

Formality in Electronic Contracts

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Abstract: - *The law contains many types of formal contracts, including the sale of real estate contract, the mortgage and the mortgage insurance on real estate, and the contract for the sale of machinery and vehicles and the contract of sale of the ship. The purpose of this research is to highlight the concept of form, because of the growing importance that has become and which began to expand the expansion of contracts and the multiplicity of new contracts have become necessary to the legal texts to address the effects of legislative treatment, especially electronic contracts, which form has an important role in the conclusion for the privacy it enjoys. Where the vast and accelerating development in today's world, which knows no boundaries except God's will, requires abandoning the traditional methods of life in general, and the tendency to satisfy them through the computer and dialogue through those and the elimination of borders for the speed of those devices easy to use. This leads us to: 1) examine the nature of these contracts and 2) the extend of the possibility of adhering to traditional formality, and 3) whether electronic formality could replace traditional formalism to overcome the difficulties of establishing electronic contracts? And 4) can formalities be completed in the same way when an electronic contracts is concluded its writing on paper or it absorbs electronic writing? And 5) whether the electronic signature is the normal signature required by law? And 6) are the rules for electronic contracts applied to all contracts and legal acts or there are contracts and action excluded from subject to electronic formalities.*

Keyword: - *Electronic, Contracts, Law.*

Introduction

In our examination of the subject of the form in electronic contracts, we noted the importance and the role played by this element of legal action. We also noted the extent of the legislative deficiency in this pillar in comparison to the elements of other legal conduct (satisfaction). The Iraqi civil law did not come up with a comprehensive approach to the issue of the form, but came with the general provisions that clarify the idea of form without getting into the reality of this idea, despite it's very importance. The origin in the consensual contracts, meaning that the contract is concluded as soon as the two contractors express their desire without any other action, and an exception may require the law to void the consent in a specific form, which is called the formal contracts and formal contract is not enough to be a mere consent of the parties, but

Must follow a particular form stipulated by the law in addition to compromise. Thus, the purpose of formalism is to alert contractors to step to ensure the stability of transactions, to reassure the same contractors and to protect third parties, and to surround these contracts with a fence of security and confidence in a manner that ensures the integrity of transactions related to it.

Research importance and contributions

The importance of the formal subject is shown mainly in the internet contracts in civil law. Due to the lack of research subject to specialized studies that deal with the problems that may arise in the practical application of the research topic, we seek to prove the existence of traditional formality using electronic writing and electronic signature, Electronic problem search

There are a number of problems, including:

- 1) How to protect the consumer through the Internet through legal formalities.
- 2) How to determine formalities in Internet contracts in general
- 3) The extent to which formal requirements legally imposed as a pillar of the contract can be met using electronic writing and electronic signature.
- 4) The extent to which an electronic notary can document the contract through the Internet.
- 5) How to prove the contracting over the Internet when the legislator imposed some formal conditions in the proof
- 6) How to determine the law applicable in the form of contracts over the Internet.

Research Plan

We studied the subject in accordance with a scientific plan that includes its division into a section that includes four topics. The first topic we devoted to defining the electronic contract. The second topic will deal with the definition of its elements of affirmative and acceptance. We will discuss in the third section the formality in electronic contracts in its formal and informal form. Legal actions excluded from the scope of electronic formality. We did not overlook the conclusion of the research to accommodate the most important implications, and contains the most prominent results that result.

The first topic: what is the electronic contract?

The definition of a contract is based on the determination of the legal provisions applicable to a given case, or on the search for its nature and the definition of what it is to be included in a category prior to the application of its rules on the specific contractual relationship and at the same time linked and incorporated into a category with a specific legal system, where the description or form, and the form always is the editing of a written document or the writing of the contract, but the so-called computer that makes the contract in question is a distinctive form.

In its definition of the electronic contract, the legislation differed from Jordanian legislation (No.

85 in 2001) to electronic transactions as "an agreement which is held by electronic means in whole or in part."

The Dubai Transaction and Electronic Commerce Law (No. 2 in 2002) did not define the electronic contract, although it indicated that (for the purposes of contracting, the offer and acceptance may be expressed in whole or in part through electronic correspondence.)

