

Electronic Writing as Evidence

الإثبات بالكتابة الإلكترونية



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Abstract:

This study examines the legal regime governing evidentiary standards in electronic transactions against the backdrop of the ongoing information revolution. It addresses the challenges emerging from the ubiquity of Electronic Data Interchange (EDI) and the consequent rise in digital litigation, which has necessitated the adoption of modern evidentiary mechanisms. The research provides a comparative analysis of legislative trends across Arab and Western jurisdictions, with specific emphasis on the Algerian legislative stance. Crucially, the study highlights the Algerian legislature's explicit recognition of the admissibility of electronic writing. This recognition enshrines the principle of "functional equivalence," thereby according electronic records the same probative value as traditional paper-based instruments, contingent upon rigorous safeguards regarding identity authentication and the preservation of data integrity.

Keywords: Electronic Evidence, Electronic Transactions, Electronic Writing, Functional Equivalence, Probative Value, Algerian Legislation.

ملخص: تُسلط هذه الدراسة الضوء على النظام القانوني للإثبات في المعاملات الإلكترونية. ولا سيما في ظل الطفرة المعلوماتية التي يشهدها قطاع الاتصال. وهي تبحث كذلك التحديات التي أفرزها شيوع التبادل الإلكتروني للبيانات، وما نتج عنه من منازعات قضائية ذات طابع تقني، استلزمت اعتماد وسائل إثبات حديثة تواكب هذا التطور. وتركز الدراسة بصفة أساسية على تحليل السياسة التشريعية في الأنظمة العربية والغربية، وبوجه خاص مناقشة موقف المشرع الجزائري الذي اعترف صراحةً بالحجية القانونية للكتابة الإلكترونية، مكرساً بذلك مبدأ "التعادل الوظيفي" الذي يمنح السند الإلكتروني ذات القوة الثبوتية التي يتمتع بها السند التقليدي، وذلك في إطار ضوابط صارمة تضمن التوثيق من هوية المصدر، وتكفل سلامة المحرر الإلكتروني خلال مراحل الإعداد والحفظ. الكلمات المفتاحية: الإثبات الإلكتروني، المعاملات الإلكترونية، الكتابة الإلكترونية، التعادل الوظيفي، القوة الثبوتية، التشريع الجزائري.

Introduction

The world has witnessed tremendous scientific and technological progress in various aspects of life, particularly in information and communication technologies, leading to a transformation from the tangible real world to the digital virtual world, and to the emergence of electronic documents and signatures, which in turn produced new forms of electronic legal transactions.

Given this accelerating scientific and technological evolution, it has become essential to address how to prove legal acts conducted through modern means that no longer rely on traditional paper documentation, and to determine their evidentiary value and the extent to which legal texts have adapted to this evolution. Evidence serves as the means by which parties substantiate their claims and assert their rights before the judiciary, especially in administrative matters characterized by their procedural particularities and types of disputes. Electronic writing has thus imposed itself as a modern means of proof, prompting many legislative initiatives to establish a legal framework ensuring its credibility and evidentiary force before the courts. Several legislations have recognized electronic writing and granted it the same probative value as written documents on paper. The Algerian legislator, though somewhat late compared to other countries, has also moved in this direction by enacting modern laws such as Law No. 15-04¹ on electronic signature and certification, and the Law on the Modernization of Justice², both of which established the legal framework for recognizing electronic writing in matters of proof.

This study, therefore, seeks to answer the following questions:

- What conditions has the Algerian legislator established for electronic writing to fulfill its evidentiary function?
- To what extent do electronic documents have the same probative value as traditional documents?

For a long time, jurisprudence, judicial practice, and legislation have confused the notions of *writing* and *paper*, often using one term interchangeably with the other. However, with the advent of modern technological advancements and the gradual transition from paper documents to digital records, this notion has been

1. Certification. *Official Journal*, N°. 06, February 10, 2015.

2. Law N°. 15-03 of February 1, 2015, on the modernization of justice. *Official Journal*, N°. 06, February 10, 2015.

abandoned. Consequently, electronic writing has gained significant importance as a modern means of proof.

Definition of Electronic Writing

With the proliferation of electronic writing, its recognition has gradually expanded at the international level through conventions and model laws. Foremost among these is the UNCITRAL Model Law on Electronic Commerce¹, which represents the first international legislative step toward recognizing electronic transactions by establishing the principle of functional equivalence between electronic and traditional writing. This model has since been adopted by the domestic legislations of several countries, including France, Egypt, and Algeria.

1. Definition under the UNCITRAL Framework

The 1996 UNCITRAL Model Law on Electronic Commerce addresses the concept of electronic writing in Article 2(a) by defining a data message as “information generated, sent, received, or stored by electronic, optical, or similar means, including, but not limited to, electronic data interchange, electronic mail, telegram, telex, or telecopy”².

Furthermore, **Article 6(1)** stipulates that a data message satisfies the requirement of “writing” if the information contained therein is accessible so as to be usable for subsequent reference. Additionally, **Article 2(b)** defines “electronic data interchange” as “the electronic transfer of information from one computer to another using an agreed standard to structure the information.”

From these provisions, it is evident that the Model Law does not require paper-based documents or handwritten signatures; rather, it recognizes electronic writing provided that the information is stored in an electronic format that allows future access and reference.

