



كلية الحقوق

إقسم القانون المدني

## مشكلات الإثبات في مجال المعاملات الإلكترونية دراسة مقارنة

رسالة مقدمة لنيل درجة الدكتوراه في الحقوق

إعداد الباحث

نوزت جمعة حسن سليمان

لجنة المناقشة والحكم على الرسالة :-

رئيساً ومشرفاً

الأستاذ الدكتور / محسن عبد الحميد إبراهيم البيه

أستاذ القانون المدني المتفرغ بكلية الحقوق - جامعة المنصورة

عضواً

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١٤٤٠هـ - ٢٠١٩م





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كلية حقوق المنصورة  
مكتبة الادبيات  
تدوين

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T02-01206



بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

(وَمَا أُوتِيتُمْ مِنَ الْعِلْمِ إِلَّا قَلِيلًا)

صَلَّى  
الْعَظِيمِ

(سورة المائدة : الآية ٨٥)





## المشرف

عنوان الرسالة : مشكلات الإثبات في مجال المعاملات الإلكترونية – دراسة مقارنة.

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وكيل الكلية للدراسات العليا

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رئيس القسم



## الإهداء

إلى والدي رحمه الله تعالى

إلى والدتي تيمناً ببركاتها ودعائها

إلى زوجتي العزيزة طالما كانت تساننني في مدة دراستي ورسالتي وتحملت مني عناء السفر والسهر.

إلى فلذات أكبادي وقرة أعیوني .....

شيماء و فمان و محمد و بيقين

إلى كل من مد يد العون لي ، ومن كان سبباً في استكمال دراستي أهدي هذا الجهد المتواضع له سائلاً القدير أن يتقبل مني جهدي هذا ، خالصاً لوجهه الكريم ، وعملاً متقبلاً ، فيه منفعة للناس أجمعين.

إلى صديقي العزيز شعبان عبد الظاهر صابر الذي كان طالما يؤازرني طوال فترة البحث وأعجز عن رد فضله عليّ .

الباحث



## شكر وتقدير

ابتداءً نحمد الله على توفيقه ونشكر فضله العظيم على عونه في إنجاز هذه الرسالة بشكلها المتواضع، وعرفاناً بالجميل ، ورداً للفضل إلى أصحابه ، أتقدم بخالص الشكر ، وجميل العرفان إلى العالم الجليل أستاذي العزيز سعادة الأستاذ الدكتور/ محسن عبد الحميد إبراهيم البيه - أستاذ القانون المدني المتفرغ بكلية الحقوق جامعة المنصورة - لتفضله بالإشراف على هذه الرسالة ، والذي عهدناه صاحب الخلق الرفيع ، والعلم الغزير ، والعقل الكبير ، والصدر الواسع ، والنظرة الثاقبة ، الذي شملني كغيري من طلاب العلم بعلمه وفكره ، ومنحني الكثير من وقته ، ولم يبخل على بنصح ولا إرشاد وملاحظاته القيمة طوال مدة الدراسة فضلاً عن تزويدي ببعض المصادر والأحكام القضائية حول موضوع الدراسة ، فأنزّلني من نفسه منزلة الولد من والده ، فكان نعم الأستاذ ونعم الوالد، فقد كان لصبره وتدقيقه وإبداء ملاحظاته السديدة ، الأثر الواضح في توجيه سير دراستي نحو الاتجاه الصحيح ، وفقه الله وجزاه عني خير الجزاء ، فأسأل الله أن يبارك له في عمره ، وذريته ، وأن يمتعه بالصحة وتمام العافية ، وأن يجزيه عني وعن طلاب العلم خير الجزاء.

كما أتقدم بأسمى آيات الشكر والعرفان والتقدير العميق إلى الأستاذ الدكتور / ثروت عبد الحميد عبد الحليم - أستاذ القانون المدني المتفرغ بكلية الحقوق جامعة المنصورة - على تفضل سيادته وتكرمه بقبول المشاركة في لجنة المناقشة والحكم على الرسالة ، الذي لا يخفى فضله ، ولا يجحد علمه ، والذي يظهر ورعه ووقاره للقريب والبعيد .