An electronic contract is a normal contract but it acquires electronic character through the means by which it is held or is concluded. Where the subscriber has to be connected to the Internet remotely, and therefore we can find the definition of the electronic contract as (an agreement in which the acceptance and acceptance of an international network open to remote communication by means of visual and / or audio thanks to the interaction between the positive and the opposite.) For any other contract, may be returned to all services, objects and goods as long as they are not outside the deal, and that the parties are not different from the parties to any business relationship of buyers, sellers or consumers, and such contracts are between private or public projects, they can be between private individuals [1].

What is the Iraqi legislation did not provide a text dealing with the subject of electronic contracts, but with reference to the text of Article (73) of the Iraqi Civil Code, which we can fill the lack of the subject of electronic contracts, the article stated that (contract is the relationship of the affirmation issued by one of the contract to accept the other on). The text of the article shall accommodate all contracts, including electronic contracts [2].

Article (88), which dealt with the subject of contracting between absentees, also addresses some of the treatment of this problem and the question of identifying the adaptation of contracts made by means of immediate communication such as telex and facsimile, where it states: "The contract by telephone or in any similar manner shall be deemed to have been present with regard to time and absentees in relation to the place".

At the present time and in line with the development in the field of technology was required by the Iraqi legislator to enact legislation to provide the foundations and legal frameworks for electronic transactions through modern means of communication, so was legislated the law of electronic signature and electronic transactions no. (78) for 2012 published in the Iraqi newspaper with the number 4256 on 5/11/2012 and therefore agrees with the irrigation that defines the electronic contract as "the one in which the offer and acceptance are expressed and met in whole or in part through programmable electronic devices that connect a network of multimedia communications that may be open or closed" [3].

That is, the contract which is made solely on the basis of the agreement of the parties, namely, the acceptance and acceptance of the use of such techniques from the Internet, e-mail, remote communication, web page services and web links whether those devices are programmed for the purpose of contracting on behalf of or on behalf of the parties.

The e-contract is characterized by its global reach, which covers all countries because it is made by an open network. The network is available to all who enter it. It is also characterized by its electronic means, which is carried out by electronic devices and programs that convey the expression of the will of the contractors to each other without a contemporary physical presence. To say that the electronic contract is distinguished from the traditional contract of the following faces:

- 1) The electronic contract is not installed on a paper support other than the traditional contract which is affixed to a paper support. In the electronic contract, the contractual mechanism is stripped of its physical base [4].
- 2) The contracting parties in electronic contracts are located in different countries and carry out their obligations electronically across the borders of those countries. At other times, the implementation of the obligations arising from the electronic contract is done by physical delivery, in any conventional way, but what

we find in the traditional contract is also done in a traditional manner.

- 3) The payment method is also different in terms of the method of paying the price. The payment is delivered in the electronic contract by an electronic payment method that may be credit card, electronic money or electronic networks [5]. In conventional contracts, payments are made in the traditional way [6].

It is necessary for the electronic contract to have the availability of the consensual element and the existence of the consensual agreement depends on the convergence of the expression, i.e. the consensus of the offer and the acceptance and convergence. If there is no concurrence, the contract is not held, so it is necessary to stand on the elements of the electronic contract represented by affirmation and acceptability for its privacy and this is what we focus on in the next topic.

The second topic: elements of the electronic contract

In order for the contract to be held in general, whether it is a contract by conventional means or a contract by electronic means, a contract must be made by one of the contracting parties, followed by acceptance by the other party, and the offer must be accompanied by acceptance, so we will study the positive in general and then follow the acceptance study.

First: the positive

The affirmative is a firm and complete offer to contract under certain conditions directed by a person to a particular person or to non-self-appointed persons or to all [7]. It is defined by some as "the expression obtained by one of the litigants directed at the other party for the purpose of having a legal effect." [8]

The expression of will is not considered positive unless it is a pool of elements that qualify him to perform this function, which includes the existence of a firm will because it does not contain all elements that do not imagine the contract without it.

The affirmative function of formulating a specific project can be transformed into an agreement once

it has been declared to be acceptable to it, which is different from the invitation to negotiate, which is merely the declaration of an abstract desire to contract with the intention of finding those who have a desire to contract or with the intention of soliciting it. The call to make a specific offer for the contract or a positive.