2. Definition under French Law

French legislation³ marked a significant turning point with the adoption of

3. *UNCITRAL Model Law on Electronic Commerce with Guide to Enactment*, 1996, with additional article 5 bis as adopted in 1998. United Nations Publications, New York, 2000. Retrieved August 1, 2025, from <https://uncitral.un.org>

2. Kiari, Asmaa. (2015). *أدلة الإثبات في الدعوى الإدارية* (*Evidence in Administrative Litigation*). Master's thesis in Private Law – Litigation Law, Faculty of Law and Political Science, Djillali Liabes University, Sidi Bel Abbes, Academic Year 2014/2015, pp. 124–125.

3. France.(2000). Law N°. 2000-230 dated March 13 2000.Journal Officiel de la République =

Law No. 2000-230 of 13 March 2000 on electronic signatures, which amended the *French Civil Code* to legally recognize both electronic writing and electronic signatures as valid means of proof. This recognition came as a response to the growing prevalence of electronic transactions and the need to modernize traditional evidentiary rules that had been confined to paper-based documentation.

Through the addition of Articles 1316 to 1316-4¹ (now Articles 1365 to 1369), the legislator expanded the concept of “writing” to include electronic writing. Article 1316 (now 1365) defines writing as “the result of any sequence of letters, characters, figures, or any other signs or symbols having intelligible meaning, whatever their medium or method of transmission”².

Article 1316-1 (now 1366) further establishes the principle of equal evidentiary value between electronic and paper writing, provided that the identity of its originator can be verified and that it is created and stored under conditions guaranteeing its integrity.

3. Definition under Algerian Law

The Algerian legislator did not remain behind the international developments promoted by UNCITRAL. Electronic documents were addressed for the first time in Law No. 05-10 of 20 June 2005³, amending and supplementing the *Civil Code* through the addition of Articles 323 bis and 323 bis 1, and by modifying Article 327.

In doing so, the legislator adapted the rules of civil evidence to encompass non-paper media and communications, providing a broad definition of writing in Article 323 bis, which considers writing as “any sequence of letters, descriptions, numbers, or any signs or symbols bearing intelligible meaning, regardless of the medium or transmission method used”. Furthermore, Article 323 bis¹ explicitly recognizes the principle of functional equivalence between

=Française, March 14, 2000. Retrieved: September 10, 2025,

Retrieved from <https://www.marche-public.fr>

1. France.(2016). French Civil Code No. 131/2016 dated February 10, 2016, which renumbered the articles to 1365–1369.
2. Article 1316 du Code Civil Français. « La preuve littérale, ou par écrit, résulte d’une suite de lettres, de caractères, de chiffres ou de tous autres signes, ou symboles dotés d’une signification intelligible, quels que soient leur support et leurs modalités de transmission ».
3. Law . (2005). Law No. 05-10 dated June 20, 2005, containing the Civil Code. *Official Journal*, N°. 44, June 26, 2005, p. 17.

electronic¹ and traditional writing, granting electronic writing full evidentiary value provided that certain legal and technical conditions are met:

“Proof in electronic form is equivalent to proof in paper form, provided that the identity of its author can be verified and that it is created and stored under conditions ensuring its integrity.”

This recognition was gradually reinforced through various special laws, such as:

- Law No. 05-02 of 6 February 2005 amending the *Commercial Code*, which permitted the use of electronic writing in commercial transactions (e.g., electronic bills of exchange and checks).
- Ordinance No. 05-06 of 23 August 2005 on combating smuggling, which explicitly referred to “electronic payment methods.”²
- Ordinance No. 04-10 of 26 August 2006 amending the *Monetary and Credit Law*, whose Article 69 defines “means of payment” as all tools enabling the transfer of funds regardless of the technical means used.
- Presidential Decree No. 10-236 of 7 October 2010 on *public procurement*,³ which for the first time explicitly allowed the conclusion of contracts via electronic means of communication and established the electronic procurement portal, later reaffirmed by Presidential Decree No. 15-247 and Law No. 23-12 of 5 August 2023.
- Law No. 18-05 of 10 May 2018 on *electronic commerce*⁴, and
- Law No. 15-04 of 1 February 2015 on *electronic signature and certification*.

These legislative developments collectively confirm Algeria’s recognition of electronic writing in harmony with global trends toward **e-government** and digital transformation. Although such recognition came later than in many foreign jurisdictions, it marks a decisive step toward legal modernization and technological neutrality, ensuring that all contracting means -traditional or

1. Belaisaoui Mohamed Tahar, & Ghania Batli. (2017). *طرق الإثبات في المواد المدنية والتجارية (Means of Proof in Civil and Commercial Matters)*, Houma Publishing House, p. 101.

2. Law. (2005). Law No. 05-17 of December 31, 2005, approving Ordinance No. 05-06 of August 23, 2005, on Combating Smuggling.

11 Law. (2010). Presidential Decree No. 10-236 of October 7, 2010, on the organisation of Public Procurement. *Official Journal*, N°. 58, p. 3.

12 Algeria. (2018). Law No. 18-05 of May 10, 2018, on Electronic Commerce. *Official Journal*, N°. 28 (May 16, 2018).

electronic- are treated equally under the law.

The Law N°. 22-13, dated July 12, 2022, amending and supplementing Law No. 08-09 on the Code of Civil and Administrative Procedure, was issued to reinforce this approach by allowing the use of electronic means before judicial bodies¹, supporting the electronic submission and notification of files and documents within administrative courts². This framework has since been extended to other sectors, such as higher education and scientific research, as well as local government and other administrative sectors.

Conditions for the Admissibility of Electronic Writing as Evidence

For electronic writing to perform its legal function in proof on an equal footing with traditional writing, it must meet a set of conditions explicitly provided in the UNCITRAL Model Law and subsequently incorporated into national legislations.

