

## PalArch's Journal of Archaeology of Egypt / Egyptology

### ELECTRONIC CONTRACT AND PROOF ARGUMENT

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**Baydaa Kadhim Faraj<sup>1</sup>, Adil Ajeel Ashour<sup>2</sup>, ELECTRONIC CONTRACT AND PROOF ARGUMENT, PalArch's Journal Of Archaeology Of Egypt/ Egyptology, 17 (8), 1171-1187 ISSN 1567-214x**

**Keywords: Challenges, Electronic, Contract, E-Commerce**

#### ABSTRACT

The world is now undergoing rapid developments in the field of contracts, including changes in the way of life in-depth, inclusiveness and speed witnessed by states as a result of the revolution in modern communication technology, and their interaction in all sectors and institutions, the so-called e-commerce has emerged, which has raised some legal challenges and problems that require new laws that address those aspects that are not contained in existing laws or require a reassessment of existing legal rules to adapt to the private medical commerce, These challenges include e-commerce contracting as e-commerce faces difficulties in terms of the extent to which traditional laws recognize ab ram contracts by electronic means, means of positive and acceptance between contracting parties.

#### INTRODUCTION

The contract is defined as the compatibility of two or more wills and is fully identical at a given moment in time to have a legal effect, whether this legal effect is the establishment, transfer, modification, or end of a legal association, and this definition is understood to be the conclusion of any contract that assumes the compatibility and conformity of two wills that are geared towards concluding the intended conduct so that it can be implemented among contractors.

The importance of research on this subject lies through the spread of the Internet among individuals in light of the sophisticated advertisements and advertisements they see through this network on the one hand, and the importance of studying this subject in the absence of legal texts regulating this type of transactions, which even if

they exist.

As for the problem of this research lies in the widespread use of the Internet in the conclusion of actions, as well as the increased interest of individuals in it and directed towards contracting through it, where the electronic contract is modern headquarters of other contracts and distinct from it, the contract can be established and how sufficiently the organization threw the organization's yen for electronic contracting to rule the stage of proof? What is the position of Iraqi law on this?

### **THE CONCEPT OF ELECTRONIC CONTRACT**

Contracting through the Internet has become one of the results produced by the great development in the world of internet and e-commerce, and imposed itself strongly, so the legislation has paid wide attention in this area to inform all its rules and effects, and how to prove it, and the role of the judge in keeping up with the development in the world of electronic contracts, in reaching the proof of the incident in question and the applicable law.

Given the special nature of e-commerce in terms of the lack of geographical boundaries and the speed of development, The rapid changes in systems needed, which is totally contrary to the nature of the development and drafting of laws because of the characterization of e-commerce because it is a specific formula for dealing in an electronic way between a group of beneficiaries away from the servants of documents and paper documents, to ensure effective and efficient implementation of the completion of trade deals and business processes and payment of their prices electronically, e-commerce covers direct relations between companies to obtain It can be said that the<sup>1</sup> e-commerce contract differs from traditional trade contracts in terms of the rule used in e-exchanges, not in the legal nature of relationships and businesses, e-commerce is a type of contract that arises between absent persons.

#### ***The first demand***

##### ***Definition of electronic contract***

The electronic contract is generally intended to be the contract in which the offers of goods and services expressed by a person are met by multiple technological mediations by acceptance expressed by another person through the same media by interacting with them to satisfy their mutual needs by completing the contract.<sup>2</sup> While goes to another definition of the e-commerce contract, he says that (an agreement in which the positive sale of things or the provision of services, expressed in the manner of audiovisual broadcasting or in the middle of an international network of telecommunications remotely

The most important characteristic of the electronic contract is that it is a contract made through an electronic means and belongs to the range

of contracts that are made through the means of remote communication and which are intended to take a means that can be used to conclude the contract without the need for the physical presence of both parties, which applies to contracts of financial goods and services made through the Internet.

### *The second requirement*

#### *Contract Pillars*

To contact customers through the Internet, there must be a contract, and where the contract online is different from the traditional contract, In terms of satisfaction, solution and reason, satisfaction is the main pillar in the contracting through the Internet<sup>0</sup>, which is an internal matter that no one knows and does not know, and the lack of satisfaction invalidates the contract, the agreement between the two parties includes the satisfaction of each of them to complete the<sup>3</sup> contract and directs their will to make a legal impact, and this is done through the association of the positive acceptance, and in any form, whether it is verbal, writing, or reference, and requires in the person issued positive(The offer), or acceptance is welcome to contract, following the rules of civil law and trade law<sup>4</sup>

Others defined it as "every remote connection that contains all the necessary elements so that the sender can accept the contract directly and excludes from this scope the mere declaration"<sup>0. 5</sup>