The affirmative must therefore contain the essential elements that the contract does not contract by default, which defines the nature of the contract and its distinction from other contracts, which include determining the place of contract, fixing the price, and any expression of the desire to contract does not include these elements is not a positive but an invitation to negotiate the person. The contracting party may not obligate itself to contract if the other party accepts it unless it has specified the fundamental issues of this contract. Moreover, the expression of the contract by the contract is an expression of a will that is legally directed to effect a legal effect so that the consensual will be achieved, and that the affirmative must include the substantive issues of the contract, since it cannot be said that another will share the will of the debtor in the same direction to contract only if it accepts the positives of the determination of the substantive issues.

Since the personality or character of the other contracting party may be an essential element of the contract when the contract is considered personal, the public announcement, which includes the determination of the core issues of a contract of personal consideration, is nevertheless not positive, but is an invitation to contract because the character of the other contractor. Which is an essential element of the contract is still not defined. Contracts that do not take into account personal considerations are the only ones in which a public advertisement is considered an expression of a positive nature of the contract.

It is not sufficient for us to be in the expression of an affirmative contract that the expression includes the determination of the substantive issues of the contract, but moreover that this expression does not imply that the intention of the contract is legally binding if the other party accepts it. If the

expression contains what negates this intention, then we shall not be positive but a call to contract [9].

It is clear from the above that the criterion for distinguishing between the call to contract and the affirmative is the intention to conclude the contract. All that precedes the final determination and is aimed solely at preparing it is not a positive one but rather a negotiation [10]. Calling for negotiation is a positive step, but positive is a step to the decade.

The negotiations conclude with the conclusion of the contract and not with the affirmative. Although the affirmative is important as a firm and absolute expression of the contract to include the essential elements of the future contract, it remains a unilateral will which is the obligor and the contract only if that will coincides with another will, Article (85) of the Iraqi Civil Code states: "If one of the contractors requires that the contract be held, the other contract shall be accepted in the manner corresponding to the affirmative".

It should be noted that the question of the return of the positive before it is accompanied by acceptance, if the negotiation on the Internet resulted in positive, can this withdrawal be withdrawn before associating with acceptance?

We see that the principle set out in article 84 of the Iraqi Civil Code imposes on the positive obligation to remain in effect if a period is specified for the other party to accept or reject the source of the obligation of the obligor is his sole will to return before the acceptance of the other party.

However, this principle does not apply to the positive outcome of negotiations over the Internet because this is not only produced after long negotiations, nor is it the will of one party to be able to return. Rather, it is the result of the mutual will of both parties. Is called a common positive, and then the affirmation indicates the great confidence generated by the negotiations with both parties, and therefore they have an obligation not to prejudice this confidence generated by their behavior.

The necessity of the stability of transactions and the imposition of a legal principle is one of the general principles of law, which is the principle of good

faith in respect for the trust and trust generated by the negotiations, all of which entail a commitment not to return the positive outcome of the negotiations through the Internet [11].

Second: Acceptance

This must be accepted by the other party as an expression of his willingness to contract and must be specific and directed to bring about legal effects. And that the buyer's consent must include specific elements such as the contracted object and service, the price and the method of delivery, the method of delivery, and the manner in which the after-sale service is performed. It is clear that the reference to these elements aims to converge positively with the acceptance of the essential elements of the contract, without agreement [5].

As a result, the expression of acceptance should not include the determination of the detailed issues not specified by the assignee in its acceptance of the contract but retained at a later date without suspending the contract on this agreement. The intention of the debtor is to retain it for a later agreement and it may be understood that the non-agreement does not prevent the contract from being concluded, and therefore we are not in the process of expressing acceptance of the contract but we will have a new affirmation of the contract also should not include expression of acceptance on some issues which was set forth in the affirmative to a subsequent agreement as detailed issues.

The acceptance of the affirmative must be in full conformity if it contains what is amended in the affirmative. It does not have the rule of admissibility, but it is a new affirmation which, when accepting a contract under a new will, may not result in a direct effect. The first answer is followed by the fall of positive [1].