1. Legibility of Electronic Writing

Whether on paper or in digital form, writing must be legible and intelligible to serve as admissible evidence against others. The Algerian Civil Code, in Article 323 bis, refers to “symbols bearing intelligible meaning”³. Similarly, the French Civil Code, in Article 1316, uses the phrase “intelligible significance of characters”. While legibility is self-evident in paper documents, which can be read directly with the naked eye, electronic documents require special means—such as computers or display screens—to translate machine language into human-readable form. Thus, the *interface* between digital data and the human eye becomes essential to achieving legibility in electronic writing.⁴

13 Law . (2022). Law N°. 22-13 of July 12, 2022, amending and supplementing Law No. 08-09 establishing the Code of Civil and Administrative Procedures, *Official Journal*, N°. 48. Article 815 provides: “Actions before administrative courts may be filed in paper form or electronically.”

14 Law . (2008). In *Code of Civil and Administrative Procedures*, Article 840 provides: “All actions taken and investigative measures shall be notified to the parties by any legally available means, including electronic means.” Article 931 allows for the electronic submission of documents after the hearing and before the close of the investigation.

15 Al-Shaouabkeh, Faisal Abdel Hafiz. (2013). *النظام القانوني للعقد الإداري الإلكتروني*. (The Legal Regime of the Electronic Administrative Contract) Islamic University Journal for Economic and Administrative Studies, Vol. 21, No. 2, June 2013, p. 352.

16 Farghaly, Abdel Nasser Mohamed Mahmoud. (2010). *الإثبات العلمي لجرائم تزوير وتزوير. المحررات التقليدية والإلكترونية، دراسة تطبيقية عملية وقانونية، مقارنة*. (Scientific Evidentiary=

2. Identification of the Originator

The 1996 UNCITRAL Model Law sets this condition in Article 10(c), while Article 1316-1 (1366)¹ of the French Civil Code and Article 323 bis 1 of the Algerian Civil Code require that writing clearly identify its originator. However, the term “originator” raises interpretive challenges. While it is clear when the person drafts the document personally, ambiguity arises when a document is drafted by one party and signed by another. Some French jurists therefore propose replacing “originator” with “the person to whom the writing is attributed,” a more precise expression².

In any case, the electronic signature is the primary means of establishing authorship and consent³. Law No. 15-04 (Article 6) defines its function as verifying the signer’s identity and confirming their approval of the content⁴. This is ensured through certification authorities, which issue digital certificates that confirm the authenticity of the signature and prevent denial or repudiation by the signer⁵.

Certification providers must possess the technical, professional, material, and legal qualifications required by Article 34 of the same law, as they play a decisive role in ensuring the reliability of electronic evidence.⁶

=*Techniques in the Crimes of Forgery and Counterfeiting of Traditional and Electronic Documents: A Comparative Legal and Applied Study*), Doctoral thesis in Law, Faculty of Law, Criminal Law Department, Cairo University, Egypt, p. 46.

17 UNCITRAL. (1996). UNCITRAL Model Law on Electronic Commerce. Article 10(c): “Retention of any information which may enable the identification of the origin and destination of a data message and the date and time of its dispatch and receipt”.

18 Tamer Mohamed Suleiman Damyati. (2009). *إثبات التعاقد الإلكتروني عبر الإنترنت، دراسة مقارنة* (Proving Electronic Contracting via the Internet: A Comparative Study). Alexandria: Al-Maaref Publishing, 1st Edition, pp. 525–526.

19 Mohamed Mohamed Sadat. (2011). *حجية المحررات الموقعة الكترونياً في الإثبات، دراسة مقارنة* (The Probative Value of Electronically Signed Documents in Evidence: A Comparative Study), Alexandria: Dar Al-Jami’a Al-Jadida, p. 205.

20 Shanab, Mohamed Labib, & Mujahid, Osama Abu Al-Hassan. (n.d.). *محاضرات في قانون الإثبات* (Lectures in the Law of Evidence). Egypt: Al-Israa Press, p. 230.

21 Law. (2015). Law N°. 15-04 establishing the General Rules Governing Electronic Signature and Certification. **Article 2(12)** defines: “A certification service provider is any natural or legal person who issues qualified electronic certificates and may provide other certificates in the field of electronic certification.”

22 Taboub, Fatima Zahra Rabhi. (2021). *18-05 قانون المعاملات الإلكترونية وفقاً لقانون* (The Law of Electronic Transactions Pursuant to Law No. 05-18). Dar El Beida/ Alger: Bayt Al-Afkar,

3. Integrity and Preservation of Electronic Writing

According to Article 6(1) of the UNCITRAL Model Law, electronic writing must be stored in a manner that allows future access. Article 8 adds that integrity is ensured when the information remains complete and unaltered from the time it was first generated. Article 10 provides further requirements for the retention of data messages.

In France, Article 1316-1 (now 1366) of the Civil Code requires that electronic writing be “established and stored in conditions that guarantee its reliability.” Similarly, Article 323 bis 1 of the Algerian¹ Civil Code stipulates that electronic writing must be “created and preserved under conditions ensuring its integrity.”

Law N°. 15-04 (Article 4) further requires that electronically signed documents be stored in their original form, a requirement detailed by Executive Decree No. 16-142 ² of 5 May 2016, which defines “storage” as the set of technical measures ensuring that the electronically signed document can be received, stored, and retrieved securely.