As a result of the great development in the field of communications and information, and the expansion of the field of electronic contracting, it is permissible to express the will through electronic means<sup>06</sup> whether positively, or acceptance, and requires the positive to be strict and expressing a final will to contract, if accompanied by acceptance by the other party, and that the answer should be specific and sufficient and include all the main elements, such as sales and price, and to communicate with the knowledge of the person addressed to him.<sup>7</sup>

Acceptance is the subsequent expression of the affirmative (which is an expression of the will of the person to whom the positive is<sup>8</sup> addressed, and the contract is contracted if the acceptance matches the positive, and the acceptance may be explicit, or implicit, taken from an effective, or the statements of the one issued from it<sup>0</sup>, the implementation of<sup>9</sup> the contract, or the start of its implementation is acceptable but is not ambiguous.<sup>10</sup>

In Iraq, the Electronic Signature and Electronic Transactions Act No. 78 of 2012 was passed, which aims to provide the legal framework for the use of electronic means in conduct of electronic transactions,<sup>11</sup> which is an essential element in electronic trading of

securities and international and domestic transactions conducted through the Internet.

The electronic signature is an effective element in international and domestic transactions carried out online, which have taken a wide area of domestic and international trade, where electronic contracting is made through the electronic broker, and the means of this contract is the electronic signature by which the contractor expresses his will and the safety and commitment of the editor, and to sign electronic tasks from them<sup>0:12</sup>

1- Documentation: This is the verification of the identity of the parties to the contract specifically distinct to them and that the editor is assigned to them, and the problem of identifying the contract person and his eligibility for the contract is the most prominent problems raised in dealing through the Internet.

2- Confidentiality: The use of the electronic signature ensures the confidentiality of the information contained in the e-mails, where it is available to the sender only by using the general key of the sender and protecting the data against illegal use.

3- Safety: the contents of the electronically signed message have not changed its content and its data has not been manipulated. as this process is done through the use of data encryption technology and compared to the status of the message sent with the signature fingerprint.

4- Lack of denial: The electronic signature guarantees the inability to deny the data message by those who protest it, which means the inability to deny the signature, to fully link the public key to the private key of the site, in addition to the presence of a third party to confirm the electronic signature, which is the authorized electronic certification authority.

To be used as an argument for proof, the conditions must be met:

- 1- The electronic signature should be linked to the site alone.
- 2- The electronic broker should be under the control of the site alone.
- 3- Any modification or change in the electronic signature must be detectable.
- 4- To be established following the procedures specified by the ministry with instructions issued by the minister.

### ***The third requirement***

#### ***The legal nature of the electronic contract***

The electronic contract is difficulty of finding an objectionable collector's definition, which in turn led to differing views in determining the nature of the contract is considered a bargaining contract or a contract of compliance, where the bargaining contract is subject to the principle of the authority of leadership and compromise between the contracting parties The distinction between acquiescence contracts and bargaining contracts is crucial, as bargaining contracts

are concluded with the consent of contractors and are subject to general rules, and the judge may not amend their terms or exempt one of them because the contract is the law of the contractors, as the suspicion explains in the interest of the debtor, which includes article (166).<sup>13</sup> In compliance contracts, the rule applies to it to amend arbitrary conditions, and it can exempt the appellant, whether the debtor or creditor, and the suspicion explains the interest of the party in question as stated in the content of the article (167),<sup>14</sup>

### ***Electronic contracts are compliance contracts***

The trend of English and French jurisprudence as well as the trend of some of the organization's e-commerce regulations, such as the Egyptian e-commerce law project, considers some e-contracts to be applications of compliance contracts where the other party does not have the freedom to negotiate the terms of the contract, except in response to the conditions set by the other party, i.e. does not have the option to discuss, modify or object to it, and this is close to the contract of compliance and an example of the contract of transport, electricity, and gas.<sup>1</sup>

### **Electronic contracts are bargaining contracts:**

Bargaining contract: It is a contract based mainly on consent, i.e., actual, and legal equality between parties where each party has the freedom to contract or not and discuss the terms of the contract or modify it or object to it<sup>2</sup>

The proponents of this go not towards considering electronic contracts as consensual contracts, and that the equalization process prevails with these contracts differently, except for contracts that are in fact contracts of acquiescence, and that the positive is not limited to the mere approval of the pre-prepared conditions, but he is free to deal with any product and may move from one site to another<sup>15</sup>.

