks, including the following:

### **1. Voice Simulation and Impersonation Risks:**

Advancements in audio manipulation technologies allow individuals to imitate voices, potentially deceiving the other party by impersonating a legitimate proposer.

### **2. Data Tampering and Identity Fraud:**

There is a risk of manipulating transmitted data or impersonating individuals, which can undermine the authenticity of the contract.

### **3. Unauthorized Data Access and Surveillance:**

Sensitive personal data may be subject to unauthorized access or exploitation through digital espionage.

### **4. Technical Malfunctions:**

Disruptions or failures in digital systems may interfere with the contract’s conclusion or compromise its procedural integrity (Shalqami, 2015, p. 45; ‘Abd al-Nabi & Gamal, 2022, p. 238).

Undoubtedly, like other electronic contracts, the electronic marriage contract is subject to certain drawbacks that necessitate appropriate legal and practical safeguards.

These protections must be carefully designed to account for the unique nature, elevated status, and inherent sensitivity of the marriage contract—particularly given the serious implications of fraud, deception, or manipulation in such agreements.

## **Subsection Two: Safeguards for the Electronic Marriage Contract**

In addition to the requirement that an electronic marriage contract fulfill all the essential religious and legal conditions applicable to conventional marriage contracts, it must also be surrounded by a set of protective measures. The most significant among these include:

### **1. Ensuring the Security and Integrity of Digital Platforms**

The electronic systems used to conclude such contracts must be protected against hacking, deception, and fraud to maintain the integrity and authenticity of the contract process.

### **2. Verification of Identity through Legal and Biometric Documentation**

The identities of the prospective bride and groom must be confirmed using legally recognized biometric documents that include personal photographs. The identities of the witnesses must likewise be verified through official documentation. It is also essential that the witnesses publicly acknowledge the contract, that the actual guardian (*wali*) of the bride is present, and that her family and relatives are fully informed of the marriage (Jabr, 2022, p. 227).

### 3. Clear Communication of Offer and Acceptance

The two witnesses must hear the offer (*ijab*) directly from the proposer, and the acceptance (*qabul*) must be stated in identical, unambiguous terms. The terminology must be explicit—such as using the words *nikah* or *marriage*—and other terms are not to be considered valid. The proposer must clearly state his name, title, and the full name and status of the woman he wishes to marry, so that there is no room for ambiguity or misidentification.

#### **In this regard, the Grand Mufti of Egypt has stated:**

*"A marriage contract conducted via the Internet must be officially documented by a licensed marriage registrar. This ensures the presence and consent of the legal guardian and the mutual agreement of both parties. If the marriage is conducted via correspondence without witnesses, it is religiously invalid, as it fails to meet the essential pillars and conditions of a valid Islamic marriage"* (as cited in Zaybari, 2015, p. 164).

#### **Subsection Three: A Model for the Electronic Marriage Contract**

The advancement of technology and the growing reliance on digital tools in official transactions have led to the emergence of the concept of the "electronic marriage contract." This represents a modern form of documenting traditional marriage contracts, conducted through officially approved digital platforms that allow couples to conclude the contract in accordance with Shariah and legal standards, without the need for physical presence in a single session.

Given that the nature of this contract directly impacts one of the core pillars of society—namely, the establishment of the family—it has become imperative to develop a comprehensive model for the electronic marriage contract. Such a model must take into account all relevant dimensions: religious, legal, technical, and social ('Adhib, 2020, pp. 12–13).

#### **Components of the Electronic Marriage Contract Model**

To ensure that the electronic contract reflects a valid expression of will and holds legal weight, the model must include the following core components:

##### **1. Personal Information of the Contracting Parties**

**The contract must contain accurate and verifiable details regarding both the bride and groom, including:**

- Full name as stated on the official identity document
- National ID number or residence permit number
- Nationality, date of birth, and marital status
- Occupation and place of residence
- Email address and mobile phone number registered with the digital platform

This information serves as a legal foundation for identifying the parties and is considered a fundamental legal requirement in all contracts. Under the new **Saudi Personal Status Law**, such details are essential when documenting marriage contracts (Saudi Personal Status Law, Royal Decree No. M/73, 2022).

##### **2. Guardian and Witness Information**

Since the presence of a legal guardian (*wali*) is a fundamental condition for the validity of marriage according to the **Hanbali school of jurisprudence**, which is the basis for judicial rulings in Saudi Arabia, the contract model must include detailed information about the bride's legal guardian, as well as both witnesses. This includes:

- Full name, national ID number, and relationship to the bride or groom
- Place of residence
- Method of identity verification (e.g., digital signature or biometric authentication)

##### **3. Power of Attorney (If Applicable)**

In cases where one of the parties is represented by a third party, a valid power of attorney must be attached to the contract—either in electronic form or as a digitally signed document. It must include:

- Information about both the grantor and the agent

- Official documentation or registration number
- The issuing authority (e.g., Ministry of Justice or Notary Public)
- A clear definition of the scope and limitations of the agent's authority

Islamic jurisprudential rules state that: "*What a person is permitted to do personally, he may also delegate to another*". However, due to the unique and sensitive nature of marriage, the power of attorney must be **explicit and narrowly defined** (Ibn Nujaym, 1405H, p. 142).