It is noted that there must be a convergence between the positive and the acceptance in order for the contract to take place. If this encounter does not occur because there are two identical desires, the contract does not take place, either because the expression of the positive is not related to the knowledge of him or because the positive has fallen, he did not contact the knowledge of the

positive, so until the consensual agreement is reached and the contract is concluded, the expression of the affirmative must meet with the expression of acceptance so that it can be said that each of them was associated with the other. The expression of affirmative action shall not be nullified of the projected his reasons, and must be related to a third expression of acceptance of the knowledge of the face of it.

The general rule is that the contract comes from the moment when the will of the parties meets. This principle faces difficulties in its application in the case of electronic contracts, since the parties are not present in one place.

Determining the moment of the meeting leads us to the following question:

Is online contracting a contract between those present or a contract between absentees? In other words, does the contractor combine a contract board, or are both contractors apart from each other and not together?

Some jurists have a standard of time to distinguish between the contract between those present and the contract between the absentees. In the contract between those present, the momentary moment between the acceptance and the acknowledgment is waived, and the debtor knows of acceptance at the time it is issued. In the contract between absentees, there is a significant period of time between the issuance of acceptance and the knowledge of positive [8].

Some scholars believe that the criterion of time is neither universal nor restrictive. Time is not the only element that distinguishes between the contract between those present and the contract between the absentees. There are three elements combined, namely the element of time, the element of time, or the element of preoccupation with the affairs of the contract [12].

If we return to the electronic contract we find that there is no time interval between each of the contractors contract online, such as contracting by telephone is a contract between the present rule and the electronic contract is held in the place and time

in which the applicant knows the acceptance unless there is a text or agreement, otherwise.

That the issue of determining the time and place of electronic contract is one of the most important legal issues that raise a lot of problems under the contract online, because of the divergence of the parties and their absence in one place, which led to a difference in the provisions of the legislation, which adopted different positions of the issue of identification Time and place of establishment of electronic contract.

In its article 15, the Model Law on Electronic Commerce (1996) took the acceptance theory into the determination of the time and place where the electronic contract was created. The receipt of the data message at the time of entry of the data message is the information system that is assigned or the time of the recipient's retrieval of the data message if the data message was sent to an addressee information system that was not the system that was assigned.

Article 17 of the Jordanian Electronic Transactions Act also deals with the question of determining the time and place of the establishment of an electronic contract. Article 17 states that "the information message is sent from the time it enters the information processing system that is not under the control of the originator or the person who sent it the letter on its behalf unless otherwise agreed between the originator and the addressee".

That is to say, the acceptance theory determines the time when the information message is entered into a system that is not under the control of the originator.

Article 18 provides that: (a) The interpretation of the information message has been sent from the place where the originator's work is located and has been received at the place where the addressee is located, and if it has no place of business, The originator of the message and the addressee have agreed otherwise. (b) If the originator and the consignee have more than one place of business, the nearest place to the transaction shall be deemed to be the place of dispatch or delivery or, where it is

not possible, the principal place of business shall be the place of dispatch or delivery.

The previous article specifies where the electronic contract is to be located at the consignee's place of business, i.e., the place where the computer is located and the message of information sent by the originator is received. This is the case if there is one place of business for the addressee [13]. In case of multiplicity of work premises, the place where the electronic contract is located is the closest place to be related to the type of contracts and the proximity and connection to where the goods are sent and where they are delivered.

As for the Iraqi legislation and according to the provisions of Article (87) of the Civil Code, it takes the theory of science to accept the contract by correspondence has been done at a time when the positive knowledge of acceptance and where this science. The Iraqi legislator also considered the arrival of acceptance as a presumption of knowledge according to the second paragraph of the said article, since it is presumed that the positive knowledge is acceptable in the time and place of his arrival, which is a presumed and not a valid science [14].

Section III: Formality in Electronic Contracts

That an electronic contract, like the traditional contract, would take place as soon as the two parties exchanged their expressions without the need for another measure, unless the law provided for a specific form to be followed, that form should be completed in the manner prescribed by law.

The shape of a corner of the conference is no more than a mother just writing or the need to register in an official record.