- If the contract is by e-mail or through chat programs, the contract is consensual, as the parties exchange views through electronic means, and the positive mentor can negotiate freely on the terms of the contract.<sup>3</sup>

- Or if the contracts are contracted through websites, which often use model contracts whose terms are prepared in advance, the compliance contracts are prepared here because of the lack of opportunities for parity in contractual capacity.<sup>16</sup>

### **The second one.**

### **The characteristics of the electronic contract and its distinction from other similar systems**

<sup>(1)</sup> Elias Nassif, *International Contracts: Electronic Contract in Comparative Law*, D.I., Al-Halabi Human Rights Publications, Beirut, 2009, p. 45.

<sup>(2)</sup> Zahira Bin Hijaz, *Consumer Right to Refrain from Implementing Electronic Contract*, Previous Source, p. 12-13.

<sup>(3)</sup> Khaled Mamdouh Ibrahim, *Conclusion of the Electronic Contract "Comparison Study"*, previous source, p. 64-65.

Contracts and electronic transactions appeared, and there appeared problems and differences of jurisprudence and prompted modern legislation to contain these behaviors created by e-commerce, which is the area in which this type of contract appears, so it has characteristics that make it different from other contracts, so this research is divided into two demands in the first characteristics of the electronic contract and in the second we are discriminated against from other similar systems.

### *The first requirement*

#### *Electronic contract properties*

It may seem that electronic contracts do not have special contractual aspects and that these contracts can generally be included within the framework of traditional contracts between absentees, they differ from other contracts, because of their specificity, which lies in the means by which the contract is made, namely the Internet.<sup>17</sup>

1. The electronic contract is concluded without the physical presence of its parties, the basic feature of the electronic contract is that it is between two persons who are not joined by a real contract board where the contract is contracted remotely by technological means of communication, and therefore belongs to the range of contracts remotely, where the positive and electronic acceptance is exchanged online and thus combined by a default governing contract board, and therefore it is An immediate and contemporary contract, and the electronic contract may not be contemporary.

2. The electronic contract is no different in terms of subject matter or parties from other traditional contracts, but it differs only in terms of the way it is concluded and the fact that it is done using electronic media and that it is the media that led to the disappearance of traditional paper-based writing to be replaced by electronic writing based on electronic pillars.

3. The e-contract is often commercial and consumer, so it is called the e-commerce contract, which is a dominant feature of that contract as e-sales contracts account for the bulk of all contracts.

4. In terms of loyalty, electronic payment methods in electronic contracting have replaced ordinary money, as technology has evolved, and e-commerce has increased, and these methods have emerged as an innovative method of payment in such transactions.

Electronic payment methods used in e-commerce include several means, including bank cards, e-commerce papers, and e-money, which are two types: digital money and e-wallet.

5. In terms of<sup>18</sup>proof, it is the paper claim that embodies the physical existence of the traditional contract, and writing is not a complete

proof of proof unless it is signed by manual signature, and the electronic contract is established through the electronic document and electronic signature, as the electronic document crystallizes the rights of the parties to the contract.

6. An electronic contract binding on both sides, as it arranges mutual obligations to the parties to the contract, so the buyer must pay the price following the terms set by the seller and which is agreed upon, often through the electronic payment that suits this form of contract, and in return, the seller is obliged to provide the initiator with adequate information about the goods, how much is required to deliver the goods at the agreed time and<sup>19</sup> place.

8. Electronic contract is a contract associated with the right to re-nounce

It is planned by the general rules and under the binding force of the contract, that neither party to the contract can return it, when the positive acceptance is met, the contract is concluded, but since the consumer contract in the electronic contract does not have the actual possibility to inspect the item and know the characteristics of the service before concluding the contract, and because the contract is done remotely, it must have the right to re-enter into the<sup>20</sup> contract.

### ***The second requirement***

#### ***Distinguish e-nodes from other similar systems.***

The characteristic of the electronic contract, which is that it is a remotely concluded contract, made it distinct from other contracts.

First: distinguishing electronic contracts from traditional contracts

Delivery of an electronic payment method if the place of obligation to pay a sum of money or delivery of goods or service, it is done in traditional contracts through the delivery of the shop through electronic contracts, and the traditional contracts are expensively recorded on official or nude editors signed in one of the normal signature images (handwritten, fingerprint or seal), and electronic contracts have created so-called electronic signature.<sup>21</sup>

#### ***Second: Distinguishing electronic contracts from contracts surrounding the electronic environment***

In the field of the electronic environment, the electronic contract is not the only one, but there are other contracts on which the electronic contract can be based, including network usage contract, information lease, and virtual store construction contract.

1. Distinguish the electronic contract from the network usage contract

"A legal act between the positive and the able to allow the other party to benefit from the network and conduct browsing with it, in addition to what the customer may offer to the user in providing technical assistance called the hotline.

