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The impact of electronic transformation on the expression of will

Abdulmohsin Kareem Shaghati

College of Economics and Administration / University of Iraqia
abdulmohsin.k.shaghti@aliraqia.edu.iq

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Abstract:
Technological development in all areas of life in general, and law in particular, has influenced the formulation of legal rules, including those related to the expression of will in concluding contracts. After the expression of will was traditionally done orally, in writing, or by sign, the methods of expressing will have multiplied with the multiplicity of means available to express it. This forced the legislator to amend laws at times, and enact new laws at other times, including the enforcement of the Electronic Signature and Electronic Transactions Law in an attempt to fill the gap left by the development in the field of contracting. This study aims to shed light on the most important effects that occurred as a result of the electronic transformation and analyze them by presenting the texts related to the expression of will in Iraqi legislation.
In order to present the study comprehensively, we divided it into three sections. The first was devoted to explaining the forms of expressing the will in the electronic transformation. Then, in the second section, we explained the effect of the electronic transformation on acceptance. In the third, we presented the effect of the electronic transformation on acceptance, and we concluded the study with the results and recommendations.

Keywords:
Electronic contract, electronic transformation, electronic offer, electronic acceptance, electronic expression of will.

Corresponding Author: Abdulmohsin Kareem Shaghati: abdulmohsin.k.shaghti@aliraqia.edu.iq

the introduction:

The development in the field of communication has not been limited to conversation or electronic message, but has extended to the possibility of forming a contract between two people via electronic means, or between a person, whether natural or legal, and an automated electronic intermediary. As a result, many voices have emerged calling for the enactment of laws to regulate this relationship, considering them as modern methods for concluding a new type of contract.

Hence, the question of how to express one's will electronically can be raised from several aspects, including the appropriate means of concluding the contract, which prevents the parties from falling into a defect in the will, and ensuring the identity and capacity of the contracting party. The forms of electronic contracting may develop with the development of the means of contracting electronically, which requires us to keep pace with these forms and attempt to regulate them legally, and to eliminate any defects that arise from them.

Especially since electronic contracting is often used to harm contracting parties in general and consumers in particular, the legislature must find a means of protecting electronic contracting parties to keep pace with this development, which could be exploited by unscrupulous individuals to commit illegal acts that undermine trust among those involved in this field.

Importance of research:

Studying the legal aspects related to the will of the contracting parties is of particular importance, as these issues require that the parties have sufficiently free and informed will when negotiating and expressing their will, whether in an electronic offer or an electronic acceptance. This ensures that the will of each contracting party is free from any defects that may taint it, thus ensuring the principle of stable transactions.

Research problem:

The research problem arises from examining the legality of expressing one's will electronically, the manner in which it is expressed, whether explicit or implicit, the ruling of the electronic contract council between present or absent parties, and other issues that may arise in this regard.

From the above, we can raise several questions regarding this problem, as follows:

- What is electronic expression of will?
- What is the impact of electronic transformation on offer and acceptance? And to what extent is Iraqi legislation keeping pace with this development?

Research methodology:

In order to complete this research, we relied on several methods, including the comparative method through the use ofBy comparing the texts of the Civil Code with special legislation such as the Electronic Signature and Electronic Transactions LawThe descriptive approach to explaining textsResearch topic specificThe analytical approach to interpreting and analyzing legal texts, and sometimes the critical approach to presenting the problems raised regarding the topic.

Structure Search:

To cover all aspects of the research, we must divide the research into three sections as follows:

Section One: Forms of Expression of Will in Electronic Transformation.

Section Two: The Impact of Electronic Transformation on Positivity.

Section Three: The Impact of Electronic Transformation on Acceptance.

The first topic: Images expressing the will to electronic transformation

There are many ways to express one's will. Some are traditional, whether verbally, in writing, or through a common sign, the meaning of which people agree. [(1)], including expression by electronic means, which may be through electrical, magnetic, optical, electromagnetic devices, equipment, or any other means used to create, process, exchange, and store information. [(2)].

The Iraqi legislator included in the text of Article 79 of the Civil Code the phrase "and by adopting any other course that the circumstances of the case leave no doubt as to its indication of consent." This opened the door for those working in the field of this law to use analogy to introduce new means of expressing the will that did not exist at the time of enacting this text. Some believe that expressing the will via a computer can be included under the classification of expression in writing, but it is electronic writing that can be read by machines and by humans. [(3)].

However, when enacting the Electronic Signature and Electronic Transactions Law, the Iraqi legislator included texts indicating the adoption of modern means of expressing will, and in

[1]Article 79 of the Iraqi Civil Code states that: "Just as the offer or acceptance may be made verbally, it may also be made in writing, by a commonly used sign, even if it is not from a mute person, by actual exchange indicating consent, or by adopting any other course of action that the circumstances of the case leave no doubt as to its indication of consent."