The main objective of preservation is to ensure the **availability, stability, and reliability** of the document for future reference, preventing any alteration, loss³, or deterioration. This is achieved by storing the data on secure media such as magnetic disks, computer outputs, or digital repositories, ensuring that the document can be retrieved in its original form and verified through its electronic signature.

The Evidentiary Value of Official Electronic Documents

The Algerian legislator did not explicitly establish a specific legal framework for official electronic documents. However, according to Article 323 bis of the Algerian Civil Code, which recognizes the equivalence between

Edition, 1st edition, pp. 277–278.

23 Article 323 bis1 of Algerian civil law provides: “...and must be prepared and preserved under conditions that ensure its integrity.”

24 Law. (2016). Executive Decree No. 16-142 dated May 5, 2016, concerning the procedures for the preservation of electronically signed documents. *Official Journal*, N°. 28. May 8, 2016.

25 Elias Jawadi. (2018). *الإثبات في المنازعات الإدارية، دراسة مقارنة في الجزائر ومصر وفرنسا* (The Law of Evidence in Administrative Litigation: A Comparative Study of Algeria, Egypt, and France). Beirut: Al- Helaby Legal Publications, 1st Edition, pp. 300–301.

traditional written evidence and electronic writing, alongside the provisions of Law No. 15-04 on electronic signatures and certification, Law No. 15-03 on the modernization of justice, and the regulations governing civil status documents¹, it can be inferred that the legislator implicitly acknowledged electronic documents as an organizational method for official documents within governmental institutions. Consequently, they are subject to the same legal rules applicable to traditional official documents.²

Conditions for Official Electronic Documents

The Algerian legislator addressed the concept of official electronic documents without amending the legal rules governing traditional official documents. In the absence of a specific provision regulating this type of document, official electronic documents are subject to the general rules of evidence. Accordingly, for an electronic document to be recognized as an official document, it must satisfy all the conditions³ prescribed for traditional official documents to confer it with equivalent legal validity.

Article 324 of the Civil Code defines an official document as one in which a public officer, administrative official, or person charged with a public service records what has occurred before them or what they have received from concerned parties, in accordance with legal formalities and within the limits of their authority and competence. From this definition, several conditions can be derived for a document to acquire official status and be binding on all parties: it must be prepared by a public officer, administrative official, or person charged with a public service, within their authority and competence, and in compliance with the applicable legal formalities.

Accordingly, an official electronic document is defined as an electronic writing prepared by a public officer or person charged with a public service, recording what has occurred before them or what they have received from concerned parties, in accordance with the legal formalities and within the limits of their authority and competence. To achieve the same evidentiary value as

26 Law . (2015). Executive Decree N°. 15-315 of December 10, 2015, pertaining to the issuance of copies of civil status documents by electronic means. *Official Journal*, N°. 68, p. 6 (December 27, 2015).

27 Belaisaoui, Mohamed Tahar, & Batli, Ghania. (2017). *طرق الإثبات في المواد المدنية والتجارية*. (Previously cited), p. 119.

28 Mohamed Hassan Mansour. (n.d.). *قانون الإثبات مبادئ وطرقه (The Law of Evidence: Principles and Methods)*. Alexandria: Dar Al-Jamia Al-Jadida Publishing, p. 57.

traditional official documents, official electronic documents must meet the following conditions:¹

1. Issuance by a public officer or person charged with a public service:

A person charged with a public service is anyone delegated by the state or its institutions to perform tasks within the scope of a public function, whether remunerated or not, such as court-appointed experts, sworn translators, and elected council presidents. The term “public officer” includes all employees operating within public institutions and administrations, encompassing central state administrations, decentralized services, regional authorities, public institutions of administrative, scientific, cultural, professional, or technological nature.² To acquire official status, the document must be issued by a public officer, administrative official, or person charged with a public service, such as a judge for rulings, a court clerk for session minutes, or a notary for legal deeds. Handwriting is not required, but the document must be issued in their name and signed³.

2. Competence in terms of subject matter and territorial jurisdiction:

For an official document to be valid, it must be issued within the limits of the issuer’s authority. Subject-matter competence requires that the official be in active service; if they have been dismissed, suspended, or transferred, their mandate lapses, and any document issued by them is invalid⁴. Territorial competence requires that the document be issued within the official’s jurisdiction, unless a law explicitly provides

29 Mohamed Mohamed. (2011). *حجية المحررات الموقعة إلكترونياً في الإثبات، دراسة مقارنة*. (Previously cited), p. 168.

30 Law . (2006). Ordinance No. 06-03 of July 15, 2006, establishing the General Statute of the Public Function. *Official Journal*, N°. 46, July 16, 2006, p. 3. **Article 4** defines an employee as: “Any agent appointed to a permanent public position and assigned a rank in the administrative scale.”

31 Abdel-Razzak Ahmed Al-Sanhouri. (1968). *نظرية الالتزام بوجه عام، الإثبات- آثار الالتزام*. (The General Theory of Obligation: Evidence and the Effects of Obligation). Cairo: Dar Al-Nahda Al-Arabiya, pp. 116.