2. Distinguish the electronic contract from the information lease  
the Internet provider is obliged to put at the disposal of the polytheist part of his technical possibilities to use it to achieve his interests in the way he sees fit, and this is done by allowing the subscriber to benefit from part of the possibilities of hardware and information tools such as the allocation of hard drive space or tape Traffic the service provider receives the information and messages of the subscriber, allows it to access the network, and ensures that the subscriber facilitates the use of the site where he stored his information.

Through the characteristics of this type of service contract, it allows the use of the network and the conduct of permissible behaviors through it such as roaming sites, shopping, and browsing, which may allow electronic contracts to be concluded thanks to this service, that the contract itself can be an electronic contract if it is concluded electronically in full or at any stage through <sup>electronic<sup>22</sup></sup> means.

3. Distinguish the electronic contract from the virtual store construction contract

It is an e-service contract and some call it a participation contract, and its service provider or owner is obliged to allow the participant to open a virtual store in the mall, by authorizing him to use a special program that allows him to do business on the Internet in exchange for money paid to the owner of the virtual center.<sup>23</sup>

### **Third Research**

#### **Proof of electronic contract.**

The technical development of modern communications and information technologies has allowed for the handling of a new type of strut, creating a new type of writing and signature that have become electronically completed, where data messages are exchanged and contracts are concluded through communication networks, and uploaded to paperless struts inside and outside computers accompanied by an electronic signature of the author through encryption, making writing in its traditional form not only the means of proof but also of writings on paper supports as long as these techniques are used to save and read writing.

#### **The first demand**

#### **Writing in electronic form and its argument for proof**

The modern concept of writing requires leaving this term (writing) without specifying, and we mean that e-writing can be considered as paper writing under the Iraqi Evidentiary Act No. (107) of 1979 as long as it does not specify a form For the article in which it is written or on it, this is reinforced by the fact that the Iraqi legislator may use technical devices instead of some commercial books, and since the Law of Proof has considered commercial books as an excuse for its owner, and means that<sup>24</sup> e-writing can be said as paper writing.

After all, it is written in the language of the However, these considerations cannot be accepted because scientifically, paper writing is vulnerable to weaknesses. Writing on paper using a graphite pen



(lead) is considered to be easier to write than to manipulate e-writing a lot, and e-writing has seen a great development so that recording can be used as videotapes and memory cards that ensure a high degree of accuracy that does not accept erasure and modification, where these guarantees are recorded.<sup>25</sup>

Article (1316) of the French Civil Code stipulates that: (The written guide obtains letters, photographs, signs, or symbols that have a clear significance, whatever their propaganda or means of circulation), as stipulated in article (131). 6/1) Of the same law, (e-writing is accepted in the text with the same force as writing on the paper stent provided that the origins of the person who was issued are known and that they are established and preserved within the conditions required by the nature of this writing and ensure its integrity))<sup>(26)</sup>The French Court of Cassation has argued that writing can be placed and preserved on any basis if its integrity and content ratio can be ascertained by its editor or at least if these issues are not disputed.<sup>(27)</sup>

The Iraqi legislator notes in the Evidence Act No. 107 of 1979, which required proof of legal conduct worth more than 5,000 dinars, but there are cases excluded from the above, which he considers to be the principle of proof of writing or considering the meeting through electronic means as a barrier to obtaining written evidence or resorting to agreements regulating the proof of electronic bonds <sup>(and therefore</sup><sup>28</sup>explaining each case separately).

Consider electronic bonds as the principle of proof of writing:

Article (78) of the Iraqi Proof Act No. (107) of 1979 states that (it is permissible to prove testimony in legal conduct even if the required conduct is worth more than 5,000 dinars if there is a principle of proof of writing, and the principle of proof of writing is each writing issued by the opponent that would make the existence of the alleged right close to the possibility) this means that writing through electronic means is considered as a principle of proof of writing as long as a law does not require a particular form of material written on it or it. Others, Moreover, Article (18) of the Iraqi Evidentiary Act No. (107) of 1979 states that (it may be established in all ways of verses that should not have been proven by writing in two cases: first: if the written bond is lost in a manner that has nothing to do with the will of its owner. By this text, the legal authenticity of e-bonds can be added as a barrier to obtaining written evidence through electronic means, and this impossibility arises from techniques used in an e-commerce environment in which it is impossible to obtain a paper bond or impossibility arises because of the prevailing norms in a commercial environment that tend to limit itself to concluding the contract electronically without the need for paper documentation for considerations related to speed, cost, and effectiveness.<sup>29</sup>

C- Agreement on proof of electronic bonds:

The rules of proof contained in the Iraqi Evidentiary Act do not express public order, so proof may be agreed in a way other than the normal legally designated methods, and some have tried to legalize

electronic bonds by resorting to agreements regulating proof of electronic bonds, and anyone who engages in online business regularly has an interest in concluding a written agreement with the other contract under which the terms of proof of electronic bonds, including the assets of the files, archived and preserved, are determined by a preliminary contract or a framework contract. Closed information, which assumes a previous contractual relationship, which is difficult to imagine in open information networks such as the Internet, where it is treated in a vulnerable manner, as well as the discretion of the court in the consideration of complete or incomplete evidence in the evidence.<sup>30,31</sup>

### **The second requirement**

#### **Electronic signature**

The Iraqi legislator authorized in the article (42.25) of the Proof Act to sign the signature, fingerprint, or personal stamp, so it is possible to sign the fingerprint or stamp, although it is not done by the hand of the site but by it, because it accurately expresses the character of the site, such as the signature of the manuscript altogether<sup>0.32</sup>

#### **First: Defining the concept of electronic signature.**

We address the definition of electronic signature and the characteristics that distinguish it from the normal signature and then indicate its types in the following points:

#### **Paragraph 1: Definition of electronic signature.**

The Iraqi legislator did not know the signature, but he specified his methods, namely signature, fingerprint, personal seal, but by reference to the definitions adopted by comparative laws and jurisprudence, which we find concerned either with how the signature is made or the functions and roles of the signature, including those who combine functions and roles at the same time.

The UN International Trade Commission defined it as a "set of numbers representing a signature on a particular message", this signature is achieved by following some calculations associated with a digital key for the sender, so by clicking on these numbers for the Internet user, the electronic signature is formed, and these special numbers can be determined Through collective agreements for Internet users in commercial transactions or without a contract between the two parties that determines the PIN of both parties, so that the association of the message sent with these numbers, the person can determine the identity of the contractor who sent the message, which means that the electronic signature can be multiple, with the multiplicity of transactions made by the person.

In article 1316.4 of the Civil Code, the French legislator defined him as: "The signature necessary to complete the legal conduct, to define the identity of its owner, and to express the satisfaction of the parties with the obligations arising from it"<sup>0.33</sup>

The European instruction dated December 13, 1999, in Article 2 of it also defined the electronic signature as: "Information or data in an electronic form, logically linked or related to other electronic data and used as a means of approval"<sup>0.34</sup>

One of the definitions suggested by jurists is that "following a set of procedures or technical means that can be used by code, numbers or codes, to produce a distinctive mark for the author of the letter transmitted electronically" <sup>0.35</sup>

**Second paragraph: Electronic signature properties.**

As is clear from these definitions, the electronic signature is distinct from the traditional signature through its characteristics:

- The electronic signature, contrary to the written signature, is not limited to signature or fingerprint but includes innumerable images including letters, numbers, images, symbols, signs, and even sounds, all provided that they have an individual character, allowing the identification and identification of the person with the signature, and showing his desire to approve the legal work and satisfaction with its content, electronic signature of a message or document

It is fragmented data from the same message (a small part of the data) that is encrypted <sup>0</sup> and sent with the message, so that the validity of the <sup>36</sup>message's release from the person is documented at decryption, and the content of the signature of the message applies.

- The electronic signature is characterized by the fact that it is not done through a physical intermediary, i.e. a paper pillar, so that it is followed by writing, as in the case of the written signature, but is done in whole or in part through an electronic intermediary through computers, or online, so that the parties to the contract can contact each other and access the documents of the contract, negotiate its terms and empty this contract in electronic editors, and finally sign it electronically <sup>0.37</sup>

- The need for the intervention of a third party Tiers defiance, which acts as a mediator between the parties to the contract, where the necessity of legal security necessitated the need to use secure technology in the electronic signature that allows identification of the personality of the site, and this feature will be detailed when processing the authenticity of the electronic signature.

**Paragraph 3: Types of electronic signatures.**

The electronic signature has two common images, one digital signature and one biometric.

**The digital signature.**

Also called key-based signature, this technology provides the electronic document with an encrypted signature that can identify the person who signed it, the time it was signed, and other information about the signature holder.

The digital signature is then officially recorded by entities known as authorities de certification <sup>38</sup>authorities, and this signature is done with two keys, the key of the year is known to all, and a special key is available only to the person who created it and in this way, anyone with the public key can send encrypted messages, but not He can decipher the message except the person who has the special key, and uses this system especially in banking transactions and explained an example of a credit card that contains a secret number known only to the customer, who enters his card in the towing machine when he

requests to inquire about his account or shows his desire to spend part of his balance.

