

IT And The Law

Is our current legal and regulatory framework up to speed when it comes to dealing in IT related matters? A sensitive question that requires some serious contemplation before a definitive conclusion is reached. This is certainly not about the independence and integrity of our judges and legal system, for these are highly regarded and not in doubt. This is about the adequacy of the various components of our legal and regulatory framework when viewed from an IT perspective. A quick look into the basic components of the litigation process, one notes the following:

Laws

Most of the regulatory framework is already in place either in the form of enacted Laws and/or Regulations. Long awaited and notably absent is the Information Privacy Law as recommended in the Reach 3.0 review (in 2002) as well as some laws dealing in certain crimes using IT or the Internet. Issues regarding the current drafting process and enforcement are causes for concern.

Judges

There is a real need for specialist training in this area. Our judges need to be well versed not only in basic IT and Internet matters but also in some of the legal and technical intricacies arising from IT cases. Specialization of judges (and not the courts) should be actively promoted.

Lawyers

A very small number of local legal firms can accurately claim competence in IT related matters. Referrals to external IT experts is commonly practiced. A random survey of capabilities will likely show that a significant percentage of our lawyers are still IT and Internet illiterate.

Trial Procedures

These are lengthy by all standards and need to be speeded up considerably. Logically, rapidly changing technologies require fast track legal procedures.

Expert Witnesses

Such witnesses are available in other disciplines (engineering, insurance, real estate), but they are non existent when it comes to IT matters. The presence of Court

Approved expert witnesses will have a positive impact and should be encouraged.

In the absence of adequately qualified judges, fast trial turnaround times, or the availability of court approved expert witnesses, the only other viable choice is to contractually insist and pre-agree on alternative dispute resolution methods such as professional arbitration or reconciliation. This is easily achievable when the contractual counterparts are all private sector or commercial entities. The issues get absurdly complicated when one of the counterparts is either a government department or public sector institution.

In Jordan, ICT related contracts, business dealings and commercial transactions are growing in number and magnitude day by day. While most of them sail through to a smooth closure, it is only a matter of time before problems, disagreements and disputes catch up.