32 Al-Sanhouri, Abdel-Razzak Ahmed. (1968). *نظرية الالتزام بوجه عام، الإثبات- آثار الالتزام*. (Previously cited), pp. 122–123. Note: “If the official is unaware of the expiration of his mandate due to dismissal, suspension, transfer, or other reasons, and the concerned parties are in good faith unaware, the official document issued by the employee is valid to protect the apparent situation”.

otherwise.¹

3. **Compliance with legal formalities:** Public officers or persons charged with a public service must adhere to formal and substantive requirements prescribed by law. For example, Articles 19–26 of the law regulating the notarial profession require verification of parties' identities and legal capacity, drafting contracts in Arabic in a clear, unified text, including all relevant data on parties, transaction subject, agencies if applicable, and notary information. Notaries must recite relevant legal provisions to parties before signing, sign and authenticate the document, and preserve the original in official registers, providing copies to the concerned parties.²
4. **Connection with qualified electronic signatures:** Law N°. 15-04 distinguishes between a simple electronic signature and a qualified electronic signature, granting the latter the same legal validity as a handwritten signature³ if it meets the requirements of Article 7, namely: issued based on a qualified certification, linked uniquely to the signatory, capable of identifying the signatory, created using a secure mechanism under the signatory's sole control, and linked to the data in a way that reveals any subsequent alterations. While Algerian legislation does not explicitly require official electronic documents to use a qualified electronic signature, this requirement is implicitly understood from various laws and regulations, including the Law on Electronic Signatures⁴ and Certification, the Modernization of Justice Law, and the

33 Law. (2006). Law N°. 06-02 of February 20, 2006, regulating the Notary Profession.= *Official Journal*, N°. 14, March 8, 2006, p. 15. **Article 2:** "Public notary offices shall be established, subject to the provisions of this law and applicable legislation, with their territorial jurisdiction extending over the entire national territory."

34 Omar Zouda. (2024) *الإثبات في المواد المدنية في ضوء أحكام القضاء وآراء الفقهاء* (*Evidence in Civil Matters: In Light of Case Law and Legal Doctrine*). Dar El Beida/ Alger: Dar Belquis, Casablanca, 2nd edition, p. 65.

35 Law. (2015). Law N°. 15-04 establishing the General Rules Governing Electronic Signature and Certification. **Article 8:** "A qualified electronic signature alone shall be equivalent to a handwritten signature, whether for a natural or legal person".

36 Law. (2015). Law No. 15-04 establishing the General Rules Governing Electronic Signature and Certification. **Article 2(11)** defines: "Trusted third party: a legal person who issues electronic certification for the benefit of actors in the governmental sector." **Article 2(13)** defines: "Actors in the governmental sector: public institutions and administrations, public bodies defined by applicable legislation, independent national

executive decree on issuing electronic copies of civil status documents¹.

Evidentiary Value of Official Electronic Documents

Referring to the provisions of the Civil Code related to evidence, it is apparent that the legislator completely omitted any reference to official electronic ²documents, limiting itself to the equivalence between traditional paper writing and electronic writing without specifying a regulatory framework. However, this gap was addressed through Law No. 15-04 on electronic signatures and certification, which grants a qualified electronic signature the same legal validity as a handwritten signature when legal conditions are met.⁴¹

An electronic document that meets the requirements of Article 324 of the Civil Code and bears a qualified electronic signature enjoys the same probative force as a traditional official paper document. This recognition was further reinforced by Law No. 15-03 on the modernization of justice, which integrated electronic means into judicial and administrative procedures. The use of electronic methods has been extended across various public sectors to advance e-government and bring public administration closer to citizens, including the issuance of civil status documents, biometric passports, banking cards at post offices, health cards, and other services—demonstrating the Algerian legislator’s acknowledgment of the official electronic document.

Once an official electronic document satisfies the legally prescribed conditions, it acquires the same legal value as a traditional official paper document and possesses absolute evidentiary power against all parties. It may only be challenged on the grounds of forgery, and its contents are considered *prima facie* evidence until proven otherwise according to applicable legal rules.³

institutions, regulatory authorities, interbank participants, and any person or entity belonging to the governmental sector by nature or function”. **Article 15** provides: “A qualified electronic certificate is an electronic certification that meets the following requirements: issued by a trusted third party or an electronic certification service provider, in accordance with an approved electronic certification policy...”

37 Law. (2015). Executive Decree N°. 15-315 establishing to the Issuance of Copies of Civil Status Documents by Electronic Means. **Article 2**: “Copies of civil status documents issued electronically shall be sealed with a qualified electronic signature.”

38 **Article 323bis**. The Algerian Civil Code.

39 Law. (2015). Law N°. 15-04 establishing the General Rules Governing Electronic Signature and Certification. **Article 8**: “A qualified electronic signature alone shall be equivalent to a handwritten signature, whether for a natural or legal person”.

It is necessary, however, to distinguish between two types of data. Data recorded by the public officer or person charged with public service within the limits of their duties—such as the date and place of the document, and verification of the parties' identities, as well as matters witnessed by them—enjoy absolute probative force and may only be contested on the basis of forgery¹. Conversely, data provided by the parties themselves and recorded by the official based on their statements do not have absolute probative force and are considered correct only until the interested party proves otherwise using legally prescribed methods of evidence².

Evidentiary Value of Private Electronic Documents

Traditional private documents are divided into those prepared in advance by the parties for use as evidence in case of a dispute, and those not intended for evidentiary purposes but which may nonetheless be used as evidence. By analogy, private electronic documents are similarly categorized into electronic documents prepared for evidence and those not prepared for this purpose.

Evidentiary Value of Private Electronic Documents Prepared for Evidence

These are documents prepared in advance by the parties to serve as evidence in case of a dispute. They constitute complete evidence³ and are binding on their creators. Generally, a private document is a non-official document issued by individuals without the involvement of a public officer, administrative official, or person charged with public service⁴. No formalities are required for its creation, unlike official documents, and it is signed by the party it binds⁵. It may serve as full proof unless denied by the person who wrote, signed, or affixed their fingerprint.