The advantages of this signature can be summarized as follows:

- It leads to the approval of the information contained in the bond or to which the signature holder aims.

- Contracts are allowed to be concluded remotely, without contractors physically present in the same place, which helps to ensure and develop e-commerce.

It is a safe means of identifying the person who signed.

The biggest negative of the negatives of a digital signature is that the probability of theft, loss, or imitation of the PIN, which makes the owner obliged to keep his number secret, and if the number leaks to others, he is responsible for the implications as long as he does not consider the rules of caution unless he reports that it has been stolen or lost to the documentation authorities or the bank.

### **Biometric signature**

The biometric signature depends on determining a special pattern in which the person's signed hand moves during the signature, as an electronic pen is connected to a computer, and the person signs using this pen, which records a person's hand movements during the signature as a characteristic feature, considering that each person has a particular behavior during the signature<sup>39</sup>

This signature is validated by the same software, by which it was signed, deciphers the biometric code, compares the information with the stored signature, and then sends it to a computer program that gives the signal whether the signature is correct.<sup>40</sup>

### **Second: the authenticity of electronic signature in proof.**

The Algerian legislator states in article 327 paragraph 2 that: "Electronic signature is used by the terms mentioned in article 323 BIS 1 above", thereby limiting the authenticity between the traditional signature and the electronic signature, which is called a functional tie between the traditional signature and the electronic signature, i.e. the electronic signature can perform the same functions as the written signature in terms of identifying its owner and acknowledging the content of the transaction used in its<sup>41</sup> completion.

At the same time, the legislator referred to the conditions stipulated in Article 323 BIS 1 to recognize this yearning:

The possibility of verifying the identity of the person who issued it.

- To be prepared and preserved in circumstances that ensure its safety.

As mentioned above, it is difficult to achieve these conditions except with intermediaries endorsing the validity of this signature, ensuring that it was issued by the person to whom it was attributed, and confirming that there had been no distortion or modification. This certified person must submit a document to the Internet user in the conclusion of the contracts containing his name, address, and if a moral person is determined by his powers, his pin number, and this certificate carries the electronic signature of the person issued by it, this would confirm the relationship between the person and his e-mail, and that the transmission of the message in conjunction with these

procedures consisting of the electronic signature confirms its proportion to a specific person on the one hand, and that there has been no manipulation, distortion or modification of the letter on the other, and this would give some kind of confidence. In dealing through the Internet, it ensures for the future the integrity of information sent from the other party as it was issued completely without distortion resulting from the intervention of another person on the internet, and in order to give confidence to this means, this body must create a digital system for electronic signature to prevent confusion between Internet users as well as the creation of an electronic archive, including electronic signatures issued by it.<sup>42</sup>

In Algeria, in the absence of a structured framework for this function, the parties to the contract are free to choose the electronic system that guarantees its reliability.

As for the Iraqi Evidentiary Act, the electronic signature does not mean one of the legally accepted methods of the signature because the Iraqi Evidentiary Act has defined the methods of signature adopted and based exclusively on the movement of the hand, namely, signature, fingerprint, and personal stamp, and cannot be recognized in any other form of signature, it is unacceptable to consider the electronic signature as a signature or a stamp because it does not include the person's name and surname, nor does it include fingerprint features so that it can be considered to sign the thumbprint, the electronic signature does not meet the form required by the law<sup>(the law requires it)</sup>. Electronically or other contemporary technological means, rather than keeping them in their original form for the duration specified in the law, these miniatures have the same effect as the original in terms of proof, so the Iraqi legislator has acknowledged electronic signature in specific areas and should have gone the way to its end by amending the evidentiary law to overcome the obstacle of the legal form of signature.<sup>43 44</sup> ,

### **The conclusion**

At the end of the week, we reached the number of results and proposals that we will provide in turn:

1- The main difficulty faced by the customers of the electronic contract is the issue of identity verification, since dealing electronically requires that the contract between the parties concerned be contracted and their eligibility confirmed, as the contract is not considered valid unless it is issued by the contractors themselves.

2- The means used is the criterion in determining whether the contract is electronic or traditional on the one hand and determining whether the contract is a compliance or bargaining contract on the other.

3- Consumerism is the dominant and distinctive nature of electronic contracts, as they are often concluded between traders and consumers, making them subject to consumer protection law.

4- The strength of the traditional electronic and written directory is equal to some of the laws that organized it.

5- Well, the Iraqi legislator did when he made the evidence not from the public order, leaving individuals free to agree to violate it. This means that they are free to give strength to the biblical evidence.

