



**NEAR EAST UNIVERSITY  
GRADUATE SCHOOL OF SOCIAL SCIENCES  
DEPARTMENT OF LAW  
MASTER'S PROGRAM**

**MASTER'S THESIS**

**VARIOUS PROVISIONS OF CISG RULES AND  
DOMESTIC LAWS CONCERNING E-  
CONTRACTS FORMATION**

**Beegard Mohammed ISMAEL**

**NICOSIA  
2016**

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**DECLARATION**

I hereby declare that this master's thesis titled as *Various Provisions of CISG Rules and Domestic Laws Concerning E- Contracts Formation*" has been written by myself in accordance with the academic rules and ethical conduct. I also declare that all the materials benefited in this thesis consist of the mentioned resources in the reference list. I verify all these with my honour.

**Beegard Mohammed ISMAEL**

18/01/20

## ACKNOWLEDGEMENT

*After painstaking effort, I dedicate the outcome of my effort to:  
My dear father the owner of compassionate heart (God bring him into His rest in  
peace)*

*The source of kindness and tenderness: my mother*

*My husband, which I considered him the source of my strength and my success*

*The light of my life my children:*

*Aland, Anya, Rasty*

*My Esteemed professors*

*My family and my precious ones and all those who contributed to my support and  
encouragement*

## ABSTRACT

Despite the numerous studies and research that specializes in studying the contracts, whether local or international, but the contracts, liabilities and business transactions has become an urgent necessity of the era and not have given up the risks and cases of fraud or mistake that accompany these transactions. However, studies that deal with commercial contracts concluded by electronic means has become more than necessary due to "increasing and commonness" of this type of the so-called e-commerce even become one of the features of this century.

Therefore I will conducted research to make a study about electronic contracts through both national and international ranges in this research that entitled "*Various provisions of CISG Rules and Domestic laws Concerning E- contracts Formation*" where I will examine topics that fall within the organized legal framework for electronic contracts by dividing the study into five sections and as follows:

**Chapter I:** This chapter will be the presented and introductory of the subject of electronic contracts also in this section it will be the theme of e-commerce and electronic contracts and attempts to give the profile topics to be studied.

**Chapter II:** In this chapter it will be examine an introduction to contract law, and contracts in brief, an Introduction of the formation of contracts in common, the concept of e-commercial The advantages of electronic commerce, contracts in electronic approach.

**Chapter III:** While the third chapter will be allocated to examine the electronic contracts, which in turn is divided into several parts and each part dedicated to address a specific topic. These topics are: e-contract definitions, for example; the mean of Electronic, electronic communications, messages in data forms, etc. The interdependence of Internet, E-commerce, E-contract, the nature of electronic contracts the concept of electronic contracts, Electronic Contract characteristics.

**Chapter IV:** chapter four will be the most in-depth section from other chapters, because of what it will be examine and analysis of important topics in the issue of the formation of electronic contracts, in both national laws, and international conventions, particularly the CISG. It will study the formation of electronic contracts, and the most questions that rise in this area, for example; is e-contract a valid legal contract? Are e-contracts always international? As well as the standard of distinction between national and international contracts, the formation of e-contract, correspond of will, electronic offer, determination the time of the conclusion of the contract in e-contracts, and electronic acceptance, also electronic Agents and the time and place of sending or receipt electronic communications, electronic signature.

**Chapter V:** The fifth chapter will be the last section and the conclusion of my research, which will be assigned to discuss the recommendations and the outgrowth of the study.

**Beegard Mohammed ISMAEL**

18/01/2016

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## Abbreviations

E-Contract	----	Electronic Contract
E-Commerce	----	Electronic Commerce
E- Signature	----	Electronic Signature
ICSG	----	United Nations Convention on Contracts for the International Sale of Goods
UCC	----	Uniform Commercial Code (USA)
UNISTRAL	----	United Nations Convention on the International trade
OECD	----	Organization for Economic Co-Operation and Development
WTO	----	World Trade Organization
UETA	----	Uniform Electronic Transactions Act (USA)
CUECIC	----	United Nations Convention on the Use of Electronic Communications in International Contracts
MLEC	----	United Nations Model Law on Electronic Commerce
IESTL	----	Iraqi Electronic Signature and Transactions Law

## **CHAPTER I**

### **INTRODUCTION**

The evolution in the field of IT and the emergence of the global information network (Internet), and other modern means of communication, which has facilitated commercial transactions in an international trade field of communication, delivery of services, and the completion of all transactions without waiting for a long time and travel costs, that lead to the appearance of a new type of electronic transactions not previously unknown which is termed e-commerce.

Electronic commerce as a general concept is any form of business transactions in which the parties interact electronically rather than material exchanges or direct financial contracts .Electronic contracts are the kind of contracts that made through machines that work by electronics which are many, the most important and most recently is computers.

According to Dave (2009, p.11) the UK government defined e-commerce as:

“the exchange of information across electronic networks, at any stage in the supply chain, whether an organization, between business, businesses and consumer, or between the public and private sector, whether paid or unpaid.”

Business and contracts that done by the use of online networks are considered international character occurring because parties predominantly belong to different countries, that we examine in this study, the Internet has make the world's most established states in constant communication. There are many types of commercial transactions that take place via the Internet for example; to buy goods such as books, clothes, or to buy services for example; airline tickets, hotels. E-commerce may be in

business to business (B2B), business to consumer (B2C), business to government (B2G), or and mobile electronic commerce (WTO, 2013).

And here questions arises about the system which should be applied in such contracts and businesses, whether it is the buyer (consumer) system or the seller, or the mediator system in the case of presence, or Internet service system supplier, ...? As well as what are the regulations and laws that govern electronic contracts, the sources of the Law of electronic commerce.

After the enormous development in the information technology and e-mail field, and then the international e-commerce which are based on the speed of the conclusion of contracts and changing the concept of the classic trade. Speed and the conclusion of contracts electronically has become one of most attributes and requirements now a day, especially in the shortening distances and reduce the time, a common example of daily practice for rapid agreements and accompanying information technology services is the mobile services with Internet service provider.

For example, in Iraq the development of electronic communications sector impressively rising with increased users of the service according to "Iraq Telecom" which is a monthly newsletter Zain Iraq's subscribers are more than 10 million, and Asiacell with 7.74 million subscribers, Korek Telecom with 2.5 million subscribers (Iraq Telecom Monthly Newsletter, 2010).

Many countries have depended in their economic and financial policies on technologies, in order to facilitate the provisions of services to its citizens for example, in India, the Indian Railway Catering and Tourism Corporation Limited (IRCTC) providing booking through the Internet and other services and facilities.

IRCTC is certainly the major e-commerce site in India and the only site that offers the only link for purchasing Indian railway tickets online and provides online booking services for customers. IRCTC offers a large option for consumers for payment of buying tickets online. IRCTC however, is one of the few enduring e-commerce sites which charged transactions charges from customers, which are different bank to bank (Indian railway, 2014).

Despite of the many advantages of electronic commerce, this type of transactions does not have given up the risks and therefore to provide security in and important e-commerce is on the rise in the global perspective. However, insecurity in the electronic means leads to penetrate part of the deal leading to financial or private information shared unintended loss (Al-Taie & Kadhim, 2013).

Therefore, e-commerce security transaction is an important part of the continuous success and growth of e-commerce in terms of secure servers and developing countries in transition have yet to evolve into a technological infrastructure to compete with the most developed countries in terms of e-commerce. For example, in Iraq as of 2011, the numbers of secure Internet servers are only four; E-commerce security requirements can be studied through the examination of the overall process starting from the consumer and ending with commerce server (Al-Taie & Kadhim, 2013).

Consequently that the world trade became a computerized system linking the consumer and the seller in what is known electronic transactions or electronic contracts. and the impact on a lot of aspects and transactions between individuals, the effect of the legal, civil and criminal liability occur as a result of what is known the electronic transactions, which raised a lot of questions related to electronic transactions such as described and adapt and applicable law and other such questions, so we will address electronic contracts in terms of their characteristics and the formation of E- contracts and applicable law.

Thus, the formation of e- contract is one of the most important concern and themes among the procedures of business transactions because it is the first stage of a commercial transaction, as well as it must be followed by agreements on the contract. Commonly, in order to avoid the uncertainty of the communications in international trade, the use of contracts in written documents may supply to reduce the risk of the transactions.

However, in classic contracts there are lots of elements in order to create a legal contract, for example; the formation of the contract, formalities, remedies, other requirements of a contract, intention to create legal relations, consideration, formalities, capacity, and contractual terms.

The evolution of our era made the export of jurists to keep pace with the theories of evolution and change in business transactions and procedures for the contractual relationship between the parties as Professor Katz believes that there are several types of Transaction costs in the legal rules governing the rules of bargaining may create, including Communication costs, and perhaps most notably, the costs "strategy behavior" (Bayern, 2015, p.70).

Accordingly, on the other hand after the revolutionize in the methods and increasing in the use of the Internet as an interactive means in transactions , which has takes nationally and internationally reliance , and in the provisions that the " internet "as global tool for making enormous commerce and transactions , the issues of the formation and agreements on the contract and the legal attention to create rights and obligations via electronic means arise.

Therefore, the purpose of this article is to evaluate the international and national current legislative and their possible impact in assisting electronic contracts in the area of contract formation. Although international standard laws and rules relating to international trade in order to coordinate the different legal systems in the sales transactions all over the world, but different legal rules still exist, inter alia, these included the formation of contracts which is stile contentious issues between different Jurisdictions.

For example, the use of electronic communications means for the establishment of international sales contracts significantly increased, and it may be a controversial issue In this regard, the study will analyzes how to resolve the issue of uncertainty legally and scientifically and that the time of formation of a contract.

Furthermore, for the purpose of doing so, this research will compared and discuss the mechanism of the rules that govern the formation of contracts by electronic means, which are ruled by international instruments and domestic laws and in electronic commerce. Also the relevant questions that raise here about methods and at what time International Electronic Contracts be able to be formed?

## **Research Methodology**

In order to moving forward in our study, the study will utilize an comparative study so that to give a clear view of the subject by reviewing various provisions of a different laws and regulations whether national or international, that deal with the electronic commerce and electronic contracts in order to the creating and the formation of the contract by electronic way and what are the applicable laws especially in issue that lots of these contracts were have an international character. Also in some of the study there will be analysis methods to go deeper and this would be in the domestic regulations and haw they give the E-contracts the legal framework.

## CHAPTER II

### AN INTRODUCTION TO CONTRACT LAW

#### 2.1 Contracts in Brief

The general objective of contract law is to facilitate and granting of authority to the Self- intention of parties to continue to achieve their common objectives through contracting and the formation of contracts through a set of indicators such as a word or an act or through regular or electronic communications (Eisenberg, 1994).