First: informal formality

It is imperative that the contractors need to write their contract without the need to document it before a competent official and such form of formality can be applied in electronic contracts after most of the laws have recognized that the electronic signature is the most important condition of the writing is reliable and should be invoked in the face of those who deny it [15].

Article (13) of the Jordanian Electronic Transactions Law stipulates that "the information message is considered to be one of the means of expression of the legally accepted will to express the acceptance and acceptance with a view to establishing the contractual obligation." Article 7 (a) of the same law also states that "For the same legal effects of documents, written documents and written signature under the provisions of the legislation in force in terms of binding the parties or the validity of the evidence."

Article (9) of the Dubai Electronic Transactions Law makes no doubt about the possibility of invoking and protesting in formality and electronic form where it states "if the law requires that any written statement, document, record, transaction, evidence or text on the order of certain results in the absence The document or electronic record meets this requirement."

After reviewing the previous texts that authorized the electronic signature, the electronic signature should be defined and its difference with the ordinary signature. The recognition of the effectiveness of electronic bonds remains incomplete and useless, requiring a signature in the handwriting of its owner, which necessitated the introduction of electronic signature as an inevitable result of bonds and electronic contracts.

(2) Of the UNCITRAL Model Law defined the electronic signature as "data in electronic form included in a data message or additive to it and logically associated with it may be used for identification the location of the data message and the site's consent to the information contained in the data message.

The Egyptian legislator defined the electronic signature under Law No. (15) Of 2004 in Article (3) as (letters, numbers, symbols or signs of a single character that allows identification and distinguishing the signature of the signature person.

The electronic signature and the electronic transactions of Iraq No. 78 of 2012 have defined the electronic signature under paragraph (IV) of Article (1) as "a personal mark taken in the form of letters, numbers, symbols, signs, sounds or other and has a

unique character indicating its proportion to the site and approved from the certification authority.

It is clear from these definitions that e-signature has two basic functions:

First: Identification of the signature holder.

The second is the expression of the person's satisfaction with the content of the bond, its approval and the direction of its will to abide by its content.

In order for an electronic signature to achieve its functions, it is required to be exclusive to the site alone, as well as to be created by electronic means controlled by the site exclusive control. Finally, the signature link must include the electronic document in such a manner as to permit disclosure of any modification, Edit the document data or signature items.

That an electronic signature can perform the same role as the traditional signature, provided that the general rules of proof are capable of accommodating the provisions of the electronic signature, but the general rules of evidence appear to be insufficient [16]. This may be the reason for the issuance of electronic signature laws as in Egypt.

Second: Official Formality

Some contracts are not valid unless they meet the formality of their ratification by a certain party such as contracts for the sale of the property or mortgage it does not convene unless recorded in the real estate registration department.

The question arises as to the extent to which the electronic contract can be reconciled with the requirement of laws, the need to register the contract in such departments and the need to certify it to the competent staff.

That the need to document and formalize the contracts requires the presence of a third party to carry out this task and thus this method provides assurance that the contract was made with the person required to contract after verifying his identity and electronic signature.

The names of those who carry out this task differ from the Dubai Transaction and Electronic Commerce Law, which is called the Certification Services Provider. On the other hand, the Tunisian Electronic Commerce and Exchange Act No. 83 of 2002 was called the Electronic Authentication Service Provider [24].

It is the responsibility of the service provider to issue the electronic certification certificate defined in paragraph (11) of Article (1) of the law of electronic signature and electronic transactions of Iraq as (the document issued by the certification authority in accordance with the provisions of this law, which uses proof of the proportion of electronic signature to the site.)

A certification service provider is a third party that is neutral, individuals, companies or independent entities acting as intermediaries between dealers [17].

That the service provider producing the electronic signature system is a person who ensures the validity of the digital certificate or certificate issued by the validity of the electronic signature, which has legal implications for the service provider, and also arranges the service provider's liability to compensate the infringer of that signature in case the source of the damage is the invalidity of the data relating to the digital certificate issued by the service provider or the inaccuracy of the data on which the electronic signature system was issued [16].

The legal status of the certification service provider has raised controversy about its legal adaptation, some have tried to compare it with the status of guarantor [4]. Others have tended to point out the idea of likening the status of the legal service provider to the Notary Public by calling it the "electronic notary public."