### References

- 1- Seeking to find an integrated electronic and legal system, which ensures the task of verifying the identity of the contracting parties so that each of the contractors reassures that the person who was dealt with is the person of the particular purpose and without falsifying his personality.
- 2- As a result of the ease of making changes to electronic data and the difficulty of reaching those who made this change, it is necessary to achieve confidence among the customers of this electronic system and it is done through the difficulty of introducing change or modification to the data received and going through many steps to do so.
- 3- To add strength to the electronic directory so that it is on an equal footing between electronic and written evidence. This is through the inclusion of a text in the electronic signature law that clearly explains this.
- 4- Develop an accurate electronic system that includes reference to the minutes of technical and evidential matters and the organization of special instructions to ensure that the legal texts are properly applied.
- 5- Finding experienced, competent, and capable judicial cadres capable of dealing with this type of contract with sufficient flexibility, as electronic proof will differ completely from the traditional proof, especially with the development that we are witnessing now.

### MARGINS

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  - (<sup>2</sup>) Dr. Osama Abu al-Hassan Mujahid, Online Contracting Privacy, Research submitted to the Law, Computer and Internet Conference, United Arab Emirates University from May 1-3, 2000, p. 39.
  - 3) Article (4/1) of the Iraqi Electronic Signature and Electronic Transactions Act No. 78 of 2012 stipulates that (the electronic signature is valid and issued by the site if there are means to identify the site and indicate the approval of the electronic document and in accordance with the agreement of the site and the sender on how to conduct the electronic transaction).
  - 4) Jamil Al-Sharqawi, General Theory of Commitment, First Book of Sources of Commitment, Arab Renaissance House, 1995, p. 83 and beyond.
  - 5) In accordance with EU instructions numbered 7/1997 came into force in the territories of its members on 4 June 2000, it came as a directive to protect the rights of consumers in contracts concluded remotely, quoting Sultan Abdullah Mahmoud al-

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- Jawari, e-commerce contracts and law applicable comparative legal study, Doctoral thesis submitted to the Faculty of Law of Mosul University, 2004, p. 37.
- 6)) Electronic means are defined as: electrical or magnetic equipment or equipment or light, electromagnetic or any other similar methods used in the creation, processing, exchange, and storage of information (Article 1/VII) of the Iraqi Electronic Signature and Electronic Transactions Act No. 78 of 2012.
  - 7)) Articles (14.15) of the United Nations Model E-Commerce Act the Australian in 1996.
  - 8) Article 18 of the Iraqi Electronic Signature and Electronic Transactions Act No. 78 of 2012 stipulates: First, it is permissible to respond and accept the contract by electronic means. Second: Electronic documents are issued by the site, whether issued on its behalf or by an electronic intermediary designed to operate automatically through the site or on its behalf. Third: The sender must prepare the electronic documents issued by the site and act on this basis in any of the cases A- If the sender uses an information processing system that has already been agreed with the site to use it for this purpose to verify that the electronic documents are issued by the site. B: If the documents reached by the sender are the result of actions carried out by a person affiliated with the site or on his behalf and authorized to access the electronic means used by either of them to determine the identity of the site. Fourth: The electronic document is not issued by the site if the sender learns that the document is not issued by the site or does not take the usual care to confirm it.
  - 9) Osama Abu al-Hassan Mujahid, Online Contracting Privacy, Arab Renaissance House, Cairo 2000, p. 79 and beyond.
  - 10)) Mahmoud Abdul Rahim Al-Sharifat, Consent in the formation of the contract online, Culture Publishing and Distribution House, Jordan, 2011, p. 144.
  - 11) Article (1/6) of the said law defined electronic transactions as "applications, documents and transactions carried out by electronic means.
  - 12)) Tamer Mohammed Suleiman al-Damiati, former source, p. 7.
  - <sup>(13)</sup> Iraqi Civil Law No. (40) of 1951 amended.
  - <sup>(14)</sup> Iraqi Civil Law No. (40) for the amended 1951 age.
  - <sup>(15)</sup> Zahira Bin Hijaz, consumer is right to refrain from implementing the electronic contract Previous source, p. 13.
  - <sup>(16)</sup> Same previous source, p. 13.
  - <sup>(17)</sup> (Its parties are themselves in any other contract, vendors, service providers, buyers, or consumers, as may be done between private or public projects, as may be contracts between individuals, see Osama Abu Al Hassan Mujahid, The Privacy of Contracting through Internet, Arab Renaissance Publishing and Distribution House, 2000, p. 33.