40 **Article 324 bis 5**, The Algerian Civil Code: “What is included in an official contract shall be considered as evidence until proven forged, and shall be valid throughout the national territory.”

41 El-Sanhouri, Abdel-Razzak Ahmed. (1968), *نظرية الالتزام بوجه عام، الإثبات- آثار الالتزام* (Previously cited), p. 147 ff.

42 Nasr Mohamed.(2014). *أدلة الإثبات في الأنظمة المقارنة (Rules of Evidence in Comparative Jurisdictions)*. Riyadh: Maktabat Al-Qanunwal-Iqtisad, p. 55.

43 **Article 326 bis2**, The Algerian Civil Code: “A contract shall be considered informal due to the incompetence or incapacity of the public officer or lack of form, and shall be treated as a customary document if signed by the parties.”

44 Lahcène Bencheikh Ait Melouya. (2009), *مبادئ الإثبات في المنازعات الإدارية (Principles of Evidence in Administrative Litigation)*. Alger: Dar Houma, 6th edition p. 247.

The probative force of private documents in establishing legal acts depends on two conditions: the writing, which records the act to be proven, and the signature, which indicates acceptance of the document's contents.¹ The Algerian legislator recognized functional equivalence between traditional writing and electronic writing, and accepted electronic signatures in private documents². Accordingly, for a private electronic document to acquire legal evidentiary value, it must meet two essential conditions: electronic writing and an electronic signature, in compliance with Article 323 bis 1 of the Civil Code. The electronic writing must be readable, the identity of the issuer must be verifiable, and it must be preserved in conditions that ensure its integrity and retrievability when needed³.

The first condition, electronic writing, is addressed in **Article 323bis** of the Civil Code, which expands the concept of writing to include electronic writing recorded on non-physical media such as computers or information systems⁴. The second condition, the signature of the person to whom the document is attributed, is essential for private documents, as it attributes the document to its author and expresses their consent to its content. Without it, the document only serves as evidence of writing. Article 327 of the Civil Code recognizes this requirement and accepts the electronic signature if it complies with the conditions of Article 323 bis 1. The signature need not be of a specific type or highly secure; it is sufficient that it links the document to the signer and demonstrates acceptance of the content. The legal effectiveness of the electronic signature cannot be denied due to its electronic form, lack of qualified

45 **Article 327:** "A customary contract shall be considered issued by the person who wrote, signed, or marked it with a fingerprint, unless explicitly denied by him; heirs or successors are not required to deny it, only to swear that they do not know that the handwriting, signature, or fingerprint belongs to the person from whom they received this right. The electronic signature shall be recognized under the conditions mentioned in Article 323 bis 1 above."

46 **Article 327(2).** The Algerian Civil Code.

47 **Article 323 bis1,** The Algerian Civil Code: "Evidence in electronic form is considered equivalent to written evidence on paper, provided that the identity of the person issuing it can be verified and that it is prepared and preserved under conditions ensuring its integrity." Article 327: "...The electronic signature shall be recognized under the conditions mentioned in Article 323 bis 1 above."

48 Belaisaoui, Mohamed Tahar, & Batli, Ghania. (2017). *طرق الإثبات في المواد المدنية والتجارية*. (Previously cited), p. 147.

certification, or the mechanism used to create it.¹

A private electronic document constitutes evidence against the party who issued it and possesses the same probative value as an official document before the courts unless explicitly denied. Silence constitutes implicit acknowledgment of its validity. Denial must occur before the subject is debated, otherwise the right to contest is lost, except through a claim of forgery. In case of denial, the burden of proof shifts to the party asserting the document, and the court may order technical expertise to examine the electronic document using appropriate technological means. This is facilitated if the document contains a qualified electronic certification providing accurate identification of the signer.

Private documents, whether paper or electronic, constitute evidence against all regarding their contents, except for the date, which is only binding on the parties themselves. For third parties, the date is only binding if legally established according to Article 328 of the Civil Code.

Evidentiary Value of Private Documents Not Prepared for Evidence:

A document not intended for evidence is one that was not created with evidentiary purposes in mind and is usually unsigned. Nevertheless, the law grants it certain evidentiary value, considering it as *prima facie* written evidence under Article 335(2) of the Civil Code, which judges may rely upon when issuing rulings². With this rapid development of electronic technologies and communication tools, various forms of electronic writing have emerged, notably email and electronic commercial books.

A. Email: Email is a widely used communication tool due to its speed, ease of use, low cost, and the ability to attach files, images, videos, or audio. It is defined as the electronic exchange of information over the Internet between two or more parties, provided the recipient's email address is known³. Executive Decree No. 01-123 defines emails as the process of exchanging, reading, and storing information in the form of data messages across

49 Algeria. (2015). Law N°. 15-04 establishing the General Rules Governing Electronic Signature and Certification. Article 9.