كما أتقدم بجزيل الشكر وأخلص التقدير والامتنان والعرفان إلى الأستاذ الدكتور/ سمير حامد عبد العزيز الجمال - أستاذ القانون المدني ووكيل كلية الحقوق لشؤون التعليم والطلاب جامعة دمياط - لتفضله بالقبول في المشاركة في لجنة المناقشة والحكم على الرسالة ، لتجشمه عناء السفر والقراءة ، فله مني جل الاحترام والوفاء والعرفان والتقدير ، سائلاً الله عز وجل أن يحفظه للعلم وأهله، وأن يمتعه بالصحة ودوام العافية ، وأن يجزيه عني خير الجزاء.

كما نشكر الحكومتين الأصيلتين العراقية والمتمثلة بحكومة إقليم كردستان العراق و حكومة جمهورية مصر العربية الشقيقة ، على ما توفره من ثمرات الجهد المشترك في البرتوكول الثقافي المتبادل، والذي وفر لي هذه الفرصة لاستكمال دراستي ، فمكني من تحقيق طموحي ويسر لي السبل في الانتساب إلى أعرق الجامعات العربية ، وأطيبها سمعة ومكانة للحصول على درجة الدكتوراه في الحقوق . كما نشكر جميع العاملين في مكتبة وقائع كردستان التابعة لوزارة العدل والمعهد القضائي في الإقليم ، وجامعة زاخو والموصل والمنصورة ، لما بذلوه من جهد كبير ومعاملة طيبة وخلق عال .

وأخيراً أبلغ شكري الجزيل لكل من مد لي يد العون والمساعدة لإنجاز هذا الجهد العلمي ، فإليهم أسمى آيات الشكر والاحترام على ما لهم من الروح الإنسانية والعلمية الطيبة ، وفقهم الله جميعاً .

والله الموفق

الباحث



# المقدمة



## بسم الله الرحمن الرحيم

### المقدمة :

الحمد لله رب العالمين الذي امتن على عباده بنبيه المرسل، وكتابه المنزل، حتى اتسع على الأفكار طريق الاعتبار، فلا تنقضي عجائبه، ولا تنتهي غرائب، ثم الصلاة والسلام على أشرف المرسلين محمد بن عبد الله وعلى آله وأصحابه وأزواجه إلى يوم الدين، وبعد .

١- في خضم الثورة الرقمية، والصحة المعلوماتية، التي بات يعرفها العالم اليوم؛ حيث انتشار تكنولوجيا المعلومات التي أصبحت تشكل الجهاز العصبي للمجتمعات الحديثة، فهي البحر الذي لا يدرك غوره، وإنما يحوم الحائمون على سواحله وأطرافه، بقدر ما يسر لهم؛ حيث عرفت العمليات التعاقدية مجموعة من التغيرات، التي مست نظامها وبنيتها القانونية، فأصبح إبرام العقود التي تتم عن طريق وسائل الاتصال الحديثة، يثير اهتمام رجال القانون والقضاء على السواء.

٢- فبظهور المعاملات الإلكترونية وما رافقها من تطور، أدى إلى إحداث تغييرات كبيرة على مستوى المعاملات، لاسيما التجارية منها، هذه الرغبة الجامحة في التقدم والازدهار عند الإنسان، ليست وليدة اليوم، بل منذ العصور الأولى للتاريخ؛ حيث يجد الإنسان الرغبة الملحة في الاتصال بغيره من بني جنسه، كأثر للطبيعة الاجتماعية للإنسان في كونه، بحاجة إلى التعامل مع الآخرين، فمجمال هذه التطورات التي حدثت على المستوى العالمي في مجال الإلكترونيات، أثرت بلا شك على اقتصاديات كل العالم، فأصبح التعاقد عن بعد أحد أهم وسائل الاتصال التقني الحديث.