- (<sup>18</sup>) Khaled Mamdouh Ibrahim, *Contract Electronic*, University Think Tank, 2006, p. 57.
- (<sup>19</sup>) Nidal Ismail, *E-commerce contract provisions*, former source, p. 57-58.
- (<sup>20</sup>) Dr. Khaled Mamdouh Ibrahim, *e-contract*, previous source, p. 54-57.
- (<sup>21</sup>) For the price of a means, the execution of the electronic contract, a message A message submitted to the Council of the Faculty of Law /University of Algiers 1, 2011, p. 21.
- (<sup>22</sup>) Dr. Lawrence Obeidat, *Electronic Editor's Proof*, Previous Source, p. 38.
- (<sup>23</sup>) For Zaar Wassa, implementation of the electronic contract, previous source, p. 23.
- (<sup>24</sup>) Article (28.29) of the Evidentiary Act No. (107) of 1979.
- (<sup>25</sup>) Bassil Yusuf, *Legal Aspects of Computer, Internet and E-Mail Business Contracts*, *Journal of Legal Studies*, House of Wisdom, Issue 4, 2000, p. 14.
- (<sup>26</sup>) (Same previous source, p. 9-10.
- (<sup>27</sup>) The decision of 2 December 1997 was referred to by Wasim Shafiq al-Hajjar, *Electronic Proof*, Wasar Publishing House, Beirut, 2002, p. 23.
- (<sup>28</sup>) Article (18) of the Evidentiary Act No. (107) of 1979.
- (<sup>29</sup>) Dr. Tony Michel Issa, former source, p. 338-339.
- (<sup>30</sup>) Dr. Tony Michel Issa, former source, p. 363.
- (<sup>31</sup>) Wasim Shafiq al-Hajjar, former source, p. 59.
- (<sup>32</sup>) Wasim Shafiq al-Hajjar, former source, p. 133.
- (<sup>33</sup>) Article 1316-4 of the French Civil Code states that: " the signature necessary for the perfection of a legal act identifies the person who affixes it, it shows the consent of the parties to the obligations arising from that act."
- See A/Mohammed Bodali, *Electronic Signature*, *Management Magazine*, Issue 2, 2003, p. 55.
- (<sup>34</sup>) "an electronic data that is joined or logically linked other electronic data and that tightens authentication method."
- Mohamed Boudali, same previous reference, p. 55.
- (<sup>35</sup>) Dr. Abdel-Fath Bayoumi Al-Hijazi, *Introduction to Arab E-Commerce*, Book II, *Tunisian E-Commerce Legal System*, University Think Tank, Alexandria, 2003 edition, p. 72.
- (<sup>36</sup>) Electronic signature is organically linked to encryption, encryption is a data change process that can only be read by the user alone using the decryption key.
- The common way to encrypt is that there are two keys, the public key is known to the public, and a special key is only available to the person who created it, and in this way anyone with the public key can send the encrypted message, but only the person with the private key can decipher it.
- In this regard, the electronic signature should not be confused with the encryption of the e-mail encrypting the message it is true that both are based on a calculation through which the content



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of the signature or message is encrypted, but there is a difference that the encryption of the message is covered in its entirety, while encryption in the electronic signature is limited to signing without the rest of the message, so that it can be linked to an unencrypted message. To see Eric Roe deer, Op cit.

Farouk Mohammed Al-Abaasiri, Internet Information Rules Subscription Contract, Applied Study of International E-Commerce Contracts, New University Publishing House, Alexandria, 2002 edition, p. 82 and 83.

<sup>(37)</sup> A/ Mohammed Bodali, Electronic Signature, Management Magazine, Issue 2, 2003.P. 57.

<sup>38)</sup> Dr. Younis Arab, Cellular Banks, Cellular Commerce, Cellular Data, A New Revolution Predicts the Beginning of the Post-Information Era. [www.arab-law.org](http://www.arab-law.org).

<sup>(39)</sup> Younis Arab, The source Previous.

<sup>(40)</sup> Abdel Fattah Bayoumi Hijazi, PainPresident Previous, p. 99.

<sup>41)</sup> D. Sami Badie Mansour Electronic proof in Lebanese law the suffering of a judge, new in the work of banks from both legal and economic aspects, the work of the annual scientific conference of the Faculty of Law Beirut Arab, part one, new in banking technologies, al-Halabi Human Rights Publications, Beirut, Lebanon, edition 2004.P. 365.

<sup>42)</sup> Dr. Farouk Mohammed Ahmed Al-Abaasiri, source Previous, p. 83 and beyond.

<sup>43)</sup> D. Majid Hamid Al-Anbaki, Aqi Transport Act, Ministry of Justice Press, Baghdad, 1984, p. 35.

<sup>44)</sup> Article (38/2) of the Iraqi Banking Act 2004.