Others said that the legal status of the supplier of certification services is a new legal status and has become increasingly important with the widespread exploitation of the information network in the field of trade, transactions and contracts in general [3].

It appears that the legal status of the supplier of certification services is similar to that of the notary

public, especially in countries where adequate and adequate legislation has not been issued to give an appropriate legal description of such a center, on the one hand, and on the other, contractor identities, fingerprints and other codes for those who wish to use them.

The primary function of the certification service provider or electronic notary [18] is to identify the identity of dealers in electronic transactions, and determine their legal capacity to deal, not to mention verify the content of this transaction and safety, as well as seriousness and after fraud and fraud.

The idea of electronic authentication is a viable solution to the problem of electronic formality. The documentation body is responsible for documenting the electronic contract, which makes the application of the idea of the ordinary notary in the Real Estate Department in Egypt and the Real Estate Registration Department in Iraq, considering that each is a neutral and independent witness to the contract between Parties, in general, that the electronic notary may not be considered a public servant, while the usual binder is a public official in accordance with the powers vested in him under the law, such as Law No. 33 of 1998, Iraqi civilian No. 83 of 1969, which in Article law makes it compulsory (51) of ratification by public and private agencies and criminal notary public or before the court hearing the case.

The electronic formality has aroused the attention of legislators in many countries and started to develop solutions to this crisis through legislation that applies rules on e-contracts to some legal acts, but some legislators, on the other hand, retained a number of legal actions in the traditional form instead of electronic form these behaviors we will try to review it in the next section.

Section IV: Excluding some behaviors from the scope of electronic formality

Some laws have excluded a number of contracts and actions from subject to the provisions of electronic formality due to multiple considerations, the most important of which are the seriousness and

importance of certain acts as the ship's mortgagor and the rights granted to the property in general.

Article (3) of the electronic signature law and electronic transactions of Iraq provided for

First - the provisions of this law apply to:

- A. Electronic Transactions Performed by Natural or Moral Persons.
- B. Transactions agreed by the parties to their implementation by electronic means
- C. Securities and electronic trading.

Second: The provisions of this law shall not apply to the following:

- A. Transactions relating to personal status and personal items.
- B. The creation of the will and the prevention of use and the amendment of their provisions.
- C. Transactions relating to the disposal of immovable property, including related agencies, title deeds and the creation of rights in kind, except for leases of such funds.
- D. Transactions which have been prescribed by a particular form of law.
- E. Court proceedings, judicial declarations, declarations in attendance, inspection orders, arrest warrants and judicial decisions.
- F. Any document required by law to be registered with the notary public.

The Jordanian Law on Electronic Transactions stipulates in Article 6 that "The provisions of:

This law shall not apply to the following:

- A. Contracts, documents and documents which are organized in accordance with specific legislation in a specific form or by specific procedures, including:
 - 1) Create and modify the will.
 - 2) Establishment of the prevention of use and amend its terms.
 - 3) Transactions in the disposal of immovable property, including related agencies, title deeds and the establishment of in-kind rights, except for leases of such funds.
 - 4) Agencies and transactions relating to personal status.

- 5) Notices concerning the cancellation or termination of contracts for water, electricity, health insurance and life insurance services.
- 6) Lists of cases, pleadings, notifications of judicial notification and court decisions.

B. Securities except as provided in special instructions issued by the competent authorities pursuant to the Securities Law in force.

In contrast to the different legislations that exclude certain behaviors from electronic formality, some note [19] that electronic formality had become inevitable, and that all types of contracts could be concluded electronically, although they were formal contracts, especially after the profession of the electronic notary had appeared.

In this regard, it is noted that the Jordanian legislator has excluded personal status issues from the scope of electronic contracts and kept them subject to traditional methods in order to protect the family entity from threats of speed and recklessness as well as for the commandment.

As for the work of the stay, the Jordanian law expressly provided for the exclusion of the stay from the scope of the Jordanian Electronic Transactions Law. The Dubai Transaction and Electronic Commerce Law did not expressly exclude the stay but stipulated the exclusion of matters relating to personal status. It is possible to measure the text of the Jordanian law also notes that the Jordanian law has excluded the work of management (leasing) located on the property of the exception and keep them subject to the law in the sense of the possibility of leasing the property electronically and contract is true since the lease does not constitute the Big Toura [20].