٣- فلم تعد الحاجة إلى عقد مجلس يحضره الأطراف، ولا إلى تدوين الاتفاقات على دعائم ورقية أو الأداعت النقدية أو غيرها من العمليات العقدية، فكل هذا حل محله الحضور الافتراضي والكتابة الرقمية، والتوقيع الإلكتروني، والتحويلات والنقود الإلكترونية، والتسوق بالبطاقات الائتمانية، واستخدام الشبائيك الأوتوماتيكية، والسرعة والدقة في إبرام العقود وتنفيذها بأقل جهد وأدنى نفقات.

وبذلك اتسعت دائرة التعامل مع العملاء والموردين، نتيجة سهولة التواصل عبر المواقع المفتوحة على مدار الساعة لتبادل المعلومات التي تتيح العلم الفوري بكل تقلبات الأسواق، وهذه الأشكال من ممارسة الأنشطة التجارية شكلت جانباً مهماً من التجارة الإلكترونية، فأصبحت تلعب دوراً حيويًا في التجارة العالمية؛ حيث عملت على تقريب المسافات وإزالة الحواجز بمختلف أشكالها بما في ذلك حاجز اللغة بين المستهلكين والمنتجين، ولم يعد التواصل بين الأفراد والشركات صعب المنال، أينما كانوا إلا أنها كالتجارة التقليدية تثير الكثير من الإشكالات



### Message summary

After we concluded with the praise of God and his help and good compromise from the completion of this study, which came under the title "Problems of proof in the field of electronic transactions," which is one of the most prominent legal issues developed, and we dealt with the mechanisms and stages of various electronic proofing process from a legal and technical point of view and detailed , And this study has raised many problems and questions and differences legislative, jurisprudence and judicial.

As well as a statement of the latest developments and amendments to the French legislation and other legislation that was under study, and our goal was to narrate, to put in the hands of the authors of the various definitions and definitions of the behavior of jurists and the judiciary in this regard.

E-transactions are one of the modern expressions that have been introduced into our daily lives as a product of technological and technological development of modern means of communication. We found that these transactions are not confined to an organization or an international or governmental institution, as they spread among individuals through their access to the Internet. This resulted in many international or local commercial transactions between individuals, institutions and governments. This led to the birth of a new type of contracts Is electronic transactions.

Humanity has entered into a new generation and a digital world through an artificial virtual space that knows nothing but numbers, data and information. It has created a new environment for contracting. The completion of various operations is faster than conventional transactions. The study, through a statement of the legislative and jurisprudential position, concluded that the difference between the concepts and terms of electronic transactions is only in tandem, and that all of them revolve in one case.

Because of the nature of the environment in which these transactions are established, several distinct characteristics emerged. We found that electronic transactions were remote transactions, could be of a national or international nature, and then we addressed the third characteristic. We found that electronic transactions ranged from negotiation to compliance As for the consumer, electronic transactions do not differ in composition or content from traditional transactions, which led us to wonder about the nature of these transactions conducted online. Are they bargaining. contracts and then subject to the principle of will



and consent between the contracting parties or contracts of compliance Where the consumer's will to modify the conditions contained in those contracts is undermined so that the consumer does not have the free will to negotiate the terms and mechanisms of contracting. We have reached the difficulty of applying the terms of the contract to the traditional concept of the contractual relationship between the professional and the electronic consumer.

In order to implement the transactions electronically, it was necessary to introduce electronic means of payment in line with modernity, so as to create a new environment instead of the traditional means, without the need for physical presence, which was one of the characteristics of this electronic transaction.

After this introductory presentation of the concept of electronic transactions, we moved to the first section of this thesis, which was entitled "Legal Regulation of Electronic Evidence," which we divided into two sections. In Chapter 1, we reviewed how to prepare the written evidence to perform its role in proving it as a tool to prove the existence of the contract and its content in transactions.

In this section, we shed light on the elements of proof in the field of electronic editing and how to prepare it, and then prepare it to perform its role in the proof and the place it can receive in the proof.

We found it appropriate to divide this chapter into two chapters. In the first chapter we discussed the definition of what is meant by proof in the field of electronic journals as an introduction to the study. This concept encountered many difficulties, which result from the traditional concepts that establish their presence in the paper world .

As we have noted in this chapter, the issue of proof has taken on a special dimension of challenges in the scope of electronic transactions concluded over a distance, because of the absence of the material intermediary on which the contract is being edited and another form of electronic props. And we found that this contradicts in turn the principles of proof that a person may not create a guide for himself, it is known that the editor is electronically made by the author and therefore is not reliable and is not a proof of proof, because the opponent may not make a guide for himself.

In order to overcome these challenges and other difficulties arising from the establishment of electronic contracts, the researcher found that it is necessary to adapt the texts and formulate them in order to make this law able to keep abreast of the technical development in the field of conclusion of contracts and proof by electronic means, , As is the case with many Western legislations that have passed their laws in this regard



By resorting to certain jurisprudential and judicial positions and comparative laws, we found that they were bold enough to rely on modern techniques of electronic proof, although this initiative may sometimes clash with some of the principles and principles imposed by the traditional rules of evidence enshrined in the Evidence Law at the time we find The provisions of the judiciary and legislation, first and foremost French law, have established rules and disciplined provisions to prove the transactions regardless of the form in which they originated. The judge, at times, is constrained by the rigor of the legal character of the methods of proof and the rules of the written evidence in the traditional sense, which does not allow any legal value to be given to these means of proof.

Hence, the legislative organization was necessary and helpful to the judiciary in solving the problems that were able to deal with this deficiency. This position was particularly relevant to the French judiciary when it affirmed the validity and validity of the complete electronic documents in evidence and as evidence derived from electronic means.

It is worth mentioning that countries differed in the manner of dealing with the provisions concerning the evidence in the field of electronic transactions, as dealt with some legislation within the legislation of an integrated electronic signature, when I set out an independent law for electronic signature, as did the Egyptian legislation in No. (15) of 2004 Of the Electronic Signature Act, while others have merely modified the rules of proof for electronic signatures, such as the former French Act No. 230 of 13 March 2000, as well as the new amendment No. 131-2016 of 10 February 2016 As noted by the states and from the confused between the two positions, when it was amended in the prescribed rules of evidence in civil law or the law of evidence, in addition to regulating electronic signature transactions within the e-commerce law, and those countries and the United Arab Emirates.

In the second chapter, we reviewed how the electronic editor was prepared in terms of its material support. We noted that the means of contracting have undergone many changes, in light of the emergence of modern digital techniques of communication between the parties to the nodal relationship. Which is intended for legal proof, is a tangible development when it has changed from its traditional character to its electronic nature, whose contents can only be accessed using modern



reading devices, so that the modern text is capable of combining written speech Image and sound, through the use of the computer screen to be presented as integrated texts or even printed and brought into existence after remaining in the main memory of the computer.

Thus becoming a general concept of the editor, and in the light of electronic transactions another concept, which was reflected in a large way on the means of proof, which led to the definition and characteristics and the parties and the advantage - sometimes - than paper.

Finally, the study concluded that the electronic editor is only one of the tools in which the existence and content of the contract can be proved, and for its preparation there must be other key elements with an organic, complementary and distinctive link to the elements of proof in the electronic transactions, the editor, the writing and the signature. Therefore, we have found it necessary to mingle and adapt legal solutions to the need to develop traditional concepts and modern technologies to accommodate these new solutions in the practical practices on the Internet. Legal solutions thus vary according to technical capabilities by focusing on the functional dimension of the written evidence without regard to its form or The pillar that is written on it, so that it makes the traditional concept of the written guide able to accommodate all the forms and patterns produced by modern technologies.

The second section of this section, which came under the name of the mechanisms of legal protection of the written evidence after its formation. In the first chapter, he pointed out that writing is considered the best tool for proving electronic transactions because of the guarantees of trust, which is often accompanied by a signature And the importance of writing in the field of proof as the second element of the written evidence after the editor, which relates to the structure of the editor is the material embodiment of the data contained in the pillar; where writing has played a prominent role in the field of proof as a The means by which the expression can be crystallized into the outside world. Writing is also necessary for the life of the editor and its existence in the legal reality and then acceptance and legal recognition and recognition as proof of proof. As traditional writing has its conventional concept, modern writing also has a different concept, which was imposed by



modern scientific and technical development. It is no longer required that written texts should be written on a specific material pillar only, as the study noted before, Legal or linguistic between the editor and the need to be written on a paper medium, which requires that there is a legal environment ready to allow and move from paper support to the other electronic in a way that absorbs intangible stents, which in turn will reflect another concept of means of proof and methods, Legal regulation c Dade keeps up with this event The study, in detail, and through a number of studies, explained the nature of the electronic writing, its characteristics and conditions, which distinguished it from the traditional writing due to the development in the field of modern data technology, and then the technical and technical stages of the process of creating electronic writing and the necessary standards for its validation. , And the statement of theses jurisprudence in this regard and the extent of acceptance and judicial recognition of the idea of this writing.

In the second chapter of this section, we reviewed how the mechanisms used to secure and protect the electronic editors were provided, which in turn ensured the validity and integrity of the editor, and then the percentage of its source. Can be compared to the traditional editor.

Where we found that one of the most important requirements of reliability in these transactions is to verify the authenticity of the electronic editor, was necessary to bring a real revolution in the field of network communications, but each of these means to progress modern gaps, which has become a threat to electronic transactions, On the issue of addressing these security vulnerabilities discovered by the experts of modern technology, by finding technical solutions to this dilemma, such as the means of identifying the character through the passwords and secret numbers or the means of encryption or biometric means of the user fingerprints transmitted digitally or symmetrically These are means by which I want to ensure that communication is confirmed and that the information about its technical system is validated, which naturally entails resorting to the idea of certification in order to identify and ensure that third parties are represented by a third party as a documentation authority in response to the requirements of safety and trust that must be



met In electronic transactions in general, and electronic signature in particular.

This is the origin of so-called protection programs and began the word of protection surfaced on the surface and establish its feet in a wide area in the world of communications. In the sense that this technical development has created some means to ensure the integrity and confidentiality of the content of the information transmitted, including cryptographic techniques for electronic messages and communications, and that stakeholders provide confidence through the process of ratification of these electronic journals, which are generally referred to as service providers Electronic certification .

In the same context, the study showed the provisions of the verification of the responsibility and the type of those who certify the certificate in violation of their obligations in the course of several studies studied in this chapter.

Then we moved to the second section, which was titled under the title of the proof value of the editor of the site and the extent of its validity in the electronic evidence, and it was also divided into two sections; we reviewed in the first section the legal authority of the editors in the field of electronic evidence; where the emergence of several explicit texts in this regard, the need to recognize the editor And even the authoritative grant of the editorials on the paperback, the requirements of the comparative legislation require conditions to give this authoritative and equal value to the traditional editor.

In order to shed light on the above, we found that we divide this chapter into two chapters. In the first chapter, we devoted to the concept of electronic signature and its forms, in order to complement the elements of the electronic editor and prepare him to prepare for his position in the proof. The first part of this thesis is that we have completed in this section the third element of proof, the electronic signature in line with the study plan. The electronic signature is one of the basic principles of proof and an important condition for documenting any document, Of various types and means within the institution or correspondence between institutions inside or outside the State.



We found that the transition from the traditional signature known long ago as a written expression, placed on a paper document, is done by hand gesture in the form of a signed signature written to a digital form that was not a coincidence or merely a dictation of a particular vacuum or a need, A legal challenge can not be denied.

Hence, the purpose of the legislator was to give great importance to the electronic signature, with the aim of achieving reliability, confidentiality and security for day-to-day transactions and benefiting from them in other fields. Which made the technicians to provide the men of law technical means to achieve security and ensure the accuracy of the appointment of the person who has acted and trust in the conduct of actions.

As a logical result of all of the foregoing, the law did not hesitate to accept the granting of the legal authenticity of modern technological means of communication, once they have achieved the two things are accuracy and safety; accuracy is the confidence reflected by the means used, and security is achieved by keeping the information and no copies.

The study examined the legislative aspect and explained the acceptability of this idea. It has become clear to us that there are major and essential elements that should be available in the signature, from which the data should be in electronic form and work within the principle of functional equivalence and neutrality towards the technology used. Shall be a clear indication of the consent and consent of the contractors to the content, as the study showed the need to shorten the validity of the signature relying on the private entities authorized to ratify. And that the signature in the end was only an indication of the will to create a certain legal effect.

If these elements are available together in an electronic signature, there is nothing to prevent an electronic signature from being accepted as an alternative to a traditional signature where it performs the same function, but some see it as more secure and stable.

The study in the last chapter of this chapter also shows how modern technical technological development has created a number of means and forms that can be used as an alternative to signing up in the electronic environment, so that we can obtain what can be called an



electronic signature.

Where we found that these means differ from each other in terms of strength of reliability and security provided by users.

We have found that there are several techniques that provide users with the highest degree of reliability and security using them as in the digital signature technology any public key, followed by the degree of security provided by the biometric signature or so-called personal characteristics, which can not be impersonated or used by someone other than the owner, These devices are digital fingerprint, retina or voice recognition technology, which are special biological characteristics in the human body, never repeated from one person to another, followed by importance and reliability, a certain password or credit card number, Put a p image Traditional signature at the bottom of the message or just write the name down the message, in the latest list can be used as a signature electronic means.

The study reviewed the legislative positions of these forms and images, and we are able to classify laws around the world from this point of view, in three categories: First: laws that explicitly stated in the legislation of the type of electronic signature required to use it, ignoring the common types of electronic signature, Digital. Second, other laws adopted a progressive standard in terms of the power of electronic signature in proof, which adopted the principle of technological neutrality but within certain limits and conditions, thus giving this electronic signature full power if the conditions of this signature, a mixed approach, were met. And third, laws that took the idea of functional equivalence based on the principle of technological neutrality as a criterion, while not specifying the technology to be used. We have found that the mixed trend, is to be adopted towards the other two directions as the study reference before.

In the second chapter, we reviewed the extent to which the principle of equality of the electronic editor of the traditional expression was recognized as one of the international efforts to recognize this equality. The study pointed to the legislative and judicial position, and then examined in a separate section the conditions of this principle. The website is electronic, and it applies to all electronic transactions.



In the previous presentation, the study concluded that most of the legislation adopted the principle of recognition and equality between the editor and the writing and electronic signature and the traditional ones, but this within the terms and conditions so that this recognition and equality is recognized, but the problem arises when the law requires a certain form of conduct. Is the case in the traditional may be required to convene or be required to prove.

Where the electronic form can be invoked in all legal acts except when expressly excluded. We have also noted that this formality has become acceptable in the laws that regulate this issue, including the French law, the Dubai Transaction Law, e-commerce and other laws, and despite all the above, there are still types of formal contracts excluded from the scope of contracts and electronic transactions and remain subject to traditional contracts, For several considerations due to its gravity and importance as previously discussed in detail through the three investigations of this principle.

Then we moved to the second section of this section, which came under the name of the types of electronic editors and the mechanism of appeal. In line with the study plan in the past, we found that we divide this section into two chapters. In the first chapter, we devoted a discussion of the types of electronic editors, their relevance and their place in electronic proof in comparison with their paper theory.

We have found that the mere creation of equality between electronic and traditional texts will not work unless it establishes rules that determine their place and acceptance in practice. These electronic journals have become a reality that can not be ignored.

Which led to the legislation in most countries of the world to address this deficiency and the issuance of special legislation dealing with this innovator and organized in legal form, the emergence of the editor, which lasted the official transactions, which require the intervention of a public official of the State so that it can be classified as described above, The official electronic editor, which is still ambiguous and controversial; it is therefore different from customary texts that are commonly mentioned and used in daily transactions between individuals.

We have also noted the importance of differentiation and interaction between the original editor and the copied image, where electronic



technologies have added a new dimension to the issue of the distinction between origin and image and thus have difficulty in distinguishing between them, unlike the paper pillar.

Therefore, electronic techniques have forced themselves to reconsider this and to adopt a broad concept of origin in order to agree with the nature of modern electronic technologies in such a way that copies of writing on an electronic pillar are considered when the necessary guarantees, such as origin, However, despite all the above, the preference for the original editors remains the reason we have studied this study.

The second and final chapter of this thesis refers to the mechanisms and methods of law that allow to challenge the validity of electronic publications. We have found that there are ways to appeal against the validity of the editor. In order to guarantee the opponent the right of defense, which invokes these statements are denial or forgery, as distinguished between them when the appeal to deny the customary editor, but the challenge of counterfeiting as the official editor, can also respond to the customary editor.

The study concluded that there was a need for a special form of rules to deal with the validity of electronic editors, which appeared to be inappropriate with the nature of paper-based papers, since they were essentially based on the presence of the editor on a paper material support.

The study also suggested the necessity of combining legislative efforts, especially in Iraqi and Egyptian legislation, by finding means to challenge the integrity of the electronic editor, including the counterfeiting of the signature, the mediator or the electronic editor, as well as the damage or signature of the signature or the mediator or the electronic editor. Conforms to the nature of electronic e-mails and removes them from the provisions of the provisions formulated in the framework of paperwork, as well as the introduction of more deterrent penalties than provided for in the current legislation.

It should be noted that the provisions of the Electronic Signature Law and Iraqi Electronic Transactions No. 78 of 2012 have omitted to



provide for penal sanctions imposed on any person who commits unlawful acts contrary to the provisions of this law, unlike the law regulating electronic signature No. 15 of 2004 Article (23) and Tunisian Legislation In Article (50) and in order to supplement the legislative deficit we have proposed several texts in this regard.

In light of this technical development, which took place at the legislative level to keep abreast of all the new technologies, a number of practical issues emerged before the courts. They had to be solved in the light of the judge's discretion, including the need to weigh the electronic evidence Although rare.

A further problem has also emerged in practice as to the extent to which the judiciary accepts the idea of agreements between the contracting parties themselves, as future disputes may arise as a means of electronic proof, such as paper writing, which may sometimes limit the judge's discretion Of such agreements in the electronic field.

In order to complete this study, we concluded that this study is an indication of the extent to which the judiciary accepts the idea of non-signed electronic statements as simple evidence in terms of the legal authority in the electronic field, in the light of the exceptions stated that the written evidence must be taken through several demands They were discussed in detail . At the end of this study, we reached several conclusions and recommendations which we have outlined above.

At the end of this study I conclude by saying that I find myself fair if I am a proponent of issuing new legislation instead of the Electronic Signature and Electronic Transactions Act No. 78 of 2012 because there is no regulation and interpretation of the provisions of this law on the one hand, The lack of legislation and the lack of effective and adequate treatment of many of the issues we referred to both through the research or proposals addressed in the study, which requires the addition of other legal materials, which we find that it may exceed half of the articles of the current law.





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**2019**