#### 4. Formulation of Offer and Acceptance

One of the most critical elements of the marriage contract is the explicit agreement between the parties through *offer (ijab)* and *acceptance (qabul)*. In the electronic contract model, this can occur through licensed platforms via audio, written, or video communication. The following conditions must be met:

- Use of explicit expressions such as "I marry you" and "I accept the marriage."
- Documentation of the exact date and time of offer and acceptance.
- Full alignment in wording between the two parties, with no ambiguity or room for interpretation.

Dr. Abdulaziz Al-Dawood and other scholars have emphasized that the validity of a marriage contract in Islam depends on the clarity and explicitness of this verbal formula, whether it is conducted in person or electronically, provided the meaning is unambiguous (Al-Dawood, 2021).

#### 5. Dowry (Mahr)

The contract must state the agreed-upon amount of *mahr* (dowry), whether immediate or deferred, and must specify the method of payment, including:

- The amount stated in the national currency.
- Timing of payment (immediate, upon consummation, deferred).
- Acknowledgment and mutual agreement from both parties.

Although *mahr* is not a condition for the validity of the marriage contract in Islamic law, it is a binding consequence. Its clear specification helps avoid disputes and secures the rights and obligations of both spouses ('Adhib, 2020, p. 651).

#### 6. Electronic Safeguards

To ensure the authenticity and security of the contract, the model must include a robust verification system to prevent fraud or impersonation. Recommended safeguards include:

- A digital signature certified by the Ministry of Justice.
- Biometric authentication (e.g., fingerprint or facial recognition).
- A verification code sent to both parties at each step of the process.
- A recorded video of the offer and acceptance session.

Several legal-tech studies have highlighted the importance of integrating such technologies in family contracts to enhance credibility and accountability (Al-Dawood, 2021).

#### 7. Approval by an Authorized Marriage Registrar

**The marriage contract does not acquire legal effect unless it is certified by a registrar licensed by the Ministry of Justice. The registrar shall:**

- Review the contract and supporting documents electronically.
- Verify the legal competence of the parties.
- Certify the contract using a digital signature and official electronic seal.
- Archive the contract in the national e-marriage platform.

According to Saudi regulations, documentation of the marriage contract by a licensed registrar is mandatory for legal recognition by public institutions (Saudi Personal Status Law, 2022).

## 8. Contract Annexes

**Additional clauses may be included in the contract, provided that both parties mutually agree upon them. Examples of such clauses include:**

- A condition for independent housing
- Agreement on employment after marriage
- Determination of child custody in the event of divorce
- Provisions related to financial support, education, and medical care

While these stipulations are considered supplementary, they become legally binding once agreed upon by both parties. This is grounded in the Islamic legal maxim: "*Al-mu'minūna 'inda shurūṭihim*"—"Believers are bound by their conditions."

### Legal Effect of the Electronic Marriage Contract

Saudi personal status and judicial regulations affirm that electronic contracts hold full legal validity, provided that they meet the essential conditions of validity and proper documentation. This is based on the **Saudi Electronic Transactions Law (2007)**, which stipulates that "*an electronic signature has the same legal effect as a handwritten signature*" if the required criteria are fulfilled (Saudi Electronic Transactions Law, Royal Decree No. M/8, 2007).

Moreover, digital documentation platforms - such as the Ministry of Justice's **e-Marriage** system - serve as official reference points in the event of any disputes, ensuring legal recognition and institutional accountability (Ministry of Justice, 2025).

## CONCLUSION

The model of the electronic marriage contract represents a progressive step in the documentation of personal status matters. It contributes to reducing administrative complexities and facilitates the marriage process, particularly under exceptional circumstances. However, the success of this model depends on strict adherence to Shariah and legal regulations, as well as the availability of technical mechanisms that ensure the contract's security and protect the rights of all parties involved.

Therefore, the development and implementation of the electronic marriage contract model necessitate coordinated efforts among legislative, jurisprudential, and technical authorities to ensure its effectiveness and the fulfillment of its intended objectives.

**Based on the findings of this study, the following recommendations are proposed:**

- The issuance of a dedicated regulatory framework for electronic marriage contracts, clarifying their procedures, conditions, and legal implications.
- Enhancement of electronic platforms to ensure greater security and identity verification.
- Specialized training for licensed marriage registrars on managing digital marriage contracts.
- Raising public awareness about the importance of legally documenting marriage through electronic means.

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