[2]- Article 1/Seventh of the Electronic Signature and Electronic Transactions Law No. 78 of 2012, which states that: "... Seventh: Electronic means - electrical, magnetic, optical, electromagnetic devices, equipment, tools, or any other similar means used in creating, processing, exchanging, and storing information."

[3]Osama Mujahid, Privacy of Online Contracting, Dar Al Nahda Al Arabiya, Cairo, 2000, p. 34.

one of them, he left the door to analogy. [4]To introduce new methods, and not to touch the amendment of the aforementioned law.

In the era of electronic transformation, the will can be expressed via e-mail, via the website, or via conversation through various chat programs. Chat), and this is what we will discuss in this section as follows:

The first requirement: Expressing your will via email.
The second requirement: Expression of will via the website.
The third requirement: Expressing one's will through conversation.

The first requirement: Expressing your will via email

Email is a means of transferring messages or files within a system or between computers, and this is usually done using a specific storage and transfer method or a method of sending texts electronically from a central computer or end-to-end to another end.[5], or it is "any message, regardless of its form, whether text, audio, or accompanied by pictures or sounds, that is sent over a public communications network and is stored on one of the servers of this network or in the terminal equipment of the recipient, so that the latter can retrieve it."[6].

The Internet allows its audience to contract via email, by each person having his own email address. The email address is

[4]- Article 1/Tenth of the Electronic Signature and Electronic Transactions Law No. 78 of 2012, which states that: "The electronic contract is the link between the offer issued by one of the contracting parties and the acceptance of the other in a manner that proves its effect on the subject of the contract, which is carried out by electronic means," as well as in Article 18/First of the same law, which states that: "The offer and acceptance may be carried out by electronic means."

[5]Abdullah bin Nasser bin Ahmed Al-Omari, Criminal Protection of E-mail (A Comparative Study of Authenticity), Master's Thesis, College of Graduate Studies, Naif Arab University for Security Sciences, Riyadh, 2010, p. 22.

[6]- Abdul Hadi Fawzi Al-Awadhi, Legal Aspects of E-mail, Dar Al-Nahda Al-Arabiya, Cairo, 2006, p. 13.

characterized by being an easy way to send acceptance and approval over the Internet, in addition to obtaining it for free, through many main headquarters on the Internet, which provide free email addresses, provided that the Internet is connected while using the mail (Online).

With this mail available to the user community, communication is available across the world, and this system has many capabilities that make a big difference from the traditional mail system, as it is: -Electronic - Able to accept messages of various types and sizes, can correspond in record time, and allows users to categorize their message creation programs [(7)].

In this method, the will of the parties to the contractual relationship to be concluded is expressed by sending messages through this medium. If the message includes all the obligations related to the contract, this is considered an offer. In this case, the recipient is informed of the offer made upon viewing his email inbox, and the person accepting it can respond to the offer made in the same way.

The Iraqi legislator has given e-mail messages an official character, when he considered them electronic documents. [(8)], thus, granting it the legal authority and protection stipulated in the Electronic Signature and Electronic Transactions Law.

The second requirement: Expression of will via the website

A website is defined as: "A group of pages, texts, images, and video clips linked together according to a coherent and interactive structure, aiming to display and describe information and data about a party or institution, such that access to it is not limited by time or

[7]- Nidal Ismail Barham, Provisions of E-Commerce Contracts, Dar Al Thaqafa Publishing and Distribution, Amman, 2005, p. 43.

[8]Article 1/Ninth of the Electronic Signature and Electronic Transactions Law states that: "Electronic documents - documents and papers that are created, combined, stored, sent or received, in whole or in part, by electronic means, including electronic data exchange, e-mail, telegram, telex or telegraphic copying, and bear an electronic signature."

place and has a unique address that distinguishes it from other sites on the Internet." [9].

The website consists of a group of pages that enable the user to perform many tasks in different fields such as communications, marketing, sales, and others, as it allows him to communicate with different people; to display information and prices and display different goods instantly, away from the traditional methods of supply and demand, as the website is stable and continuous around the clock.[10]Therefore, we find that commercial companies usually have specific pages that are their websites on the Internet to display their products and services and advertise them on a constant and continuous basis, which is considered a general positive for the network audience who can view the specifications of the product or service and its specific price.[11].

The electronic expression of will through this medium may be expressed in writing or by clicking on the designated place for acceptance, whether that is found as an icon on the website or by pressing the approval button on the keyboard connected to the personal computer or by pressing the input device in the designated place on the website page. [12].