50 Taboub, Fatima Zahra Rabhi. (2021). *قانون المعاملات الإلكترونية وفقاً لقانون 18-05* (Previously cited), pp. 249–250.

51 Sayyid Mahmoud Al-Rubaie, Ahmed Shaaban Desouki, Abdulaziz Ibrahim Al-Jabri, & Ali Saleh Al-Ghamdi. (2001). *المعجم الشامل لمصطلحات الحاسب الآلي والإنترنت* (*Complete Dictionary of Computer and Internet Terms*). Riyadh: Al-Obeikat Library, 1st Edition, p. 139.

distributed locations, allowing senders and recipients to access messages in real time or later.¹

The evidentiary weight of emails is generally contingent upon the existence of an electronic signature. As Algerian law does not specifically regulate email communications, the established principle of functional equivalence must be applied. Consequently, an email bearing a qualified electronic signature is treated as a private electronic instrument, granting it the same probative value as its traditional, paper-based counterpart, in accordance with **Article 329 bis1** of the Civil Code. Conversely, unsigned emails—though far more common—do not achieve the status of full, conclusive evidence, yet the judge retains the discretion to rely on them as *prima facie* written proof.

B. Electronic Commercial Books: Algerian legislation defines commercial books by type and organization rather than the medium. They are records in which merchants regularly document all commercial transactions, rights, and debts to track their financial position and facilitate monitoring by competent authorities. With technological advances, merchants now use electronic methods to record and store transactions due to speed, cost efficiency, and ease of storage compared to traditional paper books, which occupy space and are prone to deterioration².

Article 25 of Law N°. 18-05 on electronic commerce obliges suppliers to preserve electronic³ records of commercial transactions, including dates, and submit them electronically to the National Commercial Registry. By analogy with traditional commercial books and based on the principle of functional equivalence between traditional and electronic writing, electronic commercial books are generally binding on the merchants themselves. They may also be invoked against third parties in relation to transactions conducted by the

52 Executive Decree N°. 01-123 of May 9, 2001, concerning the Operation Regime Applicable to All Types of Networks, Including Electric Wireless Networks, and Various Wired and Wireless Telecommunication Services. *Official Journal*, N°. 27, p. 13 (May 13, 2001).

53 Mostafa Kamal Taha. (2006). *أساسيات القانون التجاري، دراسة مقارنة، الأعمال التجارية، التجار، المؤسسة*. (Foundations of Commercial Law: A Comparative Study. Commercial Acts, Merchants, Commercial Enterprise, Commercial Corporations, and Industrial Property). Beirut: Al-Helaby Legal Publications, 1st edition, p. 137.

54 Algeria. (2018). Law No. 18-05 of May 10, 2018, on Electronic Commerce. *Official Journal*, N°. 28, (May 16, 2018), p. 8.

merchants. Courts may request supplementary sworn statements if evidence is insufficient. Regular electronic commercial books must be considered in their entirety, without selectively using or discarding entries, to preserve data integrity and probative value.

Conclusion

For a long time, legal thought was dominated by the notion that writing could exist only on paper and that a document must necessarily be material and tangible. However, with the technological evolution in the fields of communication and information, it has become possible to record writings on electronic media. This led to a separation between the requirement of writing as a legal element and the medium on which such writing is recorded, whether paper or electronic.

Gradual international recognition of this new form of writing emerged through international conventions and model laws, most notably the UNCITRAL Model Law on Electronic Commerce, which established the principle of equivalence between electronic and traditional writing, later reflected in domestic legislation.

Through the amendment of the Civil Code by Law No. 05-10, the Algerian legislator adopted the principle of functional equivalence of writing under Article 323 bis 1, thereby granting electronic writing the same evidentiary force as paper-based writing. It also set forth several conditions that must be met for electronic writing to have full legal validity and perform its evidentiary function equally with traditional writing: it must be readable and clear, the identity of the issuer must be verifiable, and it must be preserved under conditions ensuring its integrity.

Nevertheless, this article adopts a broad definition of writing without specifying the scope of equivalence—that is, whether it applies to official documents only, private documents, or both. Given the legislator's recognition of the functional equivalence between electronic and traditional documents, and the absence of specific legal regulation governing electronic documents, whether public or private, such documents remain subject to the general evidentiary rules applicable to traditional writings.

The Algerian legislator has progressively recognized official electronic documents through the adoption of several important laws, the most significant

being Law No. 15-04 on Electronic Signature and Certification, which represents a major milestone in the recognition of official electronic documents within the Algerian legal system. This law established the conceptual and technical framework for the qualified electronic signature, defining its conditions and establishing certification authorities responsible for verifying the signer's identity and ensuring the document's integrity.

Consequently, the qualified electronic signature now carries the same legal force as the traditional handwritten signature, provided it meets the statutory conditions. Electronic documents bearing such a signature may therefore acquire official status, provided they also satisfy the general conditions set out in the Civil Code for traditional official documents—namely, that they are issued by a public official, a notary, or a person entrusted with a public service, acting within the scope of their authority and in accordance with legal formalities.

This recognition was further reinforced by the Law on the Modernization of Justice, which authorized the use of official electronic documents within various departments of the Ministry of Justice and judicial institutions, as well as in other public sectors — including civil status records, biometric passports, and similar administrative procedures.

Reference list

1. International Documents

UNCITRAL (2000). *Model law on electronic commerce with guide to enactment 1996, with additional article 5 bis as adopted in 1998*. New York: United Nations. Retrieved August 1, 2025, from <https://uncitral.un.org>

2. Orders and Laws

Ordinance N°. 06-03 of July 15, 2006, establishing the General Statute of the Public Function. *Official Journal*, N°. 46, July 16, 2006.

Law N°. 2000-230 dated March 13 2000. *Journal Officiel de la République Française*, March 14, 2000. Retrieved: September 10, 2025, Retrieved from <https://www.marche-public.fr>

Law N°. 05-10 dated June 20, 2005, containing the Civil Code. *Official Journal*, N°. 44, June 26, 2005.