The UAE law prohibits even renting and keeping it subject to traditional contracts. It is advisable to adopt the same concept in the Jordanian law, which allows leases to enter the electronic field because of the low risk compared to acts of disposal such as sale, pledge. The Jordanian legislator ruled out the claims of submission to electronic formality because the petition is still preparing a form sheet and must include a formality statement or else it will respond [21].

The law of the Emirate of Dubai for transactions and e-commerce did not provide for this exclusion. It is also noted that the Jordanian legislation excluded securities. However, he reiterated the possibility of subjecting them to the law of electronic transactions if the instructions issued by the competent authorities stipulated the Jordanian securities law in force. Bond through the Internet and computer is one of the most important aspects of development and speed, and the business environment needs to speed in dealing with negotiable bonds in general.

The law of the Emirate of Dubai provided for the exclusion of negotiable bonds from the scope of the law of transactions and electronic commerce, and was the first legislator in the emirate of Dubai to benefit from the provisions contained in the Jordanian law, which regulated the handling of shares and electronic bonds as this is one of the most important requirements of speed in the commercial environment Unless you agree with it.

However, it should be noted that the position of the legislator in the Emirate of Dubai was successful when he ruled that the deportation includes the commercial papers (the money transfer, the instrument and the bill of exchange), where the most important characteristic of these papers is the principle of formality and without taking into account that form, the paper loses its value and becomes a normal debt subject to the provisions of civil laws [21].

Conclusion

At the end of this research we hope that this study has achieved its intended purpose is to shed light on the concept of form in the legal actions and through it can be the most important results related to this field, as well as proposals that contribute to the promotion of this concept.

First: The Results

- 1) With regard to the position of the Iraqi legislator of formality, it takes the provisions of modern laws that make consensual a general principle and formality, except an exception.

- 2) The form in its precise sense, which is a special image of the expression of will, is not limited to traditional behavior, but extends to electronic contracts that have opened new horizons to human thought in all fields and left a clear imprint on the nature of civil and commercial transactions and means of proving them. The traditional form of writing is being replaced by electronic form. Instead of the traditional records of different persons and departments, electronic records exist. Instead of the notary, the certification service provider provides a signature instead of a traditional signature.

Second: Proposals

- 1) In the light of the Iraqi legislator issued a law on the use of electronic means to express the will by law for the purpose of contracting, because these methods have imposed themselves in most aspects of life, and if it is useless to waste time and effort in the application of the prescribed texts that still require that the signature handwritten and the thumbprint at a time when the response of the legislative institution to development is a basic need to strengthen the existence of the state and the flexibility of the legal system in the promotion of the principle of legality and in this regard we propose and on the basis of what is stated in the provisions of Article 28 that the regulations issued by the Council of Ministers or instructions by the Minister Communications in (78) for the year 2012 in a manner that facilitates the processing of applications, documents and transactions organized by the provisions of this legislation, which is consistent with the development in the field of information and communication technology and Internet activities and provides the foundations and frameworks to electronic transactions through modern means of communication and to encourage the development of the information technology industry and the development of electronic signature services and to keep abreast of legal developments in the electronic aspects and to

adapt and rehabilitate the traditional legal system in harmony and the modern spirit of modern communication.

- 2) The formality of some electronic contracts that deal with original or collateral rights in kind can be provided in order to safeguard the rights of the parties to the contract by adding terms and conditions that deal with the documentation of electronic transactions in national high quality and reliable electronic centers and servers for the protection of parties to the contract, The judiciary in the event of a dispute and must benefit from international experience in this regard as a comparative legal system can be used in the development of legal provisions governing the rights and duties of the parties to the electronic contract.
- 3) The Iraqi legislator has made the computer data equal to the written evidence in terms of the authentic civil evidence for the accuracy of the data contained in these data and because it leads to certainty no less powerful than the possibility of paper bonds. The law of electronic transactions and the electronic signature No. (78) For the year 2012 have benefited from the Arab legislations such as the Jordanian legislation on electronic transactions No. 85 of 2001, the Dubai Transaction and Electronic Commerce Law No. 2 of 2002 and the Model Law on Electronic Commerce of 1996.