How to create legal relations? Or transport our intention to create an agreement to exchange something otherwise benefits? However by the right way, this be possible only by contracts, but with a legal elements.

Contract law does not have a complete and descriptive theory; that explain what the law is, not a completion standard theory, explaining what it should be. But it includes the traditional definition of the contract, which includes promises that the law will be applied (Schwartz & Scott, 2003).

As well as in common law there are two core definitions of a contracts, the first concept is consider a contract as a: “promise or a set of promises which the law will enforce” (*Lester Williams v. Roffey Brothers 1989*), the second one is that any contract is an agreement giving rise to obligations which are required by law (Stevenson, 2008).

So what is a contract, or how it could be define? A contract may be defined as an agreement between two or more than one parties to create rights and obligations that may be enforced in the courts. The regular means of enforcement is an action for damages for breach of contract, although in some cases the court may compel performance by the party in default (Duxbury, 2009).



The most popular explanation of a contract that can be given by Corbin (1917, p.170) Corbin stated that: "It is a promise or set of promises which the law will enforce."

The CISG did not refer to the definition of contracts in general, but only the reference to the applicability of the convention to the contracts of sale of goods in Chapter One, Article 1, with the main elements of any contract; offer and acceptance which are more common sufficiently recognized in the Convention ( Ziegel, 2005).

In view of that, and according to the Secretariat of the United Nations Commission on International Trade Law which is not an official commentary on the Convention, we could define contract as: "the exchange of an offer and an acceptance"( Article 1, Chapter One, CISG, 1980 ).

English Contract Law defined contracts as: "An agreement giving rise to obligations which are enforced or recognised by law" (a4id.org, 2015). Section 1 of Article 2 of the Sale of Goods Act 1979 (UK) examine the definition of a contract of sale of goods as: "A contract of sale of goods is a contract by which the seller transfers or agrees to transfer the property in goods to the buyer for a money consideration, called the price."

Article 73 of the Civil Code 1951(Iraq) defines contracts as: "An agreement of an offer made by a contracting party with the acceptance of another party in a manner which establishes the effect thereof in the object of the contract".

Article 1101 of the Civil Code 1808 (French) defines contracts as: "A contract is an agreement which binds one or more persons, towards another or several others, to give, to do, or not to do something."

The law of contract is an issue of a great exacting impact. from the earliest aged, still now a day, people enter in to legal relations which called " contracts " or agreements starting with a cup of a tea , or buy a car ,consumer goods, ending with a enormous contracts. All these transactions are ruled by the law of contract, a contract is therefore not merely essential for the smooth implementation of commerce and trade but it strengthens society itself.

Therefore; we need to examine the law of contract, the "law of contract" is possibly a body of rules concerning to put in to force agreements that create between members of society, also structured the issues of the implementation of the contract by parties, and the remedies which offered and available in case of the failure to perform obligations which occurred from those agreements.

Contract law is not a complete narrative theory explain what is the law, can not be considered a complete standard theory, explains what the law should be. Which gives the Domain that includes the traditional definition of a contract that includes all the promises and granted by the law is the legal force and take effect when the availability of the required conditions (Schwartz & Scott, 2003, p.543).

Mainly, and usually the implementation of lots of contracts absolutely work with no problems, but what about the matter of wrong discharge of the contract? Or mistakes, breach of the contract? Here the law of contract plays its role.

For example, the terms of the contract may be unclear to be enforceable (*Bannerman v. White 1861*) ; or a party of the contract may have give the wrong impression about the other with a false statement; or when the wrongful is about the content of the contract that lead parties to be under a fundamental mistake, and consequently, all these issues and troubles may be avoid by rules of Contract law, which provide the solution to such problems by, for example, declaring the contract, or giving a remedy , or else a claim for damages (Macintyre, 2010, pp. 133-134).

The Iraqi legislature's definition of contract in force on that: "An offer link of one of the two contracting parties to accept the other on the expression of proven impact in the meeting" (Article 73, Iraqi Civil Code 1951).

It is understood from this definition that the contract will integrated linked not one will, so that Iraqi legislature confirm the difference between the contract and individual will, so that many of the scholars of Islamic Sharia use the word contract to describe all legal obligations, whether as a result of an agreement between two parties such as selling, rent, or the result of the will of one person and discharge of the debt.

## **2.2 An Introduction of Contracts Formation in Common**

A contract is the one of most important methods for the transactions of business or any trade, it is the formation of the contract mainly through the "exchange of two declarations of will: the offer and the acceptance" (Perales Viscasillas, 2001, p.371).

A contract is a legal obligatory agreement that each business need to formulate a contract, also it may be described as an agreement under which parties presume obligations to each other for valuable consideration (Macintyre, 2010, p.76).

In order to create a legal and enforceable agreement, each person or company, businesses need to follow several steps to make a contract in a correct way. The first step is the formation of the contract which has two components, the offer and the acceptance. And the Second step is intention to create legal relations and consideration, then the formalities and the capacity.

By including these steps and contractual terms of the contract, the will has its legal enforceable in courts and this mean the impossibility of remedies for the breach of the contract terms or any kind of mistake or fraud, because in each agreement each party will be able to create a legal relation that lead to give benefits to the other party in binding agreement, or the exchanging of the rights and obligations. If there was no exchange of benefits there will be no contract, but just a gift or a grant.

### **2.2.1 The formation of contracts in Civil Law**

In civil law, the formation of contracts mainly based on the agreement of the parties, and this agreement will extends to all the basic conditions for the contract: mutual consent; the ability of the parties to contract; the existence of the subject of the contract, and a legal reason (Hermida, 2005).

According to recent studies and the opinions of scholars, civil law is considered a static and difficult to apply to the new models that currently dominant, for example; electronic contracts, click on the link contracts. While the Common law considered more convenient and flexible than civil law, that it can be compatible

with the requirements of the parties to enter into contracts may be unfamiliar to the theories in establishing the contracts (M. Perillo, 2000).

### **2.2.2 The formation of contracts in Common Law**

Common law is consider an agreement that formed through mutual consent of the parties a legal and recognized contract, and this approval is an expression of the parties' intent through words or conduct usually takes the form of an offer made by someone the “offeror”, and accepting by the other, the “offeree” (Edwards, 1977, p. 217).

Under English Law, once an offer met an acceptance the contract will be created. also English Law has recognized between the "Offer" and "Invitation to Treat" here according to English Law it consider an offer as every action that if other party accepted, is a formation of contract. In contrary, "invitation to treat" is a representation by a party an offer made by another party.

The same can be said about the international legal relations, contracts that made between two parties from different places or states are called international business or international contracts, here the formation of the contract take the same shape or the principles but one important element must be take in consider which is the choice of law or the Applicable Law.

Article 14, Section 1 of the United Nations Convention on Contracts for the International Sale of Goods of 1980 ( CISG) refers to the formation of the contract in which that it is a proposal for concluding a contract to deal with one or more definite persons by the exchange of an offer and an acceptance. Once the formation of the contract occurs in this way, the contract is fulfilled, when the acceptance of the offer becomes effective, it stated that:

"A proposal for concluding a contract addressed to one or more specific persons constitute an offer if it is sufficiently definite and indicates the intention of the offeror to be bound in case of acceptance. A proposal is sufficiently definite if it indicates the goods and expressly or implicitly fixes or makes provision for determining the quantity and the price."

In case of the existing of more than one addressed proposal this will be considered as an invitation to make offer (Article 14, Sec 2, CISG 1980): "A proposal other than one addressed to one or more specific persons are to be considered merely as an invitation to make offers, unless the contrary is clearly indicated by the person making the proposal."

### **2.3 The concept of E-commerce:**

E-commerce term covers a very broad concept, which includes any business process, is done by electronic means, as well as those by fax, over the phone, through electronic data interchange (EDI) or on the Internet (Gómez Valenzuela, 2015). This kind of commerce has an especial concerned in different levels, in the International and Regional legislations, also National regulations has have the issues and legal circumstances concerning electronic commerce.

Electronic commerce includes as a general concept, any form of business transactions in which the parties interact electronically rather than material exchanges or direct financial contracts (Ahmed Badr, 2005).

This definition is consistent with the WTO definition of where the known e-commerce as e-commerce is the sale or purchase of goods or services conducted over computer networks by methods specifically designed for the purpose of receiving or placing of orders. Even though goods or services are ordered electronically, the payment and the ultimate delivery of the goods or services do not have to be conducted online, according to WTO e-commerce can be define as "an integrated set of production and distribution, marketing and selling products operations by electronic means" (wto.org, 2015).

The OECD (Organization for Economic Co-Operation and Development) considered e-commerce as international economic cooperation is generally in commercial transactions by individuals and organizations which depend on processing and transfer of digital audio and video data through the Internet, such as open or closed networks can relate to the open network.

The OECD defined e-commerce that it is:

"An electronic transaction is the sale or purchase of goods or services, whether between businesses, households, individuals, governments, and other public or private organizations, conducted over computer mediated network, the goods and services are ordered over those networks, but the payment and the ultimate delivery of the good or service may be conducted on or off-line." (oecd.org, 2015)

As for the national level, States and due to the increasing demand for e-commerce and the expansion of this kind of trade internationally and internally, Various countries around the world has enactment particular laws and regulations to regulate e-commerce to keep pace with enormous development in the volume of electronic commerce.

For example; the Article 2 of Emirate of Dubai Electronic Business Transactions Law 2002, defined e-commerce as: "e-commerce is commercial transactions through Electronic Communications." While French Trust Law No.2004-575 of June, 21, 2004 (wipo.int, 2004), regarding Confidence in the Digital Economy define electronic commerce in Article (14)/ 1 as "an economic activity in which a person proposes or achieves the provision of goods or services at a distance by electronic means" (Gkoutizinis, 2006, p.281).

The United Nations (UNCITRAL) Model Law on Electronic Commerce which issued on 16, December 1996, did not include an explicit definition of e-commerce, however, the Convention pointed out in its first article to the applicability of the Convention to any kind of data in the form of a data message used in the context of commercial activities (uncitral.org, 2015).

## **2.4 The Advantages of Electronic Commerce**

Electronic commerce is an important means of promoting commercial transactions which undoubtedly will witness steady progress during the coming years because of the multiple advantages and of as follows: -

1. Helping simplify organizational structures through the creation of an administrative structure is characterized by high knowledge levels compatible with the nature of this type of trade which is based on computers devices also reduces the need for storage and the availability of a certain extent from commodity stocks, whether raw or in the form of fully finished product where it can be received requests of purchasers and met directly from factories and sales agents, and this means reducing operating costs.
2. Create opportunities for speed deal making and the completion of the business, which is not available for traditional trade in terms of work to open new markets, which depends in large part on personal contact and promotional missions which increases the cost while the e-commerce provides marketing services provided to customers Details and as appropriate with the target market and the expected customer.
3. Assist in simplify and organize project operations and achieve their goals away from where the errors that dependence on electronic devices reduces human error and reduces the costs related to the circulation of documents between departments.
4. Helping SMEs (small and medium enterprises) to market their products through the network without a great need to follow the traditional methods of external marketing.
5. The expansion of the scope of the selection between the products through as they offer the features of their goods and the consumer have to choose between the price and the quality of the goods.
6. The use of modern methods other than the methods adopted in the traditional trade, there will be social and economic consequences of changes in many aspects, including the environment and the nature of the business and the role of governments in support of trade and the promotion of efficiency facilities.

## **2.5 Contracts in Electronic Approach**

electronic contract characterized by a universal as covering all countries in the world for being the most often through its Information network (the Internet), also characterized as openness, The network is available to all who wish to access them,

and electronic contracts are finally characterized by electronically as for being done by computers, electronic software, which is the movement of the will of the contractors to each other without a physical presence in a contemporary to them, and therefore belongs to a sect distance contracts.

It would become popular in this age of electronic developments, the whole world has become one small village, through the Internet; so that anyone can know what is happening anywhere in the country and in the world, as he sat in his home.

The Internet became the era language, through which we can shop what we want of goods, where the whole world has become a single commercial market, can any citizen in any place to walk around in, and are being commercial operations of buying and selling and marketing without a place to leave as he sat in his house does not cost the hardships of travel, through designated sites electronic contracts that emerged in the modern centuries and contributed a significant contribution to raising the high costs on contractors.

The definition of electronic contract actually does not come out in constructed and composition, types and substance from this context, and then it is subject organized by the provisions contained in the general theory of contract. Email contract consider unnamed contracts, because the legislator did not put a special regulation for these kinds of contracts.

Unnamed contracts are those contracts that have not known by a particular Appellation by legislator, has not organized by general rules that are applied due to lack of circulation, including the publishing contract.



## CHAPTER III

### AN INTRODUCTION TO ELECTRONIC CONTRACTS

#### 3.1 E-Contract: The definitions

Electronic contract is as defined by Article (2)/1 of the European Directive on the Protection of Consumers in Respect of Distance Contracts 1997 as: "any contract related to goods and services being among the supplier and consumer, through regular framework of distance sales or the provision of services organized by the supplier, which is using one or more of the electronic means of communication until the completion of the contract" (eur-lex.europa.eu, 2015).

The European Directive did not use the term "electronic contract" but refers to "distance contract" which means contracts that concluded between absent persons via electronic tools, the European Directive define electronic means as:

"means of distance communication" any means which without the simultaneous physical presence of the supplier and the consumer, may be used for the conclusion of a contract between those parties." Remoteness communication may include lots of mean or tools that should be recognized and regulate by law for example; radio, television, electronic mail" (eur-lex.europa.eu, 2015).

E-contract does not differ from the traditional contracts in terms of the conclusion; it was governed by the same rules that apply to traditional contracts, and requires to entered into the availability properly, satisfaction, subject and the reason of the contract , but the Concluded method is performed using modern communication networks (Internet) (Mujahid, 2000).

In contrast to the European Directive, Article 1, para 11 of Iraqi Electronic Signature and Transactions Law 2012, included the definition of "electronic contract" as following: "Correlation offer issued by one of the contractors to accept the other

on the features of its impact on proves held in upon that is by electronic means." This is the same as taken by lots Arabic legislations in taking the term of the electronic contract.

### **3.1.1 Electronic**

E-contract contains two approaches; "Electronic" which is according to Uniform Electronic Transactions Act 1999 is a word: "means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities" (Section 2/5 UETA United States of America 1999).

According to Article 1 para 7 of IESTL electronic methods are: "Hardware or equipment or electrical tools or magnetic, optical, electromagnetic or any other similar means used in the creation and processing of information, exchange and storage"

### **3.1.2 Contract**

Previously we dealt in this study to define the contract in general, but in national laws and because of the absence of international regulations of the definition of contract in general.

### **3.1.3 Electronic communications**

With regard to electronic contracts and transactions electronic communications should be included and defined and stand on what they are. Article 4/para a, of The United Nations Convention on the Use of Electronic Communications in International Contracts, 2007 in defines "Communication" separately as it is:

"means any statement, declaration, demand, notice or request, including an offer and the acceptance of an offer that the parties are required to make or choose to make in connection with the formation or performance of a contract."

While it refers to "Electronic communication" in Article 4/b as: "any communication that the parties make by means of data messages."

Whereas the CISG does not contain specific conditions or means to conclude and to prove a contract even if they are traditional, referring to Article 11 that any contract of sale could be concluded without needing to specific requirements, and can prove even by witnesses ( Article 11, CISG).

### **3.1.4 Messages in data forms**

The United Nations Convention on the Use of Electronic Communications in International Contracts states that messages in data forms is include any information generated, sent and received or stored by electronic means, including for example; electronic data interchange or e-mail, telex or telegraphic (Article 4/ para c, CUECIC).

Electronic Signature Law 2004 (Egyptian) defines electronic data in Article1/para b as: "a message that includes information published or incorporated into, or stored, or sends or receives fully or partially by electronic means or digital, optical or any other similar means".

### **3.1.5 Electronic medium**

The CUECIC Convention used the "automated message system" as sign to refer to electronic medium, by including the meaning of the automated message system as computer programs or an electronic or other automated means.

Electronic medium can be defined in domestic laws as: "Computer program or any other electronic means used to perform an action or respond to intent to create or sending or receiving information" (Article 1/ para 8 IESTL).

### **3.2 The Interdependence of Internet, E-commerce, E-contract**

Since in this paper it will discuss electronic contract as the means to complete e-commerce operations, firstly it is important to point out initially that the electronic contract is not an exception to the rules and regulations of the general theory of contracts, The contract is the agreement and acceptance between two parties and therefore it does not come out in its constructive and substance from the context referred to above.

Until the matter is that an electronic contract is "characterized as a contract entered into electronically, among the absentees, using modes of electronic hardware and software information and other modern technical means which operates automatically as soon as the version of the operating orders.

Because of the spread of the phenomenon of contracting in electronic approach started arise in the ground some of the problems that preoccupied scholars and legislators to find solutions to them. Perhaps the most important flaw in the electronic contract as required by law sometimes emptied of compromise in a specific format, for example if the law requires that a contract must be in written document.

#### **3.2.1 Internet, the Concept and Evolution**

It is an English word originally made up of two sections they are "inter" which means interfaces or communication, and the second "net" means the web or network, and if we collected two words together, the full meaning is obtained or the connected network interfaces.

The Internet is defined as: "a group of computers connected to each other to each other in a way able to exchange information using modern technology" or as J.C.R. Licklider describe internet as "Galactic Network".

According to Ronchi, Licklider define internet as: "a group of globally interconnected computers through which everyone could access the data and programs quickly from any location" (M. Ronchi, 2009, p.59).

The Internet has started at the end of the sixties where entrusted US Department of Defense to agency Advanced Research Projects (advanced research project agency) with the task of creation of computer networks related to each other, and it was the goal of this agency is mainly research in the field of defense action to ensure the supremacy of the United States of America in the field of defense research, and this come after the launched of the Russians spacecraft (Sputnik) in 1957.

The reason for internet penetration is to a lack of the cost of this method when compared to the means of other communications, and dispensing with paper in writing, as well as integrate them to the characteristics of the multiple of the multimedia including: TV, computer and phone together (sound and image and text) and provided amazing possibilities in communication between human beings wherever they are exceeding the limits of time and place.

### **3.2.2 Internet as a commercial concept**

The use of Internet for commercial purposes began in 1992, with the emergence of (www) World Wide Web, which invented by Tim Berners-Lee (internetsociety.org, 2015) as a promoter of goods and services, from here businessmen and entrepreneurs and businesses demand for these sites began and are making the deals through their correspondence via e-mail and then by displaying their products and services through websites on the Internet.

Electronic trade volume has dramatically increased in recent years, there's even a study concluded that the evidence suggests that 60% of economic growth during the first years of the twenty-first century will return in the first place to e-commerce and dealing in information technology in general.

In 1991, the internet had less than 3 million users around the world, in 1999, internet users reached about (300) million, and at least a quarter of the them purchases online since e-commerce locations, the estimated value of about \$ 110 billion. (wto.org, 2015) According to recent studies, consumer sales through online Recorded an exponential growth by further than 23% in 2005 to an estimated \$142–\$172 billion (Jain & Lata, 2015).

According to Richard T. Watson electronic commerce is:

"The use of computer networks to improve organizational performance. Increasing profitability, gaining market share, improving customer service, and delivering products faster are some of the organizational performance gains possible with electronic commerce" (florida.theorange grove.org, 2015).

Amazon.com is a good example to understand how to conduct sale transactions over the Internet, which is the most popular websites for online retailers. It is an online company sells thousands of products such as books, CDs, electronics (E. Hill, 2003).

### **3.2.3 E-mail**

Right now no one is unaware of e-mail, an abbreviation for expressing Electronic Mail or e-mail, which is a quick and easy service to exchange messages, sings from the use of traditional mail. An E-mail can be defined as: "Almost instantaneous transfer of text, voice, and/or video messages from one computer or device to another, over the internet" (businessdictionary, 2015).

Now a day lots of e-commerce done via E-mail especially contracts, in contracts the use of E-mail is more common and this use is not limited to business only, but beyond that the conclusion of the contract and the expression of the will.

### **3.2.4 Electronic Mediator: www**

The Click wrap agreements contracts are the most usually formed a contract on the web it used with software licenses (Joseph, 2015). Before that there will be Internet web pages, there was software, just as it has become for web pages, contracts for the Web (web wrap agreements) was a ready software contracts called (shrink wrap agreement) is the licensing agreements to transport licenses that accompany the programs (S. Wright, 2008).

It is in two forms, the first, which licenses appear on the screen during the process of downloading the software on the device, usually the user does not read it (*Pro CD v. Zeienberg*), but simply to pressure (I agree) or (I accept), it is e-contract, which finds its presence at the front of any program preceded by the download process (Install) (Squires, 2000).

In some states there are approved and recognized laws and regulations in this respect for example; in the United States of America the Uniform Computer Information Transactions Act (UCITA) forms a uniform commercial code for computer information transactions, UCITA provisions cover a varied issues connected to computer information including; software licenses, contracts for the custom development of computer programs etc (D. McDonald, 2001).

### **3.2.5 Electronic Data Interchange**

Electronic Data Interchange (EDI) is the transmission of information from one computer to another computer and those are used frequently by commercial contracting parties to send and receive standard forms and clarified an example of electronic contracting through the use of electronic agent (E. Hill, 2003).

### **3.3 The nature of Electronic Contracts:**

Is electronic contract differs in nature from ordinary contract? What is the criterion of the difference and distinguishing? It is the standard of the Implementation of the agreement is how to be? By whatever means, or remain the contract as a contract, but the parties are a measure it does not matter method and conclusion but as long as the parties were natural human beings there is no room for doubt or debate and argue? So what is standard norm of the legal nature of a contract in electronic approach?

The formation of a legal contract is recognized as a contract which requires an offer and acceptance, domestic contract laws are addressed different rules that detailed the issues of formation and the enforcement of each agreement.

For instance; there are different kinds of agreements, that depend on the subject of the agreement and the parties intentions to create an specific agreement, the sale of goods contracts has an special areas in contract law to ensure that these kind of contracts are helps more commercial sureness, certainty, standardization, for example; Article 2 of the Uniform Commercial Code (U.C.C.) is the most American specialized law for contracts, that address themes of the formation and enforcement of definite commercial agreements, specifically the sale of goods (law.cornell.edu, 2015).

The United Nations Convention on contracts of the sale of goods issues important rules for international sales which deal with agreements that its parties are from different countries and nations to find and regulate rules that adjust the formation of contracts in international terms and the possible remedies for the breach of the obligations that occurs from each contract.

Here it will be important to defining international contracts and distinguish these kind of agreements with other kind of contracts which usually known as "ordinary contracts" therefore, and in order to reach our destination, It is recommended that firstly determine the characteristics of the International contracts, and then indistinguishable it from ordinary contracts.

International contracts are characterized by a number of characteristics including, for example; internationality character and this means the international feature of the contract: that the contract is characterized by the fact that the parties of the contract are from different countries or different nationalities.

Also international contracts can be defined in diversified customs, that regulations were adopted together, national and international regulation in the base of the place of the trade or usual location of parties. In this case it will arise further common standards, as a great contacts with more than one State which involving a choice between the laws of different countries ", or each transactions that affects the interests of international business (unidroit.org, 2015).



### 3.4 Electronic Contract characteristics

1. E-Contract entered into electronically or “remotely” because the parties to the contract are not present in the same place. It is a contract between absentees in (place) and between attendees’ in (time) because the interaction through information network (Internet) is a reaction among the attendees.
2. e- contract characterized by the commercial nature and the fact that the dominant feature of that contract, with sales accounting for broad commercial aspect of the total contracts concluded via the information networks (internet), but it can be done among ordinary individuals too (Mansour, 2006).
3. Electronic contract could be held “internally” that the contractors are from the same country, but e-contract is often characterized by the “international character” since most transactions are between people exist and belonging to different countries. As the user may be in a State, and the supplier and the product in another country, the company of information processing technology, introduction and downloaded over the network from a third country (Mansour, 2006).
4. The offere in e- contract is often “general” that this contract is open for contracting for those who wish to do so from the public that would leads to the consolidation of interactive capacity between network users Informatics around the world.
5. The possibility of immediate implementation of the electronic contract that could be implemented simultaneously and immediately, it is possible to get some services or goods immediately and quickly, as well as the fulfillment of obligations may be immediately once the contract was concluded over the network (Mujahid, 2000).
6. Electronic contract is demonstrable through electronic documents and electronic signature as for in terms of the fulfillment of the electronic money has replaced the regular contracts through payment and credit cards (Mujahid, 2000).

## **CHAPTER IV**

### **THE FORMATION OF ELECTRONIC CONTRACTS**

Already have been dealt with the nature and the concept of electronic contract and its characteristics, it is time to figure out how the electronic contract be formed and carrying out as well, the laws that regulating contracts in electronic approach. The world is in constant contact because of the Internet, which is an essentially means of communication. Conflict with laws that have arisen because of the spread of the Internet and thus as a result of the differences between the physical connections and communication using the Internet.

Contractual negotiations thus are preceding the creation of a legally binding agreement. For this reason, there is a big difference between the contracts concluded via the Internet from those that are formed through face to face communications.

What are the pillars that should be available in electronic contracts and given to distinguish them from natural contracts that "writing documents" is a basic element in the composition of these kinds of agreements? How electronic contract shaped? And is it different from other traditional contracts? Or be a way the formation of the e-contracts are the same as in relation to contracts in general?

Due to the variation sites and contractors parties to the contract being held electronically by any global online networks, some of which connects with some countries? Here raises several questions on the same foundations of these contracts, and of the law about the circumstances and the problems that result from them.

Also the most important argument is "electronic contracts" are international contracts? With the legitimacy that the CISG was not refers to the electronic contracts at least not including the formation of the electronic contracts. In fact, the

CISG is applies only to contracts of sale of goods including the formation of contracts and the performance of the contracts.

To fill the gap, default and uncertainties, that are found in CISG the United Nations Convention on the International trade (UNCITRAL) adopted the Model Law on Electronic Commerce (MLEC) in 1996, and the Convention on the Use of Electronic Communications in International Contracts (CUECIC) was adopted at its thirty-eighth assembly in July, 2005.

While the CISG is applies only to contracts of sale of goods without including e-contracts, or other kinds of contracts in electronic meaning or normal types, the CUECIC is applies to communications in electronic meanings that link with the Formation or the performance of an international agreement and further, that these contracts concluded between parties from different countries and places. For example; contracts for services, licenses of software, auctions, and sales of goods (H. Martin, 2008).

The MLEC also did not mention how the electronic contract be formed or the formation of the contract and the manner of performing, or the nature of the parties to the contract in the electronic contract between a person and an electronic information system, or between a natural person and electronic agents? Or in contrary the agreements between electronic parties in other words, between two information automatic systems, and the errors and mistakes that happen in these agreements (H. Boss & Kilian, 2008).

At the national level, in terms of the national laws many countries have adopted and legislated the laws and regulations that governing electronic contracts and transactions by electronic way and that also These laws and regulations aims to achieve the protection of the rights of dealers electronically and determine their obligations, encourage and make facilitate electronic transactions and correspondence mediated by electronic records depends on it.

As well as to remove any obstacles to e-commerce and other electronic transactions that may result from uncertainties over writing and signature requirements, and to strengthen the legal and commercial development for the application of e-commerce in guaranteed.

Also by these laws facilitate will be given to transfer of electronic documents between the parties. And States is able to promote confidence in the integrity and validity of electronic transactions, correspondence, and records, including electronic contracts through the enactment of laws that concerning electronic business transactions and organizing it.

#### **4.1 Is e-contract a valid legal contract?**

It should be clear before entering to the formation of e-contract the recognition of transactions and contracts that make electronically in both international and domestic laws, is these kind of contracts was just common practices or recognized and regulated according of such laws and international conventions.

The CISG which is the international source of the sale of goods recognize the conclusion of contracts by remote means when it refers to the “telegram” and “telex” as a method of written documents. But this recognition was clearer in the CUECIC provisions; it identified the use of electronic means in contracts in Article 8: “1. A communication or a contract shall not be denied validity or enforceability on the sole ground that it is in the form of an electronic communication.”

Lots of states are recognizing electronic contracts and transactions by law, for example; Electronic Transactions Law 2001 (Jordanian) identified the legal values of electronic contracts and transactions in Article (7) it stated:

“The electronic records, contracts, messages, and signatures shall be considered to produce the same legal consequences resulting from the written documents and signatures in accordance with the provisions of the Laws in force in terms of being binding to the parties concerned or in terms of fitness thereof as an evidential weight.”

Also in Article (2) stated that an electronic contract is an agreement that firm by electronic means, in whole or in part. UAE transactions and e-commerce Law by defining electronic transactions in Article (2/22) refers to the acceptable of

electronic transactions and contracts. As well as it permitted automated electronic transactions in Article (12):

“1. Permissible to be contracted between electronic medium are automated including regular electronic information or more to be prepared and pre-programmed to do so, and be hired valid and in force and productive legal effects even in the absence of personal intervention or direct any natural person in the process of concluding the contract in these systems”. “2. Permissible to be contracted between an automated electronic information system held by natural or legal person and the natural person another if the latter knew or should have known that the system will be the conclusion of the contract or implemented automatically.”

#### **4.2 Are E-contracts always international?**

If an Iraqi merchant (exporter) wish to enter in to an agreement with an American trader (importer) here the first possibility would be, that one party first is preparing of the contract, drag a copy and sign it, in two copies of the contract, and couriers them to the other party, who in turn signs both copies and couriers one copy back and the contract would be formed .

The second possibility is that the two parties meet somewhere and sign the contract. And imagine the Imagine the difficulties in travel, time required, and charges resulting from this contract, not to mention other obstacles.

Now a day, in the electronic age, the whole contract can be completed in a seconds, that both parties only exchange information electronically on the required item to be imported and purchased through e-commerce, and attaching their digital signatures to an electronic copy of the contract.

There is no need for additional difficulties like travelling costs, late posting in such a situation. There was formerly reluctance between legislatures for recognition this new technology, but now a day after the technology revolution many states have enacted laws to recognize the electronic contracts.

Therefore, and before examining the formation of e-contracts, it is helpful to address the criterion of contract whether internally or internationally, considering that most of the agreements if not all of them were an international character due to the growing popularity of electronic commerce. There are various types of contracts by virtue of the multiplicity of the provisions to which they apply; where the contract is divided into named and unnamed contract, consensual and formal contracts.

As well as can be divided according to the law that governing the disputes arising therefrom to the internal or national contracts, are governed by domestic law and international contracts that can arise upon the conflict of laws, a matter of the applicable law.

#### **4.2.1 The Standard of Distinction**

Therefore, it is possible to adopt the following criteria to distinguish between International and Domestic contracts:

- 1- The party's nationality
- 2- The place of Business
- 3- The Applicable laws

The CISG in the first provisions of its domain of applicability mentions the validity of the convention to contracts of sale of goods between parties whose places of business are in different States, with regards of these respects; Contracting States, the provisions of private international law.

- (a) When the States are Contracting States; or
- (b) When the rules of private international law lead to the application of the law of a Contracting State.

The (CUECIC) in Article (1) the scope of application distinct between both international contracts and domestic contracts that the Convention applies just to the “electronic communications in connection with the formation or performance of a contract between parties whose places of business are in different States.”

As well as the Convention went even further when it indicated in Article IV of the Convention and specifically with regards to the concept and definition of the terms contained in the Convention with respect to the place of work, that the presence of the workplace or business activity in different locations does not preclude of the applicability of this Convention as long as the method of contracting or implementation has been electronically (Article 4/ para h, UNCUEIC, 2007).

#### **4.2.2 Case study**

Opinions differed on the type of Al -Najaf International Airport investment contract whether international or internal, as the contract was announced by the Council of governorate of Al- Najaf and thus the contract is an internal contract. But according to Prof. Almamori, Al -Najaf International Airport investment contract is an international contract, according to two criteria, the legal standard or economic standard.

According to the legal standard the contract Internationally if one of the parties was foreigner at least which is linked to one of its components more than a certain legal system of a State or other elements like the parties place of residence or place of conclusion of the contract or the place of execution ... etc.

Since the nationality of a Contracting Company is a Kuwaiti (Aviation Holding for General Trading). Also the place of conclusion of the contract has been in Kuwait for this the contract may be overlapped in which foreign elements is not a national therefor the contract became Private International law.

The economic norm it does not care for those elements which may not interfere with any foreign elements nevertheless a contract can be longer an international if the contract included an international circulation of goods and services from one country to another (Almamori, n.d.).

### **4.3. The Formation of E-contract**

The legal status of electronic contracts and the process of offer and acceptance are not valid without legal legislations creates conditions of the contract using the Internet and which will establish using the same general law of contract. This is with regard to what is happening for the most part of the contract and in the same way to negotiate where in the physical domain as in every other contract; an electronic contract also requires the following necessary requirements as in normal field:

- 1- An offer
- 2- The acceptance of an offer
- 3- Legal consideration
- 4- An intention to make legal relations
- 5- Probable performance

Thus, whether if contracting by writing, oral, or implied, the establishment of a contract including ; offer and acceptance and the terms of the contract, remains the same as the behavior of the parties in making contract in same way existed before the emergence of electronic commerce.

Extra important issue is that linked contracting via the Internet is the general rule of law which provides for the acceptance of the offer, it must be "informed" of acceptance to the offeror, since under normal circumstances, the offeror actually must receive the acceptance before contract will come into existence.

Consensual is to correspond offer and acceptance expression of the will the parties to the contract, and takes to the availability of satisfaction to the contract, even if it electronically, that there is the will on both sides and that tends to bring the legal effect its intended.

That the traditional trade relations have since the beginning of commercial activity on the basis of offer and acceptance for any contract on the basis of the commitment of the seller to deliver Sales materially and within Activity positive



external significantly for example, and that the buyer to fulfill the price, either in cash or through trade securities or check.

#### **4.4 Correspond of Will**

The correspond of will is the correlation of the offer and acceptance, since it takes to complete the contract that the parties will exchange the expression of identical wills, and this achieved by an offer includes a presentation from one of the contractors and the acceptance by the other party on the indication of assent offer and then need to correspond both offer and acceptance and the contract then is in conjunction expressions.

The electronic contract like other normal contracts are not take place properly unless it determining parties specifically and adequately, especially the name and identity of the contractor and their legal eligibility, so if a minor, or incapacitated person in whole or partially browsing internet they were prohibited from making a legal actions. For this reason, it should be set a descriptive of the parties to the contract who they are physically absent at the time of the conclusion of the contract or during the incurring of obligations (Alwan, 2002, p.234).

#### **4.5 Electronic Offer**

In any contacts contractors must makes offer and acceptance to make lawful agreement whether online, traditionally, or electronically the offer is not made individual directly. However, the most important thing raised by electronic contract, is how to express the will of the contractors, by using Electronic means, and it requires us to discuss how the issuance of the offer of one of the contractors who wishes to contract, and the acceptance of the other party to this so, where the convergence of offer and acceptance will be realized common for contractors to conclude an electronic contract.

In each case the purchaser look through available goods and services that displayed on the seller's website and then choose what he or she would like to purchase. By showing products and services via websites the seller is not make an offer for items designed for sale at a particular price it only an invitation to make an

offer and hence is revocable at any time up to the time of acceptance. Because the offer here is made by the customer after choosing the exactly products and collect them for payment.

Jurists defined the offer as: "an explicit expression of will that appear in the contract by one party to another party about the possibility of contracted under certain conditions" (Nassif, n d., p.67).

Accordingly, an electronic offer has been known by European Directive concerning consumer protection No. 66 of 1997, as every remote connection includes all the necessary elements to enable the recipient to accept the offer of the contract directly, but just advertising are excluded from this range. And it is e-offer any presentations of goods and services in websites, belonging to merchants or service providers.

Electronic offer may be generally prompt to non- specific persons as it broadcast by commercial sites on the information technology network, for example; through one of the sites that are specialized for advertisements, in which is enough pressure on a single words or images to enter the site or may be is an offer occupies a part of one of these sites, or home pages, or may be present "in the short reception page" on more than one site be upon. Or may be a special "directed" to someone or specific people as it happen in the contract that made by e-mail and through the use of electronic messages, or so-called information messages (Al-Dudin, 2006, pp.136-139).

The UNCITRAL Model Law on Electronic Commerce Convention of 1996, (Article 1 / 11 formation and validity of contracts) has pointed to the permissible of the expression of an offer in electronic contracts through data messages and when using these messages to express an offer the contract does not lose its enforceability of as soon as the use of message data for that purpose.

Article 13 of electronic transactions and commerce law 2002 (Dubai), Article 13 of electronic transactions law 2001 (Jordanian) , and Article 10 of electronic transactions law 2002 (Bahraini), in this field were permissible the expression of an offer in the electronic contract through electronic messages.

#### 4.5.1 The contents of e-Offer

An e- offer should include all necessary elements to conclude a contract for example, if an offer is about contract of sales it must then identifying and describing an " accurate description" of the identity of the supplier, the subject of the sale, and determine the sales price, the method of repayment, and other basic conditions in the contract (Sharaf Al-Din, 2001, p. 139).

The European directive for consumer protection in remote contracts has committed to the offeror to release his full name and mailing address, the need for a statement item or service characteristics, determine the price and the statement of any additional costs as transport wages (DIRECTIVE 97/7/EC, 1997).

As well as the offeror may determines the way of the expression of the acceptance and inclusion of special conditions for the mechanism of acceptance offer (*Manchester Diocesan Council for Education v Commercial and General Investments 1970*) the offeror is permissible to required the way of the acceptance in this case the plaintiff decided to call for tenders for the purchase of property and the tender supplied provided that any acceptance by the plaintiff would be sent by letter to the address given in the tender (Furmston & Tolhurts, 2010, p.75).

In all cases, and when directing the e-offer, either through websites or E-mail, in that it must be a clear and selected, as it is located on the offeror to identify all elements that relate to the contract to be concluded, for example, if the contract is focused on the sale of certain goods, the offeror should determine the offer when it was introduced to the offeree, items for sale and described accurately according to it, with a statement of the way to pay the price and the buyer's right to return the purchase and the statement of mentioned actions electronically, so that it is accessible at all stages of the sales process (Miqdadi, 2010, p. 210).

Article 1129 of French Civil Code states: "(1) An obligation must have for its object a thing determined at least as to its kind and, (2) The quantity of the thing may be uncertain, provided it can be determined." In the case *Alain Veyron v. Ambrosio*, the purchaser did not pay the price for delivering the goods for him due to the lack of determining the price set (*Enterprise Alain Veyron v. Société E. Ambrosio, 1995*).

The United Nations Convention on the Use of Electronic Communications in International Contracts does not contain any text prevents the parties to disclose their identities and places of work or other information, or reduces the legal consequences imposed on either party in the case of an inaccurate, incomplete or false statements in that regard ( Article 7, CUECIC).

It is important to note that Article 7 of the Convention oblige parties to the need to comply with the obligations of the possible acknowledgment that may exist under domestic law. The UNCITRAL is considered the most important information that must the parties to be included and detect them, is a disclosure of places of business, among other required information and also documented the fact that business partners must performing in good faith (uncitral.org, 2015).

Whereas it notes that the ICSG Convention has touched upon the required information and the content of the offer, such as the price as required for an existence of the contract in the formation of the contract chapter as general rules of the offer. And that's why, according to Larry DiMatteo, this makes French Courts have suffered because of the different of notions of determining the content of each offer including "the price" from the CISG rules (A. DiMatteo, 2014).

#### **4.5.2 The formulation**

If law requires that the necessary information which needed to conclude an agreement by electronic way to be in written, then the parties to the contract must be obligate to involve this in the contract processing, for example; written information (*Brian Royale Maggs t/a B.M. Builders (a firm) v. Guy Anthony Stayner Mars and Marsh Jewellery Co. Limited, 2006*) on the conditions and procedures for exercising the right of withdrawal.

The Vienna Convention on Contracts for the International Sale of Goods signed in 1980 approved the validity of the means of instant communication at the conclusion of the contract, Article 11 of which does not requires that the contract be in writing. Article 11 of ICSG was not required a particular form to the contract to be concluded or Illustrated and it could proved even by witnesses.as well as the United

Nations Convention on the Use of Electronic Communications in International Contracts.

In the case of *Compfitt Glas AS v. Snaige AB* despite the lack of a formal written contract and signed by both parties, but the existence of a document written and signed by the parties capable to accept the lawsuit filed by the seller and considered the contract existed.

For example; send a message confirmation next the conclusion of the contract is the most prevalent practice in international trade transactions. The purpose of this kind of a message is to put what previously was negotiated in writing formulation and create a directory on which it has been agreed upon.

Messages generally been emphasized design to removal or reduce the doubts or errors that may arise through the establishment of same conditions as those the contract award. For example; the message confirmation in the legal system of Germany, Austria and Switzerland, but there is no provision in the CISG Convention refers to rules that dealing with this type of procedure (Viscasillas, 2002, p.159).

#### **4.6 Determination the time of the conclusion of the contract in e-contracts:**

If the contract is between absent people are not in same place by E-mail way, or by any means of communications, and this requires a time between the issuance of the acceptance and the knowledge of the offeror of the acceptance. The question arises for determining the time of the conclusion of the contract, whether it is the time of acceptance or a time of the knowledge of the offeror, or otherwise?

The CISG on the sale of goods explains the time that the offer becomes effective in traditional contracts in Article (15) when it states that: “an offer becomes effective when it reaches the offeree.”

In UNICTRAL model law on electronic communications because of the use of remote methods to make an offer therefor the time is so important to make a clear and an exist offer, Article 10/ para 1, of the UNICTRAL model law on electronic communications states:

“1. The time of dispatch of an electronic communication is the time when it leaves an information system under the control of the originator or of the party who sent it on behalf of the originator or, if the electronic communication has not left an information system under the control of the originator or of the party who sent it on behalf of the originator, the time when the electronic communication is received.”

In *Fujitus Elektronik GmbH Company v. Fauba France Company (1995)*, the contract was about providing electronic materials and the processing of payment was fixed and specified, but the purchaser canceled the order while it was came into crossing. The French Supreme Court displayed that: “the contract is still valid because the contract was concluded after the made of offer by the buyer.”

#### **4.6.1 The Application of Article (24) of the CISG**

In its opinion on 15 August 2003, the CISG-AC Opinion, regarding the time of acknowledgment of electronic communications in the provisions of CISG Articles on the subject of the meaning of the term “reaches” in article 24, it stated that:

"The term “reaches” corresponds to the point in time when an electronic communication has entered the addressee’s server, provided that the addressee expressly or impliedly has consented to receiving electronic communications of that type, in that format, and to that address” (cisg.law.pace.edu, 2015).

Also, the Article (26) of the CISG states: “A declaration of avoidance of the contract is effective only if made by notice to the other party”. With the provision of this article according to the CISG-AC Opinion, it acceptable to consider that the term "notice" contains electronic communications also. And for the purpose of the applicability of the provisions of this Article the addressee shall be agreed either explicitly or implicitly to receiving electronic messages to that address in this type and format.

#### 4.6.2 Methods of electronic offer

1. An Offere via e-mail
2. An Offere through web pages.
3. The Expression of will by Chat (electronic Conversation).

#### 4.6.3 Invitations for make an offer

Both type of advertisements normally or electronically, what is the rule for the advertisements and commercial leaflets and posters? Are theses kinds of treat consider an offer? Article 14(2) of the CISG, provides that if an Offer, or in other words a proposal is addressed to one or more specific addressed persons is considered purely to be as an invitation to make offers (*Carlill v Carbolic Smoke Ball Company [1893]*) unless the person who creating the proposal clearly showed the opposing.

In *Pharmaceutical Society v Boots Chemists (1953)* the English Appeal Court consider the Storefront Mark as an "invitation to treat" not an offer (netk.net.au, 2015). Regarding circumstances of e- contracts, the CUECIC, in Article (11), set up the rules that govern the cases when a proposal or an offer to a contract directed at more than one exacting party, this is only an invitation to make an offer according to the provisions of CUECIC, except if the party who make the offer or the proposal of the contract clearly indicates the intention of being bound in case of approval (H. Martin, 2005).

Since of the regular cases of making contracts it is basically stated of the acceptance of an offer by one party to other party, there is no more than one party, but in one issue which is an advertisements that based on papers or in written documents, for example; newspapers, radio and television, price lists which are generally accessible to the public and are considered as invitations to propose offers (*Carlill v Carbolic Smoke Ball Company [1893]*) the court of appeal refers to the considering of the advertisement as an offer.

#### **4.6.4 Language employed in the e-offer**

Considering that offer in the electronic contract is often "internationally" and passing of the border, the language used in offer has its importance in the context of electronic contract. Is it necessary for the offeror in the expression of his will by electronic way to use certain language?

Despite the global online networks and international character of electronic contracts, but the possibility of responding to local requirements for all countries of the world it has become difficult and are not available for everyone. So some legislation proceeded to the requirement of the national language in the expression of the will in electronic contracts and in order to protect its citizens. The problem of the employed language in the expression of the will in e- contracts is the result of the adoption of English language in the process of information system mainly.

French legislator has ordained drafting offer in French language in the text of Article (01) of Law No. 65/ 94 issued on 4<sup>th</sup> of August, 1994, known Toubon law, which provides for the use of the French language in all areas of contracting, including electronic contracts (legifrance.gouv.fr, 2015). Also French consumption Law No. 21 in 1988 includes text indicated that the expression of will of by French language is a public order and shall not breach, and the offending subjected to criminal penalty.

Nonetheless, the use of national language in the conclusion of e-contract leads to a reduction of the spread of e-commerce and, further than that some the French jurists are asking for the using of the French language in electronic sales in the framework of Article 30 of the Rome Convention which showed using multiple alternatives of the use of languages in commercial transactions and communications (Ibrahim, 2007).

This made many global sites of commercial character stand out their pages in multiple languages and provide full simultaneous translation of the contents of the site to give facilitate entry for visitors to attract, and communicate with them in the local language.



#### **4.6.5 Counter-offer of Electronic Offer**

If acceptance does not match the offer and that includes conditions or add new norms were not present in the original offer is not consider an acceptance but rather is a rejection of the offer or may be interpreted before the Court as Counter-offer (*Hyde v. Wrench, [1840]*) (McKendrick, 2010).

The CISG realizes that any conditional acceptance is a counter-offer, Article 19 stated that: "A reply to an offer which purports to be an acceptance but contains additions, limitations or other modifications is a rejection of the offer and constitutes a counter-offer."

Accordingly, the reverse of an offer lead to end of the authority of the offeree to make an acceptance (A. Eisenberg, nd.). Also in the provisions of Article 4 para. 1 of Contracts Act 1986 (Danish): "a late acceptance shall be regarded as a counter-offer."

#### **4.7 Electronic Acceptance**

An acceptance means the approval by the offeree to an offer issued by the offeror and this approval must concentrated to all the conditions set forth in the offer of the offeror. When the acceptance follows the connection of an offer the contract will be concluded, if this acceptance has reached the offeror acknowledgment (Ahwani, 2000). The CISG defines the Acceptance in Article 18 as: "A statement made by or other conduct of the offeree indicating assent to an offer".

The electronic acceptance is differs from ordinary one in terms of their issuance, an electronic acceptance is done using electronic means and will be by remote (Ibrahim, 2007). Electronic acceptance is often an explicit and may be implicitly in a situation where the seller presents the goods to given party, and instead of accepting the purchase, the offeree submission them explicitly to third party, which implied acceptance of the purchase (Ibrahim, 2007).

There are many ways can be utilized by the offeree in the announcement of the acceptance using the computer, as though this is done via the Internet or by e-mail and chat rooms (Al-Sharaifat, 2005). Many of legislation authorized the

expression of will in any way possible, express or implied, if the parties agree beforehand "on a specific formulation for the expression of will. The last paragraph of Article (60) of the Civil Code 1975 (Algerian) states: "the expression of the will may be implicitly, if the law did not provide, or the parties have agreed be an explicit."

In the interpretation of Article 15 of the CISG it is clear to us that the acceptance is the limit specified for the purpose of the effectiveness of the offer also according to the convention it is not permissible the expression of an acceptance by silence (Article 18/ para 1, CISG). The rule "Silence sign of approval" does not apply here.

#### **4.7.1 The methods of transferring an acceptance:**

The offeree is permitted to accept the offer in different ways:

1. In writing: the declaration of acceptance can be in writing a letter, telegram, telex, fax, e-mail. Mentioned in the second paragraph of Article 19 of the CISG Convention states: "objects orally to the discrepancy or dispatches a notice to that effect" the term "notice" herein is a presumption of writing and includes electronic communications in general. Article 3/para1 of Contract Act 1986 (Danish) stated that: "If the offer is made by letter or telegram and no period for acceptance has been fixed, the acceptance must reach the offeror within the period as could be anticipated by him to pass when making the offer."
2. Orally: the offeree can declare his acceptance to the offeror in person or over the phone, on the radio, etc. for example; Article 3/para 2 of Contract Act 1986 (Danish) refers to the statement of oral offer must be meet an oral acceptance as: "An oral offer with no fixed period for acceptance shall be accepted immediately." Article (19/2) of the CISG can be interoperated as that the term "oral" also includes electronically transferred voice.
3. The acceptance of the offer may be through the behavior of the offeree (Corbin, 1917, p.202). For example the supply of goods that have been requested (*Brogden v. Metropolitan Railway Co. (1877) 2 App. Cas. 666*).

### **4.7.2 When an acceptance becomes effective**

For the purpose of the effectiveness of the acceptance in e-contract, the acceptance must be concentrated on all the conditions that displayed by the offeror (*Hyde v Wrench (1840) 49 ER 132*). And the offeree must be recoverable with a legal capacity to conduct legal actions and enjoying his free properly will (Sharaf al-Din, 2001). In spite of that some legislations has been authorized the issuance of an acceptance without the fulfillment of all conditions that contained in the offer for example, Article 2-207/para1 Uniform Commercial Code (USA).

#### **4.7.2.1 The time of the Conjunction of offer and acceptance**

As the electronic contracts are remotely, where is being held without the physical presence of the parties to the contract in one place, this time in that the coupling of the acceptance to the offer is a legal issues raised by this contract, where electronic contracts differ from traditional contracts in a matter of the time of the conjunction of the acceptance with the offer.

In traditional contracts in which the parties are far from each other, subject to the theories that contained in the civil laws which addressed the issue of determining the time of conclusion of the contract, they are; the theory of the declaration of acceptance, the theory of the export of acceptance, the theory of the access of acceptance, and the theory of the knowledge of the acceptance.

For example, Jordanian law in article (98) taking the theory of the declaration of acceptance, Switzerland Code of Obligations in Article (1) take the theory of the export of acceptance, while German law taking the theory of acceptance in Article (130) and the Egyptian civil law took the knowledge of acceptance theory in Article (91) (Miqdadi, 2010, p.216). In the light of the provisions of CISG the acceptance is effective at the moment of the arrival of the statement approval to the offeror (Article 18, CISG).

#### **4.7.2.2 The acceptance must be informed**

In order to make an effective acceptance as the offeree shall inform the offeror that he had being submitted his offer in accordance with the conditions set out in the offer (*Entores Ltd v Miles Far East Corporation, 1955*).

#### **4.7.2.3 The postal rule**

According to the postal rule the acceptance will be effective when a message is directed properly, stamped and placed in the mailbox. The general rule for acceptance by mail is that they take effect when they are exported and not when they are informed to the offeror, and the emergence of this rule is historical, dating back to a time when the transportations through this kind of post were not accurate and fast as it is today (*Adams v Lindsell (1818) 106 ER 250*) Postal rule does not apply when the acceptance is formed by quick instruments and communication, such as telephone or telex.

The opinions in *Adams v. Lindsell* have led to the theory of consolidating "mail box" and its rules in contract law, where it was expected of the emergence of a problems in the pursuit of certainty in the Formation of a contracts by the means of quick communications, this problem evolved in a later the informatics theory in determining the basic recent computer networks (Bayern, 2015).

#### **4.7.3 The agreement must be confirmed**

The parties may not agree on that they are contracted on of a future contract. And for the purpose of an effective offer and acceptance of the offer, they must be contracted to hold a certain and actual agreement *Sudbrook Trading Estate v. Eggleton [1983] AC AC 444*) not a delayed or future agreement. In addition the offer must be directed to the offeree and the acceptance to the offeror (Gulshan, 2009).

The certainty of the agreement includes the terms of the contract also, as the law required the "certain" of the expression of any agreement. The Contract law

1956 (New Zealand) contains this requirement in Article (50) it state that: "the terms of the contract must be certain" and this allowed to both normal and e-contracts.

#### **4.8 The Conclusion of e-contracts**

Usually the contract is formed when an effective acceptance of the offeree was informed and exported to the offeror. The mail-box rule is excluded from this rule because there is no need to connect the acceptance to the offer.

The general rules become differ in e-contracts that the time of the conclusion of the contract is more difficult because of the use of technological and electronic means in this kind of contacts. Section 11 of Electronic Communications Act 2000 (England) provides that for the purpose of the formation of electronic contract to determine the exact time of the conclusion of a contract when the customer has got the acknowledgment that his acceptance was receiving and assured that they receive that acknowledgment.

The CISG in Article (23) explain the time that the contract will be concluded that it is the time of the convergence of both offer and acceptance: "A contract is concluded at the moment when an acceptance of an offer becomes effective in accordance with the provisions of this Convention.

The Principles of European Contract Law (PECL) 2002, in matter of the time of the conclusion of the contract comprised three cases of when the contract will be concluded. Firstly; when the acceptance reaches the offeror, and secondly; in situations of behavior, the contract is concluded when the behavior notification reaches the offeror. Lastly; the contract is concluded by conducting some familiar behavior between the parties and here is considered the contract concluded," when starting to perform work and act without notification the offeror (Article 2/ para 205PECL).

In this respect there are several arguments and theories rises about the time that the contract will be concluded; there are four theories in this respect:

1. The Declaration theory: according to this theory the agreement concluded once the declaration of acceptance and before arriving to the knowledge of the offeror, in this moment offerer may be combined with acceptance which is all what is required for the conclusion of the contract .This is consistent also with the speed of e-commerce and other trade transactions in particular , but disadvantages of this theory is it overlook the general rules in that the expression of the will (*Bell v Lever Bros, 1932*) does not take its effect, except of the a time of the connection of the knowledge of the person who was invited to treat, and not from the time of his announcement (Al-Sanhoori, 1953).
2. The theory of the issuance of acceptance: in accordance with this theory, the contract does not take place once the declaration of the acceptance, but after its edit of its issuance for the acceptance, in other word, Sending acceptance letter by post box or e-mail, or other means of communications (M Smits, 2014). The Vienna Convention accepted the “receipt theory” as the general rule to all written will declarations.
3. Expedition Theory: the contract takes place as soon as once the acceptance reach to the offeror, regardless of his knowledge and reaching of the acceptance (*Adams v. Lindsell (1818) 1 B & Ald 681*) According to this theory is merely a presumption of knowledge. The Vienna Convention adopted the “expedition theory” as an exception to the receipt principle (cisg.law.pace.edu, 2015).
4. Knowledge Theory: Under the theory of knowledge the contract does not take place unless the acceptance reaches the knowledge of the offeror. This theory is consistent with the general rules in that the expression of the will does not affect only in the time that connects in which with the knowledge of who had been invited to make contract. The Vienna Convention implemented the “knowledge theory for oral contract formation.

Iraqi legislator has provided for this provision in Article 87 of Civil Code1951 that:

“1. The contracting between absentees has been in place and time in which the knowledge of the offeror, of the acceptance, unless there is an explicit or implicit agreement or legal provision providing otherwise 2. And it is

supposed to that the offeror has knowledge the acceptance in the place and time, which reached him therein.”

In addition to apply above mentioned theories to contracts that concluded by electronic means such as email, may be is not easy that the four theories and because each one of them based on a specific criteria may be difficult to apply in determining the time of the conclusion of electronic contracts. As a result, the parties should and in a timely manner, to determine in details the matter of formation of the contract for the prevention of any possible obscurity and disputes (Alzaagy, 2012).

#### **4.9 Means of the conclusion of electronic contract**

The ways and methods of the conclusion of electronic contract are Different for the ways in which the conclusion of regular contracts. The parties of the contract they wish to conclude it electronically must follow the methods listed in the national or international regulations for a recognized legal formulation contract.

In ordinary contracts the conclusion of the contract in certain format, does not require, and even it may be contracted orally. And furthest from that Article (11) of **CISG** approved the concluding of a contract of sale of goods in any possible way, without being restricted to a specific type for the purpose of concluding a contract: “A contract of sale need not be concluded in or evidenced by writing and is not subject to any other requirement as to form” (Article 11, CISG).

However the situation is different if the parties wish to conclude a contract in electronic form or way. The CUECIC did not required e-contract to be concluded in a certain shape but it stated that each contract to be concluding it must be formed by the communication between an automatic message organism and a normal person, or in contrary between two or more automatic message organism: “A contract formed by the interaction of an automated message system and a natural person, or by the interaction of automated message systems” (Article 12, CUECIC).

#### 4.10 National standards

Iraqi Electronic Signature and Electronic Transactions Law No. (78) of 2012 refers to the mechanism of the formation of a contract by electronic way in Article 18:

- 1- Offer and acceptance of the contract may be by electronic means.
- 2- The electronic documents issued by the signed person, whether issued by or on behalf of, or by an electronic medium is intended to work automatically mediated by or on behalf of the signed.

Article 13 of Electronic Transactions and Commerce Law 2002 (United Arab Emirates) the stated that the contracting parties may express offer and acceptance by electronic means:

- 1- " For the purposes of the contract may be expressed offer and acceptance, partly or wholly by electronic correspondence."
- 3- "A contract does not lose its validity or enforceability just because it was done by one or more than one electronic correspondence."

#### 4.11 Error in e-contracts

Error in the contracts in general is all wrong or omissions in the content of the contract or conditions. In which the laws that governing traditional contracts Mistake leads to avoidance of the contract. In electronic contracts error must exceeding the content of the contract and be essential ( *Seatbooker Sale Limited v Southend United Club*) includes data entered (Wang, 2010, p. 50). But does the same provisions for the error in the traditional contracts apply to contracts that concluded by electronic way?

The CISG did not contain the provisions of mistake in contracts, but relating to e-contracts UECIC addresses the circumstances of error in e-contract in Article 14, it stated that:



“Where a natural person makes an input error in an electronic communication exchanged with the automated message system of another party and the automated message system does not provide the person with an opportunity to correct the error, that person, or the party on whose behalf that person was acting, has the right to withdraw the portion of the electronic communication in which the input error was made”. The right to retrieve in Article (14) is permissible just in two cases:

- 1- If one of the parties notifies the other party of the error as soon as possible after having learned of the error.
- 2- If the party was not used or received any material or benefits or value of goods or of services, from the other party.

Article 14-D Electronic Transactions Act 2001 (Australian) takes the same provisions that included in the UECIC, that it give the parties the right to withdraw. The UCITA defined electronic error as: "an error in an electronic message created by a consumer using an information processing system if a reasonable method to detect and correct or avoid the error was not provided" (Article 213/para a, UCITA).

The European Directive 2000/31/EC of e-commerce provides in Article 11/para 2:

“Member States shall ensure that, except when otherwise agreed by parties who are not consumers, the service provider makes available to the recipient of the service appropriate, effective and accessible technical means allowing him to identify and correct input errors, prior to the placing of the order.”

#### **4.12 Electronic Agents**

Coincided with technological development in e-commerce many techniques that facilitate electronic communications, including the conclusion of contracts remotely by automatic mediated (Internet) and this led to the emergence of a new type of commercial agencies, which is an automatic agent or electronic agents, or called “Automated message systems” which used by the United Nations

Convention on e-commerce, that actuality used progressively more in electronic commerce automatic agent is any computer program or automated programmer that used independently without any actions or review by individuals.

Based on the provisions of the United Nations Convention (Article 4/para g UECIC) term on E-commerce we can define electronic agents as: “a computer program or an electronic or other automated means used to initiate an action or respond to data messages or performances in whole or in part without review or intervention by a natural person.”

The Uniform Electronic Transactions Act 1999 (USA) defined electronic agent in Section 2/para 6 as:

“Means a computer program or an electronic or other automated means used independently to initiate an action or respond to electronic records or performances in whole or in part, without review or action by an individual”.

Several European Acts identify in general the validity of contracts concluded via electronic ways; there is no straight mention to the availability of the formation of contracts concluded by automatic agents (Kis, 2004).

#### **4.13 Time and place of sending or Receipt electronic communications**

The determination of the place and time of sending electronic communications and receipt it is one of the most of important topics and controversial in international jurisprudence circles in the issue of formation contracts using electronic means. For the purpose of identifying and lack uncertainty and injustice in two themes: firstly; to determine the time of the conclusion of electronic contract, and secondly; the time of the performance of contractual obligations, also determining the time and locate of send and receive an e-mail is an important issue in order to reduce any mistake and the fraud.

Therefore the UECIC customize Article 10 of it in order to identify and establish a global and international scale in issue of determining time and place of sending or Receipt electronic communications as following:

#### **4.13.1 The time of sending an electronic communication**

First paragraph of Article 10 (UECIC) in matter of determining the time of sending an electronic communication stated that:

“The time of dispatch of an electronic communication is the time when it leaves an information system under the control of the originator or of the party who sent it on behalf of the originator or, if the electronic communication has not left an information system under the control of the originator or of the party who sent it on behalf of the originator, the time when the electronic communication is received.”

#### **4.13.2 The time of receipt of an electronic communication:**

On the other hand, Second paragraph of Article 10 (UECIC) stated that:

“The time of receipt of an electronic communication is the time when it becomes capable of being retrieved by the addressee at an electronic address designated by the addressee. The time of receipt of an electronic communication at another electronic address of the addressee is the time when it becomes capable of being retrieved by the addressee at that address and the addressee becomes aware that the electronic communication has been sent to that address. An electronic communication is presumed to be capable of being retrieved by the addressee when it reaches the addressee’s electronic address.”

#### **4.13.3 Place of sending and receipt an electronic communication:**

The Electronic letter had been sent in the place that the originator had his place of work<sup>4</sup> and it is considered to be received at the place where the addressee has its place of work, here according to the third paragraph of Article (10) it must

take into account in this context, the text of Article (6) of the UECIC Convention regarding the location and place of work or deed.

While Article 24 (CISG) refers to more than one place for send and receiving any expression of intention including an offer and acceptance, that the place may be a work place, or postal address, or usual actual residence.

In Article 13/para 1 of Electronic Transactions Act 2010 (Singapore) considered the time of sends and receive electronic message is similar to the provisions in the UECIC that the time of the transmission of an electronic communication is the time it leaves the information system under the control of the originator or his agent or when receiving electronic communication. Section 23 of the Electronic Transaction Act 2001(Queensland) in has seek to enact the rules concerning the time of the sent and received communication via electronic method the time of dispatch and received is the time when the electronic communication enters the information system (Dosen & Ballantyne, 2013).

While Section 10/para 1 Electronic Transactions Act 2002 (New Zealand) considered electronic communication was sent as soon as the information enters the system is not under the control of the originator of communication. And electronic communication considered recipient when it enters the information system prepared beforehand by receiver (Section 11/para a, Electronic Transactions Act 2002 (New Zealand)).

#### **4.14 Electronic signature**

With the expansion of the use of technology in e-commerce digital electronic signature has become an important tool for businesses wanting to take the advantages of the characteristics of e-commerce. The reason is that the technology plays a key role in electronic trades is that the digital signatures work on confirmation and certification of electronic messages, for the purpose of creation of electronic signature it requires an “encryption” process or “Encoding” (L. Kidd & H. Daughtrey, 2000).

United Nations Convention on in e-commerce have not touched on the issue of electronic signature or defined in detail. But in the explanatory memorandum prepared by UNCITRAL Secretariat on United Nations Convention Use of Electronic Communications In international contracts, the interpretation of article (9) the concept of electronic signature and conditions in accordance with explains this article to apply to the emphasis conditions on signature's personality or to determine signature through electronic signature.

In accordance with paragraph 3 (a) of Article 9, as indicated previously, electronic signature must be able to identify the signature and indicate the intention of the signature with respect to the information contained in the electronic communication (UNCITRAL Secretariat on United Nations, 2004).

The principle of electronic signature is the idea of a comprehensive and non-specific in particular so whether a particular record signing or not, is a question of fact and it must be done to prove this fact under other applicable laws.

#### **4.14.1 The legal definition of electronic signature**

Legislation were divided in introducing the defining of the concept of electronic signature, some of them focused on the form of the signature, while others focused on the functions of this signature. Article II of the UNCITRAL Model Law of 2001 stipulates the definition of electronic signature that: "data in electronic form are included in the data, or an added message to them and logically associated, may be used to identify the signatory in relation to a data message and to indicate the signatory's approval of the information contained in data message".

Section 2/para 8 of the UETA refers to the fact that the Act does not apply to every kind of texts and signatures, only to electronic ones it defined electronic signature as it is: "means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record."

As well as Article 1/para 4 the Electronic signature and electronic transactions law 2012 (Iraqi) defined Electronic signature in the same mechanism as:

"a personal mark in the form of letters, numbers or symbols or signs or sounds or other and has a unique character indicates the accounted for to the signatory and be supported by the certifier."

The British law did not address the definition of electronic signature, but rather leave this matter to the European Directive on E-commerce, while the Electronic Communications Act 2000 ( UK) governing electronic signature and transactions requires the creation of electronic signature merged or linked logically with related certificates, and this certificate may be issued by anyone like this signature must be all the evidence with respect to any matter relating to the validity and the safety of such communication, data ( Part 2 Sec.7/para 1).

While the UAE legislator defined electronic signature in the second article paragraph (13) of the transactions and e-commerce Law 2002 (UAE) as:"Electronic signature: Created signing of letters and numbers or symbols, audio, treatment with electronic form and extension system or linked logically and stamped with a letter documenting the structure or the adoption of that letter."

Likewise Egyptian legislator defined electronic signature under Electronic Signature Law 2004 (Egyptian) that it is any Signature placed on an electronic document and take the form of letters, numbers or symbols or signs.

While the Jordanian legislator goes further of the definition that included that the electronic signature must identify the person who signed the document it mentions in Article 2 of Electronic Transactions Law 2001 (Jordan):

“electronic, numeric or photic data or others taking the shape of letters, numbers, symbols, or signs, or the like in a data message or added or related thereto, having a shape identifying the person who timed or distinguished it from others for reasons of the person’s signature and the approval of content.”

It is clear from these definitions that entrusted with electronic signature to achieve two major issues: First: the identification of holder the signature, and Second: the expression of that person's satisfaction of the content of the bond and his

approval upon the direction of his will to abide by its content. The two posts are the most important functions of signature in general.

The prevalence of electronic commerce over the Internet operations and the growing use of electronic bonds and contracts that impose the technology of electronic signature necessitated the intervention of international and national legislation to regulate these modern concepts and the statement of terms and their implications mention of such legislation:

- 1- Model Law about e-commerce issued by the Commission on International Trade Law to the United Nations Law (UNCITRAL) by Resolution No. 51/162 date of 16/01/1996, which recognized the approval force of the documents and electronic signature.
- 2- The Directive of European 1999/93/EC published on 19<sup>th</sup> January 2000. On the electronic signature and its use in order to facilitate the proper functioning of the European internal market. The European Parliament also adopted another directive dated 06/08/2000 on e-commerce and the emphasis on attention to the signing of contracts by electronic means.
- 3- UNCITRAL Model Law on Electronic Signatures, adopted by the Commission on International Trade Law to the United Nations in its 34<sup>th</sup> session dated 05/07/2001 the law, to regulate the electronic signature in the context of commercial nature relations. This is law legally indicative guidance in this regard, but it does not include all the details of the electronic signature, but also allow for the issuing its own laws.
- 4- In United Kingdom the European Directive on the electronic signature is implemented by the Electronic Communications Act 2000, and the Electronic Signatures Regulations 2002 No. 318.
- 5- The adoption of several countries, especially the laws that organized e-commerce and electronic documents and signatures, for example; Britain in 1995, Germany and Italy in 1997, the United States of America and France in 2000, Tunisia in 2000, Egypt in 2004, and many others.

#### 4.14.2 Terms of electronic signature

The essence of electronic signature is to prove the link between the signature and the electronic document; Namely electronic signature that allows the identification of the person signing the document to allow the invocation of electronic content and give its legal effects, including rights and obligations. And it is considered a reliable electronic signature from the law's perspective if it fulfills the following conditions:

- 1- To be particular for the signature himself alone exclusively.
- 2- To be established by electronic means, controlled by the exclusive control of the signature.
- 3- To ensure the signing of the document link the website to allow it detects any amendment or alteration or modification of the elements in the document or signature data (Abu Zahra, 1994, p.73).

#### 4.14.3 Types of electronic signature

1. Digital Manually Signature: This signature signed by the signatory itself, which carries the signed document manually to the scanner device, which read and imaging and transfer signing as a group of charts reservation inside the computer, transformed into an electronic signature (Al-Dudin, 2006).
2. Biometric electronic signature: This kind of signing is dependent on human's characteristics, by fingerprint or eye mesh or tone of voice or genomic (DNA), and other characteristics of the human himself that can not be manipulated. This is done through the use of computer, camera and device for reading the fingerprint (Al-mutalqh, 2000).
3. Digital electronic signature: This signing of the means of digital encoding, which relies on mathematical algorithms or mathematical equations to ensure the confidentiality of information and communication in a secure manner by turning it into a form that is not only the concept of the person concerned (Al-Hija, 2005).

In digital electronic signature a specific key is being used to encrypt the electronic message, then goes to message receiver that decryption key to



another to get the information sent, if the message appears after decoding in a clear and legible, the sender signature right. This type of electronic signature is the most important and common deployment due to technical ease, which is the least expensive among all other signatures (Grover, 2007).

#### **4.14.4 Comparison between electronic and manual signature:**

Manual signature is a distinctive signals linear belonging the signature himself, allows the definition of who issued by, and demonstrates the satisfaction and commitment to the document signed by the entire content. It ensures many of the principles required to support the basic functions of the signing, which confirms the link between a person and his identity Site.

Manual Signature is valid without being restricted to a specific duration of time, and permanent, it does not change with the passage of time, and the possibility of detecting any forging or altered by both traditional and modern means that generally accepted through a relevant experts. Also by manual signature documents could transform to the original copy.

In the other hand, electronic signature is a technique means to impose the technological evolution to keep pace with the development of e-commerce, circulation of bonds, and the conclusion of electronic contracts, between absent people be able to secure the fundamental manual signature functions, which determine the identity of the signature and the his expression of his satisfaction of the content of the bond and agreeing upon the direction of his will to abide by its content

As the electronic signature does not prevent the familiarity of the signed text accurately, which being willingly.also it features independent and singularity, so it is impossible if two people have the same digital signature.

Electronic signature provides the possibility of the accomplishment of major transactions quickly, compared with the manual signature requirements, because it allows remote signature without the physical presence of the signature persons. If the electronic signature is exhibit to loss or theft, when it does not insured fully reliable, the manual signature also exhibit to fraud or modification. If the electronic signature

is technical device, it does not issue from the computer itself, but by the order of the Signature.

Accordingly, an electronic signature is fundamentally different from the manual signature in terms of form; however, they perform the same functions, but with the capacity of electronic signature to provide great confidence and security through the authentication authorities that internationally recognized (Dewidar, 2005).

## Conclusion

When the United Nations International Trade Commission adopted the provisions of the uniform law in the international sale of goods in 1980, it was not addressed the two important issues: firstly; the scope of the law applies only to the trade of goods, and secondly; the lack of the coverage of the convention on what is known today as e-commerce.

Despite the considerable arguments about the possibility of applicability of the provisions of the Convention on electronic trade at a time when the conditions were the convention was issued in, e-commerce were not known and electronic contracting was unrecognized or not common.

However, if we reflecting on the provisions of the Convention, particularly Articles (13) and (24) this make us realize that the Convention was addressed electronic contracts, even if it was not in details and analytical, but devising of the meaning and the substantive purpose of the two terms :telegram and telex”.

With regard to the comparison and distinction between the laws and regulations of electronic commerce, whether international or national it notes that many of the internal systems are based on the international conventions in the adoption of the articles that regulate e-commerce, and even many of the states included explicitly indicate texts to the adoption of the provisions and materials for the international conventions in trade in their national laws, for example; in the United Kingdome’s contract law the international conventions in the international trade law are consider as a part of the law.

This research shows us that the electronic contract is distinct from traditional contracts through the mechanism by which it is concluded, it concluded through the information networks, by either e-mail or Web sites. Also the e-contracts characterized by several characteristics such as; it is a contract between the present in time, and absent in the place, and the offere here is generalized in most cases, as well as the privacy of this the contract in terms of proof and fulfill.

We have found that the practical applications of these kind of contracts and widely spread of it has prompted many countries in the world to enact legislations that addressed the conditions of e-contracts, and the first Code in this regard is the UNCITRAL Model Law on Electronic Commerce issued by the United Nations in 1996, which was the basis for the most Legislations that dealt with e-commerce that issue in the world.

A proposal for the dissemination of information awareness among members of the community to establish a training curriculum works to encourage individuals to use modern means of communication in the conclusion of various contracts. Given the fact that electronic contracts are remote and the fact that goods and services offered to Buyers, effectively can not be seen by them, we suggest it and see that it is necessary to legislators mention texts in the laws that regulate electronic transactions, by requiring the seller to give accurately described with mention all the data relating to the contract at the prompt consumers to supply and before conclusion of the contract when introducing for goods and services.

These data include a full description of the different stages of the contract completion with a statement of the nature and the price of goods and services that offered for sale, and the delivery of goods to determine the costs and the period in which the goods are offered for sale.

As well as, stated prices, methods and the procedures of payments, and the extent of the possibility of granting the buyer's right to reverse and the period in which the right to exercise this right, and how the issuance of the approval of the purchase with clarify the procedures for the replacement or returning the goods, and the statement of the terms and termination procedures of the contract and other data.

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