Law N°. 06-02 of February 20, 2006, regulating the Notary Profession. *Official Journal*, N°. 14, March 8, 2006.

Law N°. 05-17 of December 31, 2005, approving Ordinance No. 05-06 of August 23, 2005, on Combating Smuggling, *Official Journal*, N°. 59, August 28, 2005.

Law N°. 15-03 of February 1, 2015, on the modernization of justice. *Official Journal*, N°.6. February 10, 2015.

Law N°. 15-04 on the General Rules Governing Electronic Signature and Certification. *Official Journal*, N° 6, February 10, 2015.

Law N°. 18-05 of May 10, 2018, on electronic commerce. *Official Journal*, N°. 28, May 16, 2018.

Law N°. 22-13 of July 12, 2022, amending and supplementing Law 08-09 on Civil and Administrative Procedures. *Official Journal*, N°. 48. July 17, 2022.

3. Decrees

Executive Decree N°. 01-123 of May 9, 2001, concerning the Operation Regime Applicable to All Types of Networks, Including Electric Wireless Networks, and Various Wired and Wireless Telecommunication Services. *Official Journal*, N°. 27. May 13, 2001.

Presidential Decree No. 10-236 of October 7, 2010, on the organisation of Public Procurement. *Official Journal*, N°. 58. October 7, 2010.

Executive Decree N°. 15-315 of December 10, 2015, pertaining to the Issuance of Copies of Civil Status Documents by Electronic Means. *Official Journal*, N°. 68. December 27, 2015.

Executive Decree No. 16-142 of May 5, 2016, concerning the Procedures for the Preservation of Electronically Signed Documents. *Official Journal*, N°. 28. May 8, 2016.

4. Arabic references

Al-Rubaie, M. A., Desouki, A. S., Al-Jabri, A. I., & Al-Ghamdi, A. S. (2001). *المعجم الشامل لمصطلحات الحاسب الآلي والإنترنت (Complete Dictionary of Computer and Internet Terms)*. Riyadh: Al-Obeikat Library, 1st Edition.

Jawadi, E. (2018). *الإثبات في المنازعات الإدارية، دراسة مقارنة في الجزائر ومصر وفرنسا (The Law of Evidence in Administrative Litigation: A Comparative Study of Algeria, Egypt, and France)*. Beirut: Al- Helaby Legal Publications, 1st Edition.

Belaïssaoui, M. T., & Batli, G. (2017). *طرق الإثبات في المواد المدنية والتجارية (Means of Proof in Civil and Commercial Matters)*, Houma Publishing House.

Tamer, M. S. D. (2009). *مقارنة إثبات التعاقد الإلكتروني عبر الإنترنت (Proving Electronic Contracting via the Internet: A Comparative Study)*. Alexandria: Al-Maaref Publishing, 1st Edition.

- Al-Sanhouri, A. R. (1968). *نظرية الالتزام بوجه عام: الإثبات، آثار الالتزام* (*The General Theory of Obligation: Evidence and the Effects of Obligation*). Cairo: Dar Al-Nahda Al-Arabiya
- Zouda, O. (2024). *الإثبات في المواد المدنية في ضوء أحكام القضاء وآراء الفقهاء* (*Evidence in Civil Matters: In Light of Case Law and Legal Doctrine*). Dar El Beida/Alger: Dar Belquis, Casablanca, 2nd edition.
- Lahcène, Bencheikh Ait Melouya. (2009). *مبادئ الإثبات في المنازعات الإدارية* (*Principles of Evidence in Administrative Litigation*). Alger: Dar Houma, 6th edition.
- Taha, M. K. (2006). *أساسيات القانون التجاري، دراسة مقارنة، الأعمال التجارية، التجار، المؤسسات التجارية، الشركات التجارية، الملكية الصناعية* (*Foundations of Commercial Law: A Comparative Study. Commercial Acts, Merchants, Commercial Enterprise, Commercial Corporations, and Industrial Property*). Beirut: Al-Helaby Legal Publications, 1st edition.
- Mansour, M. H. (n.d.). *قانون الإثبات مبادئ وطرقه* (*The Law of Evidence: Principles and Methods*). Alexandria: Dar Al-Jamia Al-Jadida Publishing.
- Sadat, M. M. (2011). *حجية المحررات الموقعة الكترونياً في الإثبات: دراسة مقارنة* (*The Probative Value of Electronically Signed Documents in Evidence: A Comparative Study*), Alexandria: Dar Al-Jami'a Al-Jadida.
- Nasr, M.(2014). *أدلة الإثبات في الأنظمة المقارنة* (*Rules of Evidence in Comparative Jurisdictions*). Riyadh: Maktabat Al-Qanunwal-Iqtisad.
- Shanab, M. L., & Mujahed, O. A. H. (n.d). *محاضرات في قانون الإثبات*.

5. Theses and Dissertations

- Farghali, A. N. M. (2010). *الإثبات العلمي لجرائم تزيف وتزوير المحررات التقليدية والالكترونية: دراسة تطبيقية عملية وقانونية مقارنة* (*Scientific Proof of the Crimes of Counterfeiting and Forgery of Traditional and Electronic Documents: An Applied, Practical, and Legal Comparative Study*) [Doctoral dissertation, Cairo University, Faculty of Law, Department of Criminal Law], Egypt.
- Kiari, A. (2015). *أدلة الإثبات في الدعوى الإدارية* (*Evidentiary Rules in Administrative Litigation*) [Master's thesis, University of Djilali Liabes, Faculty of Law and Political Science, Sidi Bel-Abbes], Algeria.