The will can also be expressed through this medium using signs and symbols, which have become familiar among users of the international information network, such as the smiley face sign to indicate approval, and an angry face sign to indicate rejection. This is

[9]- Muhammad Bilal Al-Zoubi and Ahmad Yatishan Al-Shara'i'a, Computer and Ready-Made Software, Wael Printing and Publishing House, Beirut, Lebanon, First Edition, 2004, pp. (351-352).

[10]- Dr. Hesham Al-Arabi, contracting via the Internet from an Islamic Jurisprudence Perspective, a study published in the Journal of the Center for Islamic Research and Studies, Faculty of Dar Al-Ulum, Cairo University, Issue 48, 2014, p. 70.

[11]- Dr. Enas Hashim Rashid, Expression of Will in Electronic Contracts, research published in Risalat al-Huquq Journal, College of Law, University of Karbala, Volume 1, Issue 2, 2009, p. 188.

[12]- Dr. Hesham Al-Arabi, Contracting via the Internet from the Perspective of Islamic Jurisprudence, previous reference, p. 71.

what some jurisprudence sees as the signs not departing from their traditional meaning, except that the new sign is a sign issued by the device, but it expresses the will of the contracting party and not the will of the computer. (13).

Some also believe that expressing the will implicitly in this way is permissible, by the obligee entering his credit card number, from which the value of the item is deducted immediately. In this case, we see that the acceptor did not make any specific statement indicating his acceptance, but rather performed an action that indicates his satisfaction, which is that he entered his credit card number, from which the value of the item subject to the contract is deducted. (14).

The above-mentioned view is currently unimaginable in contracting via a website, as the steps involved in concluding a contract are sequential, and the website does not permit transition to the next step until the previous one has been completed.

The third requirement: Expressing will through conversation

Online chat is a modern means of communication that has spread rapidly because it is general in nature and easy to use. This means helps express one's will through direct conversation with one or more people, whether in writing, verbally, or by using video communication, so that one can write, speak, and see the other party at the same time.

There are many programs used in this method, including Instagram, Telegram, WhatsApp, Viber, Messenger, Snapchat, Tik Tok, and other chat programs. Through this method, the Internet user can, via the chat program (IRC) Talking between one person and another through writing. This program divides the main page into two parts. One party writes his thoughts on the screen of his personal

[13]- Dr. Khaled Mamdouh Ibrahim, Concluding an Electronic Contract (A Comparative Study), Dar Al Fikr Al Jami'i, Alexandria, 2013, p. 177.

[14]- Dr. Enas Hashem Rashid, Expression of Will in Electronic Contracts, previous reference, p. 188.

device in the first part, and at the same time he will see what the other party writes on the second part of the program page. [15].

The contracting parties can also use headphones connected to the device connected to the Internet, which is similar to a telephone, as it enables the two contracting parties to speak directly and express their will through those headphones, and direct conversation through them. It is also possible to express the will by using the camera of the device connected to the Internet, as this feature enables the contracting parties to communicate directly with sound and image, so that the two contracting parties see each other and each of them hears what the other says, and thus the will can be expressed orally, by tongue, writing, or unambiguous sign. [16].

The expression of will here is similar to its expression in a real contract session, given that the expression of will is done directly and in a way that allows individuals to see and hear each other, and even agree on all matters of the contract, write it down, and send it to each other for the purpose of signing. [17].

The second topic: The positive impact of electronic transformation

An offer is defined as the definitive expression of a person's will be directed to another person, offering him a contract according to specific terms and conditions. [18]This expression does not have to be

[15]- Dr. Khaled Mamdouh Ibrahim, Concluding the Electronic Contract (A Comparative Study), previous reference, p. 171.

[16]- Dr. Faisal Mohammed Al-Ghanimi, Expression of Will in Electronic Contracts, research published in the Journal of Law, College of Law, Tikrit University, Volume 3, Issue 2, 2018, p. 156.

[17]Al-Wathiq Atta Al-Mannan, The Conclusion of the Electronic Contract, research published in the Journal of the Faculty of Sharia and Law, University of Omdurman Islamic, Issue 1, 2008, p. 91.

[18]- Dr. Abdul Majeed Al-Hakim, The Mediator in Contract Theory with Comparison and Balance between the Theories of Western Jurisprudence and Their Equivalents in Islamic Jurisprudence and Iraqi Civil Law, Part One, Sources of Obligation (Contract), Baghdad, Al-Ahly Printing and Publishing Company, 1967, p. 38.

in a specific form. [19]The contracting party may express his will in the manner he deems appropriate, provided that it has a meaning that the other party understands. Anything that sufficiently indicates the existence of the will is legally valid for expressing it.

