



Legal Problems of Adopting Electronic Evidence in Commercial Courts (Comparative Legal Study)

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Received: 10 Nov. 2023, Revised: 10 Dec.2023, Accepted: 29 Dec.2023.

Published online: 1 January 2024.

Abstract: This study aimed at identifying the possibility of proving electronic contracting in commercial courts to be true, After the industrial revolution, the world witnessed developments in several areas, including information systems and correspondence, Commercial contracts can be entered into through the Internet and confirmed through electronic documents, The electronic document became authoritative to substantiate the paper document in legal terms before the court in one of the ways provided for by law, The study was based on the comparative approach. The study reached a set of conclusions that consisted of the possibility of equality between international and national legislation for written electronic documents and the provision of the highest level of honesty and privacy for electronic documents and the need to issue legislation consistent with developments and changes to meet society's needs.

Keywords: Electronic Document, Electronic signature, Electronic proof.

1- Introduction

The world is currently witnessing successive developments in the field of information systems, and this was accompanied by other developments in the field of correspondence, and humans are no longer prisoners of their place on the planet, as cyberspace has become today an object where you are, if you are not connected to the Internet, there is no place for you, and if you are connected, then where are you? Despite the fact that the traditional document remained over a long period of time at the top of the pyramid among all the evidences of proof, so that the legislation used to use the traditional document on the basis that it was the strongest evidence that could be presented to the judge to prove the incident, the source of the right, and when the written evidence was available, the judge would issue his judgment without To have doubts about the ruling that he pronounces, but this approach did not last in light of the emergence of modern technology and in light of the information and communication revolution and the emergence of the electronic computer that entered all parts of daily life in various countries of the world[1]. This revolution led to upsetting the scales. None of us, a researcher or scholar, can hide his astonishment and admiration for the tremendous scientific development that affected all walks of life. Who would have expected one day to be able to buy books, clothes, or any of the necessities through one click of a button? Specialization is the most responsive field to the tremendous technical developments by virtue of the speed, trust and trust that distinguish this field from other fields. What we can say is that this response was not confined to specific projects or commercial establishments, but rather that development spread to everyone, albeit in varying proportions, from large commercial companies, banks, and factories down to small individual projects and ordinary consumers, as the Internet is close to distances and makes the world as one room inside small house [2].

And in light of the tremendous rapid technological development and the validity of the information that the world knows at the present time, this led to changes in society in all its scientific and practical aspects, the role of which was the removal of geographical borders, and the change of time towards defaulting and approaching to a large extent, until the world became known as the small village or the electronic world Our era is known as the digital age, as the electronic era has become imprinted on our relations and transactions. Hence, the emergence of these advanced electronic means imposed their uses in the field of contracts and civil and commercial transactions, especially the latter, because they are the main nerve in the economic life of every country, because they facilitate people's lives. And it follows the purposes, whether it is a consumer, merchant, businessmen or country where these contracts are executed and information without causing physical terror to its parties, which is called creating a development in the legal thought of the researcher, the judge, and jurisprudence, and prompting legislators in various countries of the world to do so, amend some legal texts and establish legal rules to keep pace with the development of what is happening to us in the field of proof [3].

2- Research Importance

In view of the advantages of electronic evidence with its specificity in the commercial judiciary as the most modern

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legal system, this issue has become of great importance in several aspects, as follows:

1. That the individual at the present time seeks to benefit from the regulation of informatics in various fields and is safe from falling victim to the lack of legal security on the one hand, and the lack of legislation for special regulations for electronic evidence on the other hand, so it became necessary to search for effective means to confront the evidence of electronic evidence in the existing legal situation in the Iraqi legislation before the commercial courts and the appropriateness of those legislations to ensure the provision of appropriate guarantees to confront this new system [2].
2. The connection of electronic evidence with all aspects of scientific and practical life related to commercial electronic transactions that arise between individuals or between individuals, companies and governments, and all these electronic transactions result in many rights and obligations that often raise problems related to how these transactions can be proven.
3. It is one of the most important advantages of advanced technology that it has produced much electronic evidence that have come to represent legal systems alien to the legal treatment of traditional texts, especially if we know that the advantages of this era are modernization and continuous development, which leads to the expansion of the circle of evidence to include the electronic bond or the digital signature. And the signature with the electronic pen, the signature with the electronic fingerprint, and the electronic certificate, and we do not know what the information age and communication technology hides for us from other evidence that can be revealed in the next stage [3].
4. Encouraging electronic transactions and introducing them in order to contribute to attracting investments, encouraging technology transfer, and pushing human energies for creativity and development in this field to contribute to the reconstruction on which the investing companies are based, whenever there is a legal system that protects these transactions, and this is achieved by resorting to the approval of electronic evidence as a system legally innovative in commercial legal transactions.

3- The aim of the research

An attempt to highlight the problem of proving commercial obligations in the laws, to draw legal attention to this problem and urge the Iraqi legislator to reconsider the provisions of the Evidence Law and allocate special provisions to prove commercial obligations contrary to the rules of civil evidence.

4- Research problem

The information system is still shrouded in ambiguity in several aspects, especially from the legal point of view, due to the multiplicity and diversity of the uses of the new communication technologies, which has led to the existence of many legal problems before the commercial judiciary. In particular, the legislative vacuum that requires the intervention of the legislator and jurisprudence of law to address these problems and develop solutions to them.

Where new concepts seemed to reach our minds such as electronic writing, electronic signature, electronic bond and electronic certificate, which had a great impact in changing legal concepts, that is what prompted many countries to adopt new legislations to address these issues, and this is what necessitated in our comparative study a presentation of most of these legislations and a contract Comparison in the light of the provisions of Iraqi law, at a time when it becomes clear that these countries differ in their laws, judicial systems, customs or traditions, which requires observance of those legal rules and the economic and social conditions of our society in order to reach the desired result, which made the subject of the research a thorny matter due to the lack of clarity of the concept that was not Settles towards the development of a legal system dealing with electronic evidence before the commercial courts.

5- Research Methodology

In this research, we followed the comparative approach between the repealed and enforceable Iraqi laws and the Arab laws that deal with the issue of proving commercial obligations.

5.1- Research Plan

In view of the characteristics of commercial law, the laws have always laid down provisions for commercial proof under the title of Justifications of the Rules of Evidence for Commercial Obligations [3]. The Iraqi Electronic and Commercial Signature Law, Transactions No. (78) for the year 2012 of the subject, and in this study, the traditional means of proof were exposed in terms of their nature, conditions, and authoritative evidence, as well as modern electronic means, and then the electronic signature, as it constitutes the cornerstone of the electronic bond, and the authoritative argument was also exposed Evidence of electronic documents.

Evidence from a legal point of view is proving evidence before the judiciary, in one of the ways stipulated by law, of the validity of a disputed legal fact, given the legal implications of proving it before the judiciary.

Evidence is not limited to obligations only, but it is a general and comprehensive theory that deals with the sources of obligation, the sources of real rights, and the sources of family ties, and it does not stop at the sources only, as it also governs the reasons for the expiration of rights and any other reason that creates a legal effect, and it goes beyond the field of civil law and extends to commercial law and other areas of other laws and means of proof specified by law are writing, testimony, evidence, admission, oath, and inspection [5].

5.2- Electronic Bond

Commercial law is a branch of private law, and it applies to a group of persons, who are merchants, and to a group of commercial businesses. According to the principle of freedom of proof, the parties to commercial transactions enjoy sufficient freedom to conclude them, regardless of their value, and by any means of proof without restriction.

The technological development that resulted from the digital revolution in the field of information and data led to the emergence of new means and methods. These means are witnessing continuous and permanent development, through which society has been transformed from a paper society to an electronic society, where the customary or official ties mentioned in the text of most laws began, and the evidence came and it has been running for a long time, with the business going down somewhat, with new bonds known as electronic bonds [6].

5.3- The concept of electronic bond

I mentioned that different definitions have been received about the definition of an electronic document, whereby an electronic document means that message that includes information generated, combined, stored, or partially electronic, digital, visual, or by any other means.

Jurisprudence differed in defining an electronic document, so some defined it as “information that takes an electronic form that is sent and received by electronic means regardless of how it is extracted, whether through an electronic means that works on the Internet or through other electronic means such as fax, telex, or any other means Technology that may exist in the future [5].

5.4- The legal definition of the electronic bond

The UNCITRAL Model Law defines electronic transmission by means of a data message pursuant to Article 2/c as “information that is generated, transmitted, received or stored by electronic, visual or similar means, including, but not limited to, electronic data exchange, e-mail data, telegram, telex, or telegraph.” The Iraqi legislator defined an electronic document as “documents and documents that are created, combined, stored or transmitted or received, in whole or in part, by electronic means, including electronic data interchange, e-mail, telegram, telex, and telegraph, shall bear an electronic signature [8].

As for the Egyptian legislator, he defined the electronic document as “a data message that includes information that is generated, combined, stored, sent or received, in whole or in part, by electronic, digital or visual means, or by any other means.”

6- Characteristics of the electronic bond

The electronic document proof system has many characteristics, including:

- 1- The absence of a physical support: The first characteristic of the electronic bond depends on the absence of any material support, in contrast to the traditional bond that is usually deposited on a paper bond, where information and data are recorded on paper and attached to the signature of the person concerned.
- 2- Confidentiality and security: The electronic document is characterized by security, because the information contained in the document is known only to the person who sent it, as these systems and technologies are characterized by a high degree of confidentiality and efficiency by using electronic encryption [8].
- 3- Accuracy, clarity, and lack of commissioning: electronic documents are characterized by a high degree of accuracy and completeness as a result of the increasing number of transactions that take place between individuals and companies through modern technologies and what is known as the Internet. To keep it in paper form, which is known as the electronic archive.

6.1- The effectiveness of the electronic document and its authority in proof

The Iraqi legislator kept pace with the scientific and technological development that our world is witnessing today as a result of scientific progress in the field of information technology, which resulted in the emergence of electronic

documents that replaced traditional documents that have become incompatible with the nature of electronic transactions in general and electronic commerce contracts in particular, and the Iraqi government has agreed to Recognizing these electronic documents and granting them the same legal validity established for written paper documents, provided that the conditions specified in the law are met [9] .

In order to study the authenticity of the official electronic document in the proof, we will address two issues in it:

- 1- Preference of the official electronic document
- 2- The validity of the official electronic document in the proof

6.2 Presumption of the official electronic document

According to Article (1/29) of the Electronic Transactions Law, the documents are authentic as the official paper documents, and therefore they have the same power of proof. By applying the rules of the Law of Evidence in Official Documents, we conclude the following:

1. The official electronic document is considered valid, without the need to acknowledge its validity, based on the assumption of the official capacity in terms of its issuance to the one who signed it and in terms of its content until it is challenged on charges of forgery.
2. The electronic document for which there is evidence of its official transaction, and then the court will have the discretion to determine the authenticity of the document.
3. Assuming the validity of the official electronic document, that the evidence surrounds the security system in creating the official electronic document, tells the judge that this system has been applied and followed accurately, and vice versa. By analogy with official paper documents, the electronic bond is considered to be forged and does not count, and it can be considered as ordinary electronic bonds without wasting its value in proof [5].

6.3- The validity of the official electronic document in the proof

We mentioned earlier that the Electronic Transactions Law has given the principle of equality between official electronic documents and official paper documents, and therefore we will deal with the authenticity of the official electronic document in terms of its issuance by the signatories, its physical integrity, then its validity in the data it contains, and finally its validity for others, as for the Official paper documents, according to Article 29 of the Electronic Transactions Law, which states that (the provisions of the Civil Transactions, Evidence and Civil Procedure Laws shall apply unless a special text is mentioned in this law) read with Article 41 of the Evidence Law of 1994 which states that (the Official documents are an evidence against the authority that issued them and for everyone including what is written in them unless it is proven to be forged) and compared to the latter, the official electronic document is also an argument for its integrity and not being exposed to subsequent changes to its establishment, when its appearance suggests confidence, and the data that the notary records in the document in limits of his mission.

The officialness of the data signed by the concerned parties and confirmed by the employee after his perception of them by hearing or sight, such as the seller issuing an acknowledgment of the sale, and the receipt or the buyer issuing an acknowledgment of the purchase and receipt of the thing sold. Official capacity, and it has authority in proof until it is challenged for forgery, and the employee also proves the data signed by the concerned parties and confirmed by the employee after knowing it by hearing or sight, as if the seller issues an acknowledgment of the sale, and the receipt or the buyer issues an acknowledgment of the purchase and receipt and of the sale It has an official status and has the authority of proof until it is challenged for forgery [7].

Accordingly, the official electronic document is an argument with all the data attached to it that has an official description, without the need to acknowledge the changes after its creation. Whoever claims that the official electronic document was not issued by the public official, or claims that the signature of the parties concerned has been forged, Or he claims that the content of the document has changed, he must prove it by the method prescribed for him by law, which is the method of forgery. (Article 46 of the Evidence Act of 1994)

The authoritativeness of the official electronic document in terms of the Code. Some jurists have known and some laws have distinguished between the data that the public servant edited in the official document and gave it an authenticity that cannot be refuted except by appealing for forgery. The matter and the witnesses before him and their signatures.

And according to the equality between digital official documents and official electronic documents, as stipulated in Article (29) of the Electronic Transactions Law, and this authority is specified:

First: Data that are authoritative against others, unless they are challenged by forgery: those data that the public servant edits and fall within the limits of his mission, as well as the data and declarations issued by the concerned parties and



realized by the public servant himself.

Second: Data related to the provider of electronic signature services. Doubts about the validity of these data would prejudice the trust stipulated by the law in the provider of signature services and that third parties may not deny it except by forgery, including data related to verifying the validity of names, addresses, and places of residence.

7- Methods of electronic evidence in commercial contracts

The legislation was subject in its laws to the principle of freedom of proof in commercial transactions, as it excluded it from the provisions of written evidence, that is, it gave the right of recourse to the parties to the commercial relationship to prove their existence. procedures in the way they see fit for them by virtue of the fact that commercial contracts require speed and simplicity in their conclusion, and we find that this is commensurate with the birth of modern technologies, and the conclusion of commercial transactions and contracts in which electronic means are established. [10] However, this does not give guarantees to the parties to guarantee their rights by virtue of the fact that the transaction takes place remotely, except with the availability of the means that guarantee this, which gives them the same power of proof that all traditional writing and signatures enjoy in the case of proving legal procedures.

7.1- Electronic writing

Writing is considered one of the first methods of proof that contribute to proving legal claims, due to its nature in terms of its definition and the possibility of its continuity and continuity. Electronic writing and work on equality between it and traditional writing, i.e. functional equivalence between them.

The first subsection: definition of electronic writing: It means digital information that is created, sent, or transmitted on an electronic support, whatever its source. Writing is of two types, writing that can be pronounced, and writing in the form of signs and symbols that cannot be pronounced. Electronic writing falls within this type because it revolves around electric flashes. The Egyptian legislator defined electronic writing in accordance with paragraph (a) of Article 1 of the law regulating electronic signature and establishing the Information Technology Industry [9] Development Authority. digital or visual support, or any other similar means that gives a perceivable connotation.” It is clear from this article that the Egyptian legislator has given the term “electronic writing” a precise and broad definition, in the sense that it does not need further clarification compared to the UNCITRAL Model Law, which did not provide a definition of electronic writing, but has even defined electronic writing which he referred to as "data message”.

7.2- Conditions of Electronic Writing

There are several conditions for electronic writing to be recognized, namely:

1. The writing should be legible: In order for it to serve as evidence, it is required that it be legible and clear so that it can be understood.
2. The continuity and permanence of writing: In order for writing to fulfil its function of proof, it must be written on a support and preserved for a long period of time.
3. Inability to write to modify: This condition means that electronic writing should not occur since its inception for the first time in its final form, or change, modify or tamper with data that would affect the rights of the contracting parties between them, because electronic writing can be erased easily. modify and damage it without leaving any trace on it.

7.3 The electronic signature

It can be said that the handwritten signature represents only a stage of development in the means of ratification of legal acts, and that it is not the only achievement or the last large stage of development, but it is related to the phenomenon of writing on paper and does not prevent the emergence of new forms, and the purpose of the signature can create a realistic situation. It is a phenomenon, observation and insight, so ratification is considered a mere psychological state represented in the transfer of acceptance to the vastness of the outside world [10].

The electronic signature is available under important conditions to give a kind of authenticity, and we find that most legislations have shed more light on it because it is the one that gives complete authenticity to the electronic document in the field of proving contracts and commercial transactions.

7.4- The concept of signature

An electronic alternative has been found that replaces the handwritten signature and performs the same functions in terms of documentation and proof. The electronic signature appeared as a tactic through which the parties dealing with the electronic data exchange system and electronic messages can document their transactions. The term electronic signature has been given special importance by many legislators and jurists [10].

The UNCITRAL Model Law on Electronic Signatures, 2001, defines an electronic signature in Article A: “data in electronic form included in, affixed to, or logically associated with, a message that can be used to identify the signatory to a data message and to indicate the signatory’s consent to information contained in the data message.

The Egyptian legislator defined the electronic signature of Article 1/C as “what is placed on an electronic document and takes the form of letters, numbers, symbols, signs, or others, and has a unique character that allows the person of the signatory to be identified and distinguished from others.”

The electronic signature is available under important conditions to give a kind of authenticity, and we find that most legislations have shed more light on it because it is the one that gives complete authenticity to the electronic document in the field of proving contracts and commercial transactions, and the electronic signature has several forms, including:

1- The electronic manual signature: This image is considered one of the simplest images of the electronic signature, and it is represented in converting the manual signature into an electronic signature by photographing the hand signature using a scanner, then transferring this image to the file to which this signature is to be added via the electronic network, despite the ease of use. Some way, however, it is protected by risks, so that it is sometimes difficult to attribute the message to its location, because the sender may forget to keep the message's attribution to its location, because the sender may forget to keep a copy of the copy of the signature he received and re-place it on any document edited through an electronic medium and claim that its author is the actual signature holder [6].

2- The digital signature: The digital signature is considered one of the most important forms of electronic signature due to its superior ability to accurately and clearly identify the parties to the contract, in addition to a high degree of confidence and security in its use and application when concluding commercial contracts.

Third, the electronic pen signature: This is done using an electronic pen that can be written on the computer screen using a specific program. This program performs two functions, the first is the signature point service, and the second is the signature verification service, as the program first receives the customer's data through its own card that is placed in the used device.

8- The legal impact of electronic documents in comparative legislation and international trade law

Electronic documents appeared and replaced paper papers, as well as a modern means compatible with the modern electronic image of these transactions, represented in the electronic signature along with the traditional signature in proving and documenting legal procedures to respond to the nature of those procedures. and the means by which it is done.

This prompted countries to enact legislation regulating electronic transactions in general and the electronic signature in particular, and their recognition of this signature with the same authority granted to the traditional signature, as long as it performs the same functions as the traditional signature in terms of proving the identity of the one from whom it was issued, and the expression of his will, and in order to enjoy it, the reason for the electronic document or document lies in the fact that it is reliable, and this is in fact due to the extent of the authority of this electronic document and the amount of authority granted to it by the legislator to prove, the evidence of the facts was a result. This is because the infringement of this bail constitutes a criminal act, whether it is a violation of the content of the bond or its signature, and this in turn leads to support. And strengthening the positive role of the judge in proof by examining and studying the evidence. The new method places before the judge a huge amount of information in the form of letters or telegrams. Or faxed documents or contracts stored on the computer, so that the judge can choose among them what is related to the circumstances and facts of the case. He presented and therefore the role of the newly developed media is clear in enhancing the role of the judge in the evidence and facilitating his task to reach the truth with conviction and confidence. This is why many countries resorted to recognizing these modern means by their text in its laws, giving it full power of proof [10].

8.1- The position of some laws of Arab countries

Looking at modern means of communication or finding ways for modern commercial and civil transactions that were not known before, it was necessary to find legal texts that guarantee the use of modern technical means in concluding commercial deals and protecting the rights of its parties. For this purpose, he enshrined the principle of recognizing the legal authenticity of the electronic writing associated with the electronic signature and making it a recognized force of evidence if the conditions stipulated by the law are met in a way that allows the possibility of accepting the electronic document as evidence before the courts. We give examples of some state laws.

8.2- Egyptian Legislation

The Egyptian Electronic Signature Law grants electronic writings and electronic documents within the scope of the

original civil, commercial and administrative transactions prescribed for writing and official and customary documents in the Evidence Law, when they fulfill the conditions stipulated in this law, through the text of: Article (15) previously referred to and then if the signature It is the official document complete with the legal requirements in terms of its issuance by the employee within the limits of his job and his spatial and temporal jurisdiction. He has absolute power that can only be challenged by forgery. In the evidence, and refuting it with reverse written evidence, such as commercial books, because its validity in proof diminishes according to the circumstances, as the legislator did not grant it the power of validity that it granted to contracts, and this is what Article (17) stipulates. From the Egyptian Law of Evidence, where it was mentioned (the books of merchants are not evidence against a non-merchant, but the data proven in them about what the merchants received are valid as a basis that allows the judge to direct the complementary oath to any of the parties, and that is in what may be proven by evidence), there is no doubt that This recognition of evidentiary authority for electronic writing and electronic documents, both Whether official or customary, it supports the use of these electronic means, and encourages interaction between individuals and all official government agencies, and is an important step towards realizing the idea of e-government [4].

It is noted that the Egyptian legislator does not exclude some transactions from the scope of electronic evidence, as the Jordanian legislator did in Article (6) of the Law on Private Form Transactions, Wills, Waqf establishment, immovable property transactions, and transactions related to personal status from the scope of electronic proof of their importance and impact on the national economy. However, questions may arise about the judge's role in choosing between traditional written evidence and electronic written evidence, if both are available, which one is authentic over the other? In other words, what is the criterion of preference between the traditional editor and the electronic editor? In fact, the Egyptian legislator did not regulate this issue and limited a path to adopting the authenticity of electronic writing when it was identical to traditional writing and fulfilled its conditions, according to what we referred to previously in Article (15) of the Egyptian electronic system, the signature law. As evidence of the discretion of the judge, and accordingly, the will of the parties to the conflict must be presented and then subject to their will in this regard if they do not agree on that, the legislator gives preference to the official document over the customary document, whether those documents are traditional or electronic, then refers to the oldest document established in The date and then the latest, unless the parties agree, on the latest, and if they do not prove the date the evidence appeared, the discretion of the judge in the dispute is indicated. [8] The researcher believes that it is better for the Egyptian legislator to detail this and put in place a legislative amendment that would organize the evidence to balance it in case of disagreement and not leave that to the discretion of the judge.

8.3- Iraqi legislation

Article (18) of the Iraqi Law of Evidence defines the principle of proof in writing as “...every writing issued by the opponent is liable to make the existence of the claimed right close to possibility.” At first glance, it may seem that electronic data can be considered the principle of proof in writing. The consideration of electronic writing as writing in its general sense is a matter that is not disputed by two, and that the word writing contained in the text came in a general form and did not indicate the type and description of this writing. Within the operative part of this article, but if we accept the validity of this analysis legally, it will mean that the use of electronic data in proof according to this description will be useless on the practical level, and may even lead to a waste of the value of those data in reality, especially if we know that the current dealings are beginning to Electronic grants and electronic dealing formulas became widespread so that dealing by these means and deals reached record numbers It is a normal matter and is constantly increasing, and individuals did not pay attention in proving their transactions to means other than those by which these electronic transactions are carried out, and this means that there are only electronic means of proof to prove rights and obligations, and since the principle of proof in writing cannot be taken in all cases unless It is reinforced by the testimony, as this means a waste of the rights of electronic media dealers in the event that the certificate is not available in order to be associated with the principle of proof in writing, so that it would be preferable and most effective not to say that these data are considered a principle of proof in writing [10].

Article (104) of the Iraqi Law of Evidence stipulates that “the judge shall benefit from the means of scientific progress in deriving judicial evidence.” This article included a general provision that grants the judge discretion to benefit from the means of scientific and technological progress in order to be convinced of the matter before him. Considering that they are judicial evidence, and since considering electronic operations as a means of scientific progress, this text is considered good in comparison with the comparative Arab evidence legislation, to which there is no equivalent that allows giving such authenticity to the means of scientific progress.

But this analysis can be answered by some of the drawbacks are summarized as follows: -

1- The collision of that perception with the text of Article (102/2) of the Iraqi Law of Evidence, which restricts the judge to extract evidence within the limits of what may be proven by testimony (86), so it can be said that despite the authoritativeness enjoyed by the means of scientific progress under This perception, it is emptied of its content under

that restriction

2- The authority granted to the judge is permissibility, not obligatory. He may use the means of scientific progress and he may not use them at the same time, and since the use of these means requires prior knowledge of the techniques by which they operate, it is easy for the judge who is "unfamiliar with these techniques" to resort To other methods that are easier for him to prove, while the legislator obliged the judge to rely on written evidence in proof when the conditions of its validity were proven according to both Articles 22 and 26 of the Evidence Law.

3- Since it is not permissible to prove what contradicts written evidence except with evidence similar to it in strength, it is not permissible to prove what contradicts the ordinary written evidence by electronic written evidence, because the latter will be considered a judicial presumption which is naturally weaker in strength than the written evidence.

Therefore, we can say that adapting the text of Article (104) of the Evidence Law does not help us in reaching a legal argument for electronic data in evidence before the commercial courts.

Article (21) of the Iraqi Law of Evidence stipulates that "official documents are those in which an employee or a person entrusted with a public service proves, according to the legal conditions and within the limits of his competence, what was done on his hand or what the concerned parties indicated in his presence." As for Article (25), it has It stipulates that "the ordinary document is considered issued by the one who signed it unless he explicitly denies what is attributed to him in terms of handwriting, signature or thumbprint." By analyzing these two texts, the following becomes clear:

1- Both texts are in a general form that can include ordinary "manual" writing in general and ignite others such as electronic writing, as long as the latter fulfills the conditions of that writing, so it has the same authoritative evidence.

2- The legislator did not explicitly stipulate the regular paper writing, but in both texts it was mentioned in the wording (established and promulgated), and the verification of proving and issuance is not a condition that it be on paper, but rather it can achieve both things in the regular paper and in Other means, so that the electronic data is by written evidence in all its forms as long as the process of fixing it and its limits have fulfilled the conditions necessary for its approval according to its own method.

3- Not explicitly referring to Bedouin writing in the two articles means that traditional paper or manual writing is not part of the general system of evidence, so "electronic writing" can be considered as strong as regular paper writing as long as this matter is in the interest of individuals and protects them from the harm of losing their rights to Money that they have no way to prove their rights other than digital data.

In spite of the aforementioned perception through which it may appear that the adaptation of the current legal texts can help us at the current stage to take electronic data in commercial proof, the need for legislative intervention is still present and necessary, given that the best way to give these authoritative data Legality is the explicit legal recognition of it, so we call on the Iraqi legislator to organize a law on electronic transactions in general and to give the electronic document in particular an explicit legal force in order to enjoy sufficient confidence in electronic transactions.

9- Results

- Equality between international and national legislation between electronic and written documents, in light of the functional equality between them, and the establishment of most countries whose legislation has been amended to set sufficient conditions that allow the electronic document to play the role of the written document in evidence, and these conditions in short are the ease of reading the electronic document, as well as maintaining the integrity The data recorded in it and the inability to modify it whether it decreases, increases or changes.

To achieve the electronic editor (electronic writing) and the electronic signature, and its function is evidence of legal procedures, the highest level of security and privacy must be provided in the user's environment, in its creation by technological means, perhaps the most important of which is the encryption that preserves the electronic signature system as well as the data message sent from non-existence. Any tampering with it, whether by distorting it or modifying it, which can be discovered in the event of its occurrence, as it allows identifying the sender and verifying his credibility.

- The location of different images of the electronic signature, the signature with the pen, the e-mail ..., and other images that were the result of electronic interaction, you must do it by performing the same functions as the traditional signature, as it indicates the identity of the obligated to the document, and thus his personality and expressing his full will to be committed to what has been signed . The issuance of electronic certificates by the electronic certification service provider It is a sufficient guarantee to instill confidence in individuals who depend in their dealings on writing and electronic signature.

By reading the texts of the draft law on exchange and electronic commerce, the Iraqi and Egyptian electronic

transactions law, these two texts did not regulate electronic commerce and electronic signature by one law, and they also created more than one legislation that deals with each of these means, some of which are related to electronic signature and the other to electronic commerce. Therefore, this course will lead to the dispersal of dealers and judges between two separate laws dealing with one subject, and it is advisable to unify these two laws into one law.

- With regard to the scope of using the electronic signature, we saw that the legislator, through the text of Article (2) of the draft law on exchange and electronic commerce, did not clarify what is meant by transactions that are accepted to be signed and to which the law applies. Certain procedures such as personal status transactions and immovable real estate transactions, and since the aim of this study is to address the deficiencies through the issuance of legislation by the legislator that is compatible with developments and changes to meet the needs of society, and therefore we hope that the Iraqi legislator will refer to these transactions in detail as the UAE legislator did For example, but not limited to, which makes it easier for the judge to apply the texts and refer to them and helps in allowing the use of electronic commerce in all fields between countries.

10- Conclusion

In this study, we dealt with a recent topic, which is electronic proof, which arose as a result of technological development in the world of information and electronic commerce, which was significantly dependent on electronic alternatives that replaced traditional methods based on written writing, as these alternatives perform the same goals and functions, but faster and at a lower cost. This prompted the various legislations and regulations to try to find an integrated solution, the legislative framework that determines the validity of electronic evidence and gives it a legal and reliable form of proof, such as proof by paper documents. Through our study of this topic, we have reached a number of results and tried to provide some results and recommendations.

11- Recommendations

- It is necessary to establish special rules and mechanisms that preserve electronic documents, through the establishment of agencies that work on this, but that these rules and mechanisms regulate the responsibility of these bodies for any breach that violates the confidentiality of electronic documents.
- The need to set more precise and limited conditions for finding people with experience and professional competence to work in electronic certification bodies to protect people and their dealings.
- The need to establish the legal capacity directly on encryption and electronic signature as two ways to protect electronic documents, through the development of legal rules, especially the criminalization of assault on these means.

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