References

1. Dr. Samir Abdel Samie Ouden, Electronic Contract, Al Ma'arif Press, Egypt, 2005.
2. Abdul-Majeed Al-Hakim, Abdul-Baqi Al-Bakri and Mohamed Taha Al-Bashir, Al-Wakiz in Commitment Theory, C1, Al-Ahliya Publishing Company, Baghdad, 1980- .
3. Hadi Younes, Legal Organization for Electronic Commerce - Comparative Study, PhD Thesis, Faculty of Law, Mosul University, 2002.
4. Dr. Tony Michel Issa, Legal Organization of the Internet, Dar Sader Lebanon, 2001.
5. Dr. Raafat Radwan, the World of Electronic Commerce, Arab Organization for Administrative Development, Cairo, 1999.
6. Osama Abu Al-Hassan Mujahid, The Privacy of Contracting Through the Internet, Research Presented at the Law, Computer and Internet Conference, Volume II, United Arab Emirates, 2000.
7. Dr. Mohammed Labib Shanab, Al-Wajeez in Sources of Commitment, 3, Dar Al-Nahda Al-Arabiya, Egypt, 1999
8. Dr. Abdul Razzaq Al-Sanhoury, Al-Waseet in Explaining Civil Law, C1, Sources of Commitment, House of Revival of Arab Heritage, Beirut, Lebanon .
9. Dr. Mohammed Amin Al Roumi, Online E-Contract, I 1, University Publications House, Egypt, 2004.
10. Dr. Jamil Cherkaoui, General Theory of Commitment, C1, Sources of Commitment, Dar al-Nahda al-Arabiya, Cairo, 1976.
11. Saad Hussein Abdul Melhem, the Differences in Online Contracts, Journal of Law, Vol. II, Thirteenth Edition, 2005.
12. Dr. Saad Yahya and Muhammad Muzaffar, Principles of Law and Obligations, 1, Dar Okaz, 1987.
13. Saleh Ahmed Abtan, Formality in Electronic Contracts, Rafidain Magazine, Volume II, Number Twenty-Fifth, 10th Year, 2005.
14. Jassem Al-Aboudi, On the Contractual Correspondence and Differences in it, Comparative Law Journal, No. 29, 2001.
15. Dr. Mounir Mohammed Al-Genihi, d. Mamdouh Mohamed El Genihi, The Legal Nature of the Electronic Contract, Dar Al-Fikr Al-Jami'i, Egypt, without a year printed.
16. Dr. Abdul Fattah Bayoumi Hijazi, Electronic commerce and legal protection, the thought of the university, Alexandria 2004 page201.
17. Dr. Ibrahim Dasouki Abu-Lail, legal aspects of electronic transaction council of scientific publishing, Kuwait 2003 page71.
18. Dr. Adel Abu Hashima Houta, Contracts information services in private international law, Arab Renaissance Egypt 2004 page 195

- 19.** Dr.Khalid Mahmoud, the contract of the electronic the thought of the university edition 1 egypt 2006 page 15
- 20.** Dr. Abbas Aboudi , explain the provisions of the code of civil procedure ,dar books for printing and publishing , mosul , without a year printed , page 228 and beyond
- 21.** Dr. Fawzi Mohammed Sami, Explain the Iraqi Trade Law, Edition no.tabadah al-zahra , Baghdad 1972 page 10
- 22.** Dr. Abdul Razzaq Al-Sanhoury, Al-Waseet in Explaining Civil Law, C1, Sources of Commitment, House of Revival of Arab Heritage, Beirut, Lebanon.
- 23.** Hadi Younes, Legal Organization for Electronic Commerce - Comparative Study, PhD Thesis, Faculty of Law, Mosul University, 2002.
- 24.** Flayyih, H. H., Mirdan, A. S., & Elkhaldi, A. H. (2021). Critical Success Factors Of Strategic Accounting Information System And It's Relation With Strategic Decisions Effectiveness. The Annals of the University Of Oradea, 30(1st), 227.