As we mentioned previously, the Iraqi legislator did not specify in the Iraqi Civil Code a specific means for expressing the will, but rather permitted it to be expressed orally, in writing, and by commonly used signs, whether the person can speak or is deaf, or by any other method, provided that it has a definitive indication of consent. [20].

From the above, the ability to express one's will electronically is permissible in Iraqi civil law, in addition to the permission provided by the Iraqi legislator in the Electronic Signature and Electronic Transactions Law No. 78 of 2012 when attempting to define the electronic contract. [21].

From the above, the impact of the electronic transformation on positivity can be demonstrated by examining how this positivity is formed in light of the digital transformation, as follows:

The first requirement: The effect of electronic transformation on positive properties.

The second requirement: The impact of electronic transformation on the conditions of acceptance.

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[19]- Dr. Tawfiq Hassan Farag, The General Theory of Obligation (Contract Theory), Alexandria, Modern Egyptian Office, 1969, p. 64.

[20]Article 79 of the Iraqi Civil Code states that: "Just as the offer or acceptance may be verbal, it may also be by correspondence, by a commonly used sign, even if it is not from a mute person, by actual exchange indicating consent, or by adopting any other course of action that the circumstances of the case leave no doubt as to its evidence of consent."

[21]- Article 1/Tenth of the Electronic Signature and Electronic Transactions Law No. 78 of 2012, which states that: "The electronic contract is the link between the offer issued by one of the contracting parties and the acceptance of the other in a manner that proves its effect on the subject of the contract, which is carried out by electronic means," as well as in Article 18/First of the same law, which states that: "The offer and acceptance may be carried out by electronic means."

The first requirement: The impact of electronic transformation on positive characteristics

Electronic medium means: "A computer program or electronic system or any other electronic means used to carry out an action or respond to an action with the intent of creating, sending or receiving an information message." [22].

This type of acceptance requires that it be made through an electronic medium, which is the use of an audio-visual means that allows the use of still or moving images, sound, or any other means to graphically illustrate the goods and services, which does not raise any problems, as it is sufficient for the acceptance to respect the requirements of transparency and clarity, on the one hand, and the technical means used in processing the images of the products should express a clear security about the product or service, on the other hand, so that it is possible through that image to know the commodity or service that is the subject of the contract with sufficient knowledge that negates ignorance.[23].

This option is currently made possible by 3D imaging technology.3D) and the technology of (4K) or (8K) or (10K) Without any difficulty, and there is nothing to prevent the obligor from being the same as the Internet service provider. There are other people who participate in providing the service, as they intervene in the communication and each of them contributes in turn to its completion,

[22]- Article 1/Eighth of the Electronic Signature and Electronic Transactions Law No. 78 of 2012.

It is noted from the above definition that the Iraqi legislator in this law did not list the means exclusively, but rather left the door open to any new means by including the phrase "any means."

[23]- Muhammad Saad Khalifa, Problems of Online Sales, Dar Al Nahda Al Arabiya, Cairo, 2004, p. 55.

including the communications worker, the information supplier, and the port supplier. [24].

The offer in electronic contracting is similar to the offer in contracting via television in that in both cases there is no paper support. Despite this similarity, the electronic offer differs from it in that the offeree can always return to the advertisement on the website again or sent to him via email, unlike the offer via television, which is available at specific times. It also differs in the time of the message shown on television, because the time period for television broadcasting is limited, brief, and fleeting. [25].

And Contracting in the context of the electronic transformation is sometimes similar to contracting via television, in that the offer is made remotely. Since contracting online is done through websites, the offer is located on the website of the merchant who owns the product or service, where all information related to the product or service, such as type, price, quantity, and delivery method, is available.

Where the offeror can, through the Internet, display his offer outside the places where he usually displays his offer.-Traditional shops and paper advertisements - the positive is transmitted through communication technologies that cross state borders with complete freedom, without anyone having the ability to stop it, as the positive can easily display his positive on his website anywhere in the world, in the blink of an eye.[26].

[24]- Dr. Muhammad Abd al-Zahir Hussein, Legal Responsibility in the Field of Internet Networks, Dar al-Nahda al-Arabiya, Cairo, 2002, p. 55.

[25]Mahmoud Al-Sayed Abdel-Moati Khayal, Contracting via Television, Golden Eagle Press, Egypt, 2000, p. 53.

[26]- Dr. Amina Al-Arabi, Consent in Electronic Contracts in Light of Recent Changes, Journal of Law and Humanities, Ziane Achour University, Algeria, Volume 14, Issue 3, p. 159.

This is a remote positive, and is subject to the rules for consumer protection in contracts concluded remotely, which impose on the supplier and advertiser a set of restrictions and duties that they are bound by towards the consumer in general, including providing the consumer with the basic characteristics of the products and services offered, their descriptions, price, start and expiration dates, and country of origin, and avoiding promoting by any means of media and publication the commodity or service that does not meet the approved local or international standard specifications.[27].

Under the electronic transformation, the offer has become continuous and available to all parts of the world without limitation, such that the offeror can return to the announcement again, while he cannot return to the announcement in the traditional offer.

This offer also allows for public communication, i.e. the possibility of addressing a large segment of the public, where the offer is directed to everyone, as the Internet is available to all people without discrimination, such that the offeror can determine the scope of coverage in a broad and comprehensive manner to his will. [28].

The second requirement: The impact of electronic transformation on the conditions of acceptance

An expression of will is not considered an offer unless it meets the conditions stipulated in the general rules, namely that the expression must be final and include the basic elements of the contract.[29]Although the conditions of the electronic offer do not differ from its conditions in the general rules, they are characterised

[27]Article 7 of the Iraqi Consumer Protection Law No. 1 of 2010.

[28]- Dr. Nazih Muhammad Al-Sadiq Al-Mahdi, The Conclusion of the Electronic Contract, a research paper presented to the Seventeenth Annual Scientific Conference (Electronic Transactions, E-Commerce, E-Government) during the period from 19-20/5/2009, Emirates Center for Strategic Studies and Research, Abu Dhabi, p. 222.

[29]- Dr. Muhammad Labib Shanab, Lessons in the Theory of Obligation (Sources of Obligation), Dar Al Nahda Al Arabiya, Cairo, p. 104.

by a kind of privacy on the one hand, and some special conditions are added to them on the other hand. Therefore, we will discuss the substantive conditions first, then explain the formal conditions, as follows:

First: Objective conditions:

The offer must include the basic elements of the contract to be concluded, which include specifying information about the identity of the parties, the goods and services, the price of the product or service, as well as the manner in which the contract will be executed and its specific terms.

A contract is not valid unless it is issued by two parties who have the necessary capacity to conclude it. Therefore, the obligor must commit to providing the other contracting party with the necessary data and information about his identity, in order to achieve security and trust in this type of transaction. [30]In order to maintain good faith and trust in remote contracting, the obligor must inform the person with whom he is contracting of all his information that identifies his identity in a definitive and unambiguous manner.

The offer must also include basic and detailed information about the product or service offered via the digital medium, which must be made known to the contracting party before announcing their acceptance of the electronic offer. This requires a precise description of the product or service, ensuring full knowledge of the subject matter of the contract. The offeror must ensure transparency and clarity in their offer, accurately describing their product or service offered on their website. This is achieved by establishing the full data, specifications, and components of the product, including the start and expiration dates and country of origin, before the product or service is

[30]- Article 7/Sixth, which states that: “The supplier and advertiser are obligated to do the following: ... Sixth: To record on all his correspondence, publications, and advertisements his trade name, address, and any mark he legally approves, if any.”

put on the market or before the sale, purchase, or advertisement process is carried out. [31],

The obligor is prohibited from practicing fraud, deception, deception, concealing the truth about the materials used in the manufacture of the commodity or provision of the service, and anything that would make the offer in violation of the legal obligations imposed on the supplier and advertiser in the Consumer Protection Law.[32].

The Iraqi legislator must pay great attention to determining and setting the price of the commodity, as the price is one of the elements that must be clearly and precisely included in the offer. The same applies to determining the currency in which the payment must be made, as this information makes the offer complete and precise in a way that prevents the offeror or his representative from manipulating the prices of goods and services.

The obligor must explain to the contracting party all information related to the methods of concluding and implementing the contract, especially with regard to the date of delivery of the goods, or implementation of the service, delivery costs, if any, and the methods of fulfillment and means available for delivery or implementation.[33]In order to ensure the stability of electronic transactions and provide trust, the obligor must be obligated to specify

[31]Article 7/First, which states that: "The supplier and advertiser are obligated to do the following: First: Ensure that the full data, specifications, and components of the product, especially the start and expiration dates and country of origin, are recorded before offering it on the market or before conducting a sale or purchase transaction or advertising it."

[32]Article 9/First, which states that: "The supplier and advertiser are prohibited from doing the following: First: practicing fraud, deception, deception, and concealing the truth about the materials that make up the approved specifications for all goods and services."

[33]- Michael Rashid Ali, Electronic Contracts via the Internet between Sharia and Law, PhD Thesis, College of Sharia, University of Iraq, 2012, p. 103.

the duration of the offer, even if it is for a specific period, enabling the obligee to manage his affairs and determine his choice of acceptance or rejection.[34)].

Second: Formal conditions:

Contracting via electronic mediation requires that certain conditions be met regarding the means, method and language used. As we mentioned previously, the general rules in Iraqi civil law allow the expression of will in an electronic manner implicitly, in addition to the explicit permission provided by the Iraqi legislator in the Electronic Signature and Electronic Transactions Law No. 78 of 2012 when trying to define the electronic contract. The means of presentation must allow the obligee to read and understand the content of the offer with ease, and far from ambiguity.[35)].

The offer must be made in a written manner that allows the contractual terms to be saved on an electronic medium, or any other medium, so that they can be retrieved again when necessary. The offer must also be in a clear electronic manner and with clear expressions, free from any ambiguity or confusion.[36)].

Some believe that using short, simple texts in formulating the offer, as well as using a diagram to differentiate between important elements, and using bold, large lines, helps to confirm the intention of

[34]- Lama Abdullah Sadiq Salhab, Electronic Contract Council, Master's Thesis, An-Najah National University, College of Graduate Studies, 2008, p. 77.

[35]- Dr. Belkacem Hamdi, Concluding an Electronic Contract, PhD Thesis, Hadj Lakhdar University of Batna, Faculty of Law and Political Science, Department of Law, 2014-2015, p. 73.

[36]- Dr. Muhammad Saad Khalifa, Problems of Online Sales, Dar Al Nahda Al Arabiya, Cairo, 2004, p. 55; Dr. Samir Hamid Abdel Aziz Al Gamal, Contracting via Modern Communication Technologies (A Comparative Study), Dar Al Nahda Al Arabiya, Cairo, 2006, p. 107.

the offeror, and clarifies the basic elements of the contract to be concluded. [37].

As for the language used in the affirmation, the global nature of the digital medium has necessitated the use of multiple languages, which has prompted many website owners to translate their web pages into multiple languages in order to reach the largest possible audience of various nationalities.

It is sufficient for the visitor to choose the language he wishes to use to enter the site, to browse and choose what he wants with ease and convenience. Therefore, international bodies and organizations have sought to establish model rules to unify the language of negotiation and contracting by electronic means, with the aim of avoiding misunderstandings and differences in the interpretation of the electronic contract.[38]This is what the Iraqi legislator sought in the Consumer Protection Law, when addressing consumer rights in Article 6 of the law, that the consumer has the right to obtain full information about the specifications of goods and to learn about the proper ways to use them or how to receive the service in the approved official form and language.

There is no doubt that unifying the rules for electronic data via remote communication, with the aim of arriving at a standard model for electronic data exchange, helps in formulating legal terms that are linguistically recognized, which eliminates any ambiguity or

[37]- Mohamed Nasser Hamoudi, The Legal System of the International Sales Contract via the Internet, PhD Thesis, Mouloud Mammeri University - Tizi Ouzou, Faculty of Law and Political Science, 2012, p. 113.

[38]Omar Hassan Al-Momani, Electronic Signature and Electronic Commerce Law (A Comparative Legal and Analytical Study), Dar Wael, Amman, 2003, pp. 34-35.

difference in the linguistic concepts of words and phrases, in addition to the conditions contained in electronic contracts. [39].

The third topic: The impact of electronic transformation on admission

Acceptance is an expression of the will of the other party who received the offer, directed towards the offeror, knowing that he agrees to the offer. It is the response of approval to the offeror's offer, and with it the contract is concluded. [40]Acceptance via electronic means does not differ from normal acceptance, except in the means used to express it. Just as electronic acceptance is done via electronic means, acceptance must also be done via the same means, as acceptance is done via electronic means, so that the acceptance is obtained by the same means. [41].

Electronic acceptance is defined as: "A remote communication that includes complete compliance with all the elements stipulated in the offer, as set by the offeror, such that the contract is concluded as soon as this communication occurs from the acceptor." [42] .

Some define it as: "The firm expression of the offeree's satisfaction with concluding the contract, in accordance with the conditions contained in the offer, through the means of presenting the offer itself, which is the Internet." [43].

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[39]- Dr. Mahmoud Hamouda Saleh, Problems of Electronic Contracts, a study published in the Journal of Sharia and Islamic Studies, Kuwait University, Issue 18, 2011, p. 257.

[40]- Dr. Khaled Mamdouh Ibrahim, Concluding an Electronic Contract (A Comparative Study), Dar Al Fikr Al Jami'i, Alexandria, 2013, p. 340.

[41]- Dr. Faisal Mohammed Abdul-Ghanimi, Expression of Will in Electronic Contracts, research published in Tikrit University Journal of Law, Tikrit University, College of Law, Volume 3, Issue 2, 2018, p. 160.

[42]- Dr. Enas Hashim Rashid, Expression of Will in Electronic Contracts, Risalat Al-Huquq Journal, College of Law, University of Karbala, 2009, Volume 1, Issue 2, p. 193.

[43]- Dr. Ayman Mustafa Ahmed, Expression of Will through Electronic Means, Police Thought Magazine, Police Research Center, Sharjah Police General Command, 2014, Volume 23, Issue 19, p. 160.

As we explained previously, explaining the impact of electronic transformation on the expression of will requires us to understand how to form the will in general, and the offer and acceptance in particular. Therefore, we will divide this topic as follows:

The first requirement The impact of electronic transformation on acceptance characteristics.
The second requirement The impact of electronic transformation on admission requirements.

The first requirement: The impact of electronic transformation on acceptance characteristics

Acceptance via electronic means is not much different from traditional acceptance. It is done remotely via modern communication technologies. It may be expressed via a message from the person accepting the offer or by using specific methods that confirm his acceptance of the offer via electronic means.

Electronic acceptance may be explicit, meaning that the contract is not concluded unless it is accompanied by a specific confirmation of it, such as double-clicking on the key designated for acceptance or filling out specific information specific to the website that issued the offer. The website may require the acceptor to express his will on each element of the concluded contract. [(44)].

Electronic acceptance can be implicit, by the acceptor taking a positive stance, such as the acceptor sending the price of the commodity to the obligor. [(45)]Or the buyer may unwrap some goods that the offeror sends with the offer that includes a notice to the offeree that "unwrapping or sealing the goods is considered

[44]- Dr. Amina Al-Arabi, Consent in Electronic Contracts in Light of Emerging Changes, a study published in the Journal of Law and Humanities, Faculty of Law, Ziane Achour University, Algeria, Volume 14, Issue 3, p. 224; Dr. Samir Hamed Abdel Aziz Al-Jamal, Contracting via Modern Communication Technologies, previous reference, p. 126.

[45]- Dr. Ahmed Al-Saeed Al-Zaqard, Principles of International Trade Law (International Sale of Goods), Modern Library, Cairo, 2006, p. 147.

acceptance of the contract." This can be imagined in goods with digital content, such as computer programs, newspapers, magazines, and books that can be delivered to the offeree online. Delivery on line) via email [46].

As for the obligor's knowledge of the electronic acceptance, some legislations stipulate that the will of the contracting parties must agree that the arrival of the acceptance to the obligor is not sufficient in itself to assume his knowledge of the acceptance and the conclusion of the contract, unless the obligor issues an acknowledgment of his receipt of such an acceptance. The acknowledgment may be an electronic message. -For example, within the agreed period, in which case the acceptor may, if he does not receive such electronic acknowledgment, consider his acceptance void. [47].

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[46]- Dr. Mahmoud Abdel Rahim Al-Sharifat, Consent in Online Contracting (A Comparative Study), Dar Al-Hamed for Publishing and Distribution, Amman, 2005, p. 134.

[47]An example of this is the text of Article 19/first, second and third of the Iraqi Electronic Signature and Electronic Transactions Law, which states that: "First: If the signatory requests the addressee, by virtue of an electronic document, to inform him of the receipt of that document or has agreed with him to do so, then the addressee's informing the signatory by electronic means or by any other means or his performing any action or procedure that indicates that he has received the document shall be considered a response to that request or agreement.

Second: If the signatory makes the effect of the electronic document conditional upon receipt of a notification from the addressee of receipt, the document shall be deemed not to have been received until the notification is received.

Third: If the signatory requests from the addressee a notification of receipt of the electronic document and does not specify a timeframe for that and the effect of the electronic document is not contingent upon his receipt of that notification, then in the event that the notification is not received within a reasonable period, he may request from the addressee to send the notification within a specified period. Otherwise, the document shall be subject to cancellation.

Fourth: The recipient's notification of receipt to the signatory shall be considered evidence that the content of the received document is identical to the content of the document sent by the signatory, unless proven otherwise.

The first requirement: The impact of electronic transformation on admission requirements

Acceptance is subject to the general rules of civil law, whether traditional or electronic. In order for acceptance to have effect, it must be issued at the time the offer is valid. Therefore, acceptance has no effect unless it is issued while the offer is in effect. It is an answer to an offer that has been issued. If the offer is no longer valid, acceptance is an answer to something that does not exist. [(48)]The acceptance must also be consistent with the offer in all its elements and conditions. The acceptance must be based on the entire offer and must be explicit in order to be valid.

In addition to the above conditions, the digital acceptance enjoys some privacy that makes it subject to its own rules in light of the privacy of the digital environment in which the acceptance takes place. These rules relate to the conformity of the acceptance to the offer, and the issuance of the acceptance while the offer is still valid. This is what we will discuss as follows:

First: Matching acceptance to offer:

The question arises as to the extent to which the condition of acceptance conforming to the offer is met if the offer contains hidden texts. [(49)]On the one hand, is this possible? On the other hand, is it

[48]- Dr. Amina Al-Arabi, Consent in Electronic Contracts in Light of Emerging Changes, previous reference, p. 163.

[49]Digital Steganography: "A technique that aims to hide information or messages within other media, such as images, audio, or video, in a way that makes the presence of those messages difficult to detect. Steganography is achieved in texts using techniques such as adding invisible characters or modifying commas and spaces between words." Dr. Abdul-Kazem Abdul-Karim Abdul-Kazem, Data Steganography and Secure Communications in Multimedia, an article published on the website of Future University, Department of Cybersecurity, on October 26, 2024.

-https://uomus.edu.iq.

- Date of access to the website: 11/19/2024.

possible to link acceptance with something that increases, restricts, or modifies the offer?

Contracts concluded through digital media between websites and the public of Internet users are through models presented by these websites, which include all the essential and detailed issues that the website owner sees fit.-The offeror is suitable for him, and the public has no choice but to click on the acceptance box in this form, expressing their acceptance of the contract, and thus it will be completely identical to the offer in all matters.[(50)]. It follows that there is no room to question the use of hidden texts in contracting via a digital medium.

As for the possibility of coupling acceptance with something that increases, modifies, or restricts the offer, here we must differentiate between the means used to express the will, as there is no room for negotiation in contracts concluded through the web; because as we mentioned, the way in which the offer is presented in the form of forms that include all the essential and detailed issues, so the offer is either accepted or rejected. Conversely, when the means used is email or chat, it is possible to imagine coupling acceptance with something that increases, modifies, or restricts the offer; because negotiation is present in this method. [(51)].

Second: Issuance of acceptance with the establishment of the offer:

Acceptance must be issued through a digital medium while the offer exists, if no period has been specified for it. As long as the offer is still present on the website, the offeree clicking on the space

[50]- Dr. Belkacem Hamdi, Concluding the Electronic Contract, previous reference, p. 82.

[51]- Dr. Amina Al-Arabi, Consent in Electronic Contracts in Light of Emerging Changes, previous reference, p. 163.

designated for acceptance means that the contract has been concluded in this case. (52).

If the offer is on the website and a specific time period is specified for it by the offeror, then the acceptance must be issued within the specified period. An example of this is if he publishes an advertisement to sell his car on his website and specifies a specific time period for the person who wants to buy his car. If someone expresses his desire to buy-Acceptance - after the expiry of the specified period, this acceptance cannot be taken into account; because the offer has been cancelled with the expiry of the specified period. (53).

The advanced case can be imagined in some forms of electronic contracting, such as contracting via email and chat, where the acceptance is sent after the expiry of the specified period for the offer, and the late acceptance is considered a new offer according to the general rules of civil law, while this case cannot be imagined in contracting via the web, because the offeror removes the advertisement page.-The offer is in the place designated for acceptance on his website, and therefore the acceptance does not exist, and the offeror cannot respond to this offer.(54).

[52]- Dr. Belkacem Hamdi, Concluding the Electronic Contract, previous reference, p. 80.

[53]- Dr. Bashar Talal Mumni, Problems of Online Contracting (A Comparative Study), Modern Books World, 2004, p. 68.

[54]- Dr. Sameh Abdel-Wahid Al-Tahami, Contracting via the Internet (A Comparative Study), Dar Al-Kotob Al-Qanuniyah, Egypt, 2008, p. 190.

Conclusion:

At the end of this research, I reached several results, followed by some recommendations, as follows:

Results:

1- The form of expression of will cannot be restricted to a specific form or means. The offeror and the acceptor are free to use the means they see fit to express their will.
2- Expressing one's will by traditional means is not much different from expressing one's will by electronic means, except for the means used to express one's will.
3- Electronic transformation is an effective means of simplifying legal procedures, especially in concluding contracts and generally in exchanging documents to facilitate institutional work.
4- Parties to a contract should choose an appropriate electronic means through which the identity of the contracting party can be verified and the integrity of the contract can be verified.
5- At present, the will cannot be implicitly expressed in a contract via the website, as the steps required to conclude a contract are sequential and the website does not allow moving to the next step until the previous one has been completed.
6- The Iraqi legislator has given emails an official character by considering them electronic documents, thus granting them the legal authority and protection stipulated in the Electronic Signature and Electronic Transactions Law.

Recommendations:

1- Amend Article (3/First - A) of the Electronic Signature and Electronic Transactions Law No. 78 of 2012 to read as follows: “Electronic transactions carried out by natural or legal persons, or even in the event of the natural or legal person’s non-intervention.
2- Amend the same law by adding a provision that permits contracting between automated electronic media, including one

or more electronic systems, that are prepared and programmed in advance to do so without the intervention of a natural person.

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