

# The Nature of Legal Contract for Virtual Media in Iraqi Legislation

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**Abstract--**Scientific and technological knowledge is one of the most important conquests of the world today, as it is the main source of knowledge, development and progress in this life in different fields. Today, the world is witnessing a tremendous growth in various sciences and fields, including the information and communication revolution, the intangible digital virtual environment, which is different to the traditional physical environment known. One of the conclusions of this hypothetical cognitive progress, especially in the field of information communication, is the Global Information Network, which has many and varied uses, most notably the massive transmission of information and massive international commercial contracting. The information started to reach the far north of the earth to the far south, and from the far west to the Far East, thanks to the development of the means of information and communication technology [1-3]. The day when a global information revolution is comparable (industrial revolution), it even superior, because it has reduced all geographical boundaries with a short time and cost, which is called a super-fast information revolution, this is why the current era has been called high-speed information age and has demonstrated new types of business known as e-business. In this research, I will address the study of the electronic contract, which is the most important means of electronic commerce, as this contract has characteristics that are not available in contracts concluded by conventional means, as it is built in a virtual, non-physical environment and across global communications networks that do not recognize the geographic boundaries of countries, and is often edited on non-paper supports stored within information systems [4].

**Key words--** knowledge, development, hypothetical cognitive progress, Global Information Network.

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## I. INTRODUCTION

### Virtual contracts in Iraqi legislation

These characteristics raise many questions about the extent to which the classical rules governing the contract can be accommodated in the Civil Code of these new types of contracting, particularly those relating to the conclusion, implementation and proof. In terms of its convening, the electronic contract raises questions about the extent to which civil law, and specifically the rules governing the convening of these new mechanisms to express propitiation, acceptance, and establishment of contracts elements, does not, for the time being, allow the parties to document each of the contracts, which means, establishing existence and integrity of status of the other contractor, there is also a question of the applicability of means of expressing the will to the traditional means of expressing it, and we also present the question of the location and time of its execution thereof [5-6].

### Importance of the Research

The importance of this research stems from the importance of the subject matter, where the research deals with an important subject, as the digital technology has become important in our life, and there is no house

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free of these means, governments have addressed electronic transactions in other States, this is a very important topic, they have addressed it in several important ways, namely, the concept of contract in general, as well as the characteristics of virtual contracts, and also how these virtual contracts are executed.

### **Objectives of Research**

This research has several objectives, which are summarized as following:

- Enrich scientific libraries with material on virtual contracts.
- Students need such studies to be completed on their content.
- Recognizing the concept of virtual contracts in general
- Demonstrate how these contracts are held and identify their most important characteristics.
- Indicating the most important means used in virtual contracts
- Clarifying the position of the Iraqi legislator regarding these contracts
- Knowing the legal nature of virtual contracts

### **Research questions**

There are so many questions that will be answered by our own research content, they are:

- What is a contract, and what is the concept of a virtual contract?
- What are the most important characteristics of virtual contracts?
- What is the position of the Iraqi legislator on holding the virtual contracts?
- What are the most important means used in those contracts?
- How virtual contracts and what are their most important terms?
- What is the difference between a commercial contract and an electronic support?
- What is the legal nature of electronic contracts?

### **Research Problem**

The subject of virtual contracts or contracting over the virtual world network is a broad, interlinked topic that contains many addresses (As proof of virtual contract, conflict of laws, jurisdiction, liability in virtual trade, crimes on the World wide Web, virtual footprint, virtual signature, virtual money, virtual books, information service, etc.) which requires extensive research, efforts, books, resources and time to consider this [7].

### **Research Difficulties**

**First:** The novelty of the experience by conducting a research operation on a topic, although the process of discussing any topic is a science of its origins, technical, substantive and formal rules.

**Second:** The relatively few sources of this subject to the novelty of its vocabulary.

This paper shows the holding of the default contract for all parts of the contract, but it dealt with the issue of consent (affirmative and acceptance) and the negotiation phase of the default contract, the importance of which is at the origin of the research objective.

## **Research Plan**

As for the research plan on this subject, it consists of three main themes, first theme representing, the entry point for this subject, where the concept of default contracts is required, and then to a more specific and accurate point that represented the second theme: the legal nature of the default contract, especially the characteristics of the virtual contract, then to a central point, essence of contract, which indicates to execution of the virtual contract.

### **The legal nature of virtual contracting**

#### **Theme Virtual Contracting**

The virtual contracting is no different from the ordinary contracting in something, except for machines and means are used to express it as it is done electronically, but it has almost the same characteristics and elements of contracting as is known, in this theme [8].

#### **Demand: Concept of Contract**

In this demand, I will deal with the definition of the contract in general in both language and terminology of jurists, and with the Iraqi legislature.

#### **Definition of contract in language**

It is mentioned in the Arab tongue: it is the contract, contracts in plural, it is said I entrusted to so and so of such and such, interpretation thereof that I bounded him thereby, if I said: I bargained him and/or entered into a contract with him, then the interpretation thereon is: that you have obliged him with a convention [9].

#### **Definition of the contract as defined by the Iraqi legislator**

The Iraqi legislator defined the contract as: "association of acceptance issued by one of the contractors was tied to the acceptance of the other in such a way as to prove its effect of the contracts on". Perhaps it would be good if the Iraqi legislator, whose definition of the contract was based on Islamic jurisprudence. The Iraqi legislator thus wanted to limit the contract to its technical scope, which was recognized in the Civil Code, limiting it to obligations arising out of a union of two wills. Accordingly, one cannot form a contract, but it must be formed by a two-collective wills, on the other hand, the need for the two to arrange a legal effect. If the two wills do not make such an impact—as inviting a friend to ride a car or Banquet and accepting the invitation—they cannot then be held within the meaning of the contract we mean, as well as fictitious agreements and agreements which are risibly executed, it is then not deemed to be contracts for contractors, because they did not want to make a legal impact thereof [10-12]. It may be appropriate to point out here that many civil law jurists make a distinction between undertaking or agreement on the one hand and the contract on the other, since they have the agreement or undertaking as one or more wills on a place of legal interest, as the effect of the agreement is either the establishment of an obligation, transferring, modifying, or terminating thereof. The Act consists of seventeen articles which are subject to increase in the future, and is divided into two parts. First part includes general provisions on virtual trade in specific fields<sup>11</sup>. The idea of virtual commerce has emerged three decades ago, that is, in the 1980s, and has evolved in the American system, as it was called the Electronic Data interchange—referred to as the acronym (EDI), this concept presupposes the automatic programming of commercial, industrial and administrative operations that are automatically booked and sequenced without any humanitarian

intervention [13]. Virtual Trade was defined as: Every remote commercial transaction, using electronic means, until the contract was completed. This definition is consistent with the definition of the Egyptian project for virtual trade, as well as the definition in the European Directive on 20 May 1997 that virtual trade is a remote sale contract using one or more technical means of remote communication until the conclusion of the contract. Some said that virtual trade is a system that enables online sales and purchases of goods, services and information, and also allows virtual movements that support revenue generation, such as boosting demand for goods, services and information, as virtual trade provides online support, sales and customer service. Virtual trade can be compared to an electronic market in which vendors (suppliers, companies or stores), intermediates (brokers) and in Arabic it is called the UNCITRAL law. We find that this definition extends to the new technologies currently available and in the future in the completion of virtual trade contracts, as well as to the subject of virtual trade in goods, services and other information programs and technologies, as the world is witnessing a dramatic and rapid development in the world of communications, where the means of rapid communication telephone, telex, Fax, computer, Internet are becoming increasingly mobile, hence, it is an Indispensable means for every individual in the recent society, it became the best mean of communication, transfer of information, availability, presentation and submission thereof, in a way the other traditional means such as messages and regular telegram has been already retreated. We note the importance of the Model Law on Virtual Trade of The United Nations Commission On International Trade Law (UNICTRAL), previously referred to for adoption by The General Assembly of the United Nations, in its resolution 51/62 of 16 December 1996, and the adoption of the legislation of many Arab States upon its promulgation of its legislation on Virtual Contracting [14-15].

### **Concept of Virtual Contracts**

Virtual contracts are the beating heart of Electronic Trade as they represent a legal translation of the convergence of wills between the seller or service provider - on the one hand - and the buyer or service consumer - on the other - This contract is based on confidence and requires a strong legal medium, surrounded by a safeguards framework, that will address the risks to remote transactions and cope with the growing development in the field of virtual trade<sup>18</sup>. The concept of virtual contract cannot be linked to a particular means of communication, especially as the means of remote communication that rely on electronic technologies outweigh the legal studies that follow it, this is due to the Internet – which represents the latest advances in modern science – perhaps in ten years – will become an old way, a new method, called artificial space, will emerge, leading to an artificial world of mind<sup>19</sup> [16]. There is no unified definition of an electronic contract, particularly if we take into consideration, the multiplicity of actors and forums that set out these definitions, on the one hand, and the type of technology used in its conclusion on the other, therefore, the most important definitions contained in the Islamic doctrine will be presented first, then those contained in the international conventions second, and finally, we refer to some definitions that have come from the comparative laws [17].

### **First: The doctrinal definition of an electronic contract**

The doctrine cited several definitions of the electronic contract, including those who defined it relying on one of its means of conclusion, considering that an electronic contract is the contract that is entered into online, it is noticeable at this definition that it is to limit the means of concluding an electronic contract on the Internet, ignoring other means of its conclusion, such as the TELEX, Fax and Minitel in France. Among these

definitions the one says that the electronic contract is: "Every agreement in which the offer and acceptance converges on an open international network for remote Among other definitions often simply for the contract to be concluded at least in part by electronic means for it to be considered an electronic contract, namely, an electronic contract is an agreement that is to be held in whole or in part by authenticity or otherwise, as the Jordanian legislator has done. Some of these definitions that included all electronic mean, but it required that the contract should be considered electronic to complete all its components through electronic means until its completion, considering that: "Every contract is made remotely by electronic means until the contract is completed". This is the same trend as that of the committee formed in Egypt to organize electronic trade, where electronic trade contracts are defined as: "Executing some or all commercial transactions in goods and services that take place between commercial enterprises or between a project and a consumer, using information technology and communication" [18-19]. We therefore support the jurisprudence which says that the definition of an electronic contract must focus on its privacy, which is essentially the way it is concluded, without losing sight of its important character as belonging to the range of contracts concluded remotely.

### **Definition contained in International Conventions**

In this regard, we refer only to the definition of the United Nations Model Law on Electronic Trade, which is the most important international document in this field, and then to the definition provided by European conventions [20].

### **Definition contained in the United Nations Model Law regarding Electronic Trade**

The United Nations Model Law on Electronic Commerce (UNCITRAL or CNUDCI), in Article 2-B, merely defined "Electronic Data Interchange (EDI)" it stipulated that: "Electronic Data Interchange is intended to transfer information from one computer to another using an agreed standard for information formation", The Commission prepared for the Act considered that this definition was used for all uses of electronic information, thereby comprising conclusion of various contracts and various business, accordingly, the electronic contract under this Act is the contract in which the will is expressed between the contractors using the means specified in article 2A and 2B- which is [21]:

- Transferring data from one computer to another according to a unified display system
- Transferring of electronic messages using general rules or standard rules
- Electronic transcription of text using the Internet, or by using other techniques such as Telex and Fax.

It is clear from the foregoing that the Internet according to this law is not the only way to complete the contracting and electronic trade process, but also shares it with other means such as the Telex and Fax apparatus. Most of the jurisprudence considers that the United Nations Commission on International Trade Law (UNCITRAL) unified Electronic Trade Act did not define the electronic contract, but defined the means used to conclude it, and that the law expanded the listing of the means of entering into such contracts, as in addition to the Internet there is Fax and telex [22].

### **Definition contained in European Conventions**

Article 2 of Directive No. 97-07 of 20 May 1997 of the European Parliament concerning remote contracting and consumer protection in this field<sup>27</sup>, that it means by remote contracting : "Any contract relating

to goods or services entered into between a supplier and a consumer within the scope of a remote service or sale system organized by the supplier using one or more remote communication techniques for the conclusion or execution of a contract", in the same text, remote communication technology was defined as: "Each means without physical- instantaneous presence, with the supplier and the consumer having the potential to be used to contract between the two parties", this directive defined remote contracts that include electronic contracts in its concept [23].

### **Second: Definition of comparative laws of electronic contract**

In the absence of a definition of an electronic contract in Iraqi law, reference should be made to those provided by comparative laws in this area, whereas article 2 of the Jordanian<sup>28</sup> Electronic transactions Act has defined an electronic contract as: "An agreement to be held by electronic means, in whole or in part". The same article added a special definition of electronic means by which the contract was concluded as: "Any technology for the use of electric, magnetic, optical or similar means of information exchange and storage thereof" The Jordanian legislator not only defined the electronic contract, but also defined the means by which it is concluded, considering that it is sufficient to complete one stage of the 27 Directive n°97-07 CE du 20 Mai 1997, JO CE 04/06/1997 N°144, P19. Jordanian Electronic Transaction Law No. 85 of 2000 of December 11, 2001 contract by electronic means to consider the entire contract electronically, as defined by electronic means, open to future technical developments. Article 2 of the Tunisian Electronic Exchange and Trade Act defined electronic exchanges as "exchanges using electronic documents", and electronic trade was defined as "Electronic operations that are conducted via electronic exchanges" [24-28]. Through these two definitions, it is clear that electronic exchanges that mean trading goods in money or a service in money should be done through an electronic medium, or an electronic document, thereby giving way to written documents, such as contracts, receipts, invoices, and so on, all of these are done electronically, whereas contractors negotiate, with offer and acceptance is conducted on detailed conditions for its implementation, by electronic means whatever. In France, a special committee headed by the Minister of Economy was formed to organize the issue, where electronic trade was defined as: "A group of digital transactions linked to commercial activities between enterprises and between enterprises and individuals, and between projects and administration", this definition includes contracts concluded between enterprises, such as one company's relationship with another and the relationship of enterprises to individuals, as well as commercial contracts to which the Department is a party, extending its reach to all digital means [29].

### **Virtual contracts as commercial contracts**

This is represented by the practice of virtual businesses as a matter of course, in fact, this attribute of virtual contracts is the dominant feature of that contract, whereas commercial sales accounting for the largest proportion of all online contracts, However, it can be done between private individuals on the one hand, services and benefits can be answered in the form of rent or contract on the other hand, but often the provider of the goods or service is at least a merchant, i.e. a commercial person. Thus, a new term (virtual trade) has emerged in the international trade arena and in the United States of America, the concept is being applied to the optimal use of the various types of communication technologies available for the development of business activity for different enterprises, to the benefit of the execution of commercial transactions, whether in goods or services, using information and communications technology, which are carried out in whole and in part between a

business and another, or between a commercial and consumer enterprise. If the dominant characteristic of the default contract is that it is a commercial contract, it does not mean that it cannot be a civil contract, even though it separates them. The privacy of the virtual contract – being a commercial contract - led to the emergence of the so-called virtual trade, which includes electronic contracts between companies, individuals or between commercial companies them, and thus had many benefits [30].

### **Center piece in virtual contracts**

The majority of traditional contracts are written on center piece paper, and existing legal texts does not recognize of center pieces which holds the writing of transactions except center piece papers (official transactions and banking), i.e. the writing they have developed to apply to them is paper writing, meanwhile the services available on the Internet have enabled a new type of writing on electronic supports, the virtual editor, virtual signature and virtual debuts have emerged<sup>34</sup>. In fact, writing is a method of expressing will, which involves the underline of characters in a visible-physical form and expresses a whole meaning or a coherent idea from the person to whom it is attributed, as for the writing in the virtual editor is in the form of algorithm equations that are done through the input and output of data through the computer screen, This information is fed to the device by the input modules that crystallize in the keyboard or retrieve information stored in the Central Processing Unit (CPU), after the data processing is completed, it is written to output devices which are computer monitor or to print these editors to the printer, magnetic disks, or any data storage media, the digital works published through the Internet through the Digital Processing Information Processor, the center piece, are related to virtual writing in its modern concept [31].

### **Means used in virtual contracting**

The most important privacy for a virtual contract is the mean or the way it will be concluded, whereas a person can access what they want through wide-range offers, which is by pressing the keyboard on its own Internet-connected device without having to go elsewhere, i.e. doing business electronically, or making optimum use of all types of available communications technology, so the means provided by virtual contracting differ from the traditional means of contracting, such as the immediate contracting of a real board, and there are even non-traditional means of contracting, the most important form of virtual contracting that distinguishes it from traditional contracting is contracting by default mail, through the web, or through modern means and viewing through virtual computer screens, although virtual mail contracting is very similar to conventional contracting writing, nevertheless, online writing can be deemed as a special type, for it is not writing on paper but a hypothetical writing. The second mean of virtual contracting is to contract over the web, which is in fact a mixture of information, images and other countless data that can be obtained through any website, any advertisement or offer on the Internet and each web address [32]. It can show you thousands of other sites in a long chain, once you have specified a specific address to enter and make a contract, you will see the page you are looking for on your computer screen, at this time you can check and verify what you need to conclude a direct contract with that address. As for the means of contracting through the means of speech and watching through the Internet, it may include a direct exchange of speech, and it may develop according to the program and the existence of cameras to become full-view. However, although the virtual contracting method differs from conventional means, that way is undoubtedly legal and based on general rules valid for the contract and the production of its legal effects, as long as the will is expressed clearly and understandable from the other party, In

particular, the law places in the first place the question of the compatibility of the two instruments, irrespective of the appearance of the voluntary expression [33].

### **Proof and completion in virtual contracts**

In terms of proof, most traditional contracts are listed on a paper-based basis, which are confirmed by the traditional signature or fingerprint, and by other means of proof established and elaborated by the evidentiary laws. However, the evolution of contracting techniques has created new types of methods and means of proof, showing virtual editors, the appearance of the virtual signature, the virtual fingerprint and other new means of proof, these developments represented a number of problems that challenged the long-standing legal systems, among the most prominent are the ability to prove using telex, facsimile, virtual mail, the Internet, any new scientific techniques that can be found in the near future, and the extent to which virtual bonds used by international bodies in the field of proof are recognized by means of scientific techniques, as well as United Nations Commission On International Trade Law (UNCITRAL) had also adopted the UNCITRAL Model Law on Virtual Signatures in 1996 and had promulgated Act No. 230 of 2000 in France on adapting the rules of evidence to the scientific techniques of virtual signature<sup>39</sup> [34]. In terms of both performance and implementation, virtual commerce has created electronic ways and methods of performing the corresponding in virtual contracts, as well as the possibility of traditional methods, in which the corresponding can be delivered in virtual contracts by one of the virtual payment methods, although some of these methods are not new and updated in themselves, they were found before the emergence of virtual trade, but they have evolved, thanks to virtual trading techniques such as virtual trading cards, while some of these methods are innovative and modernized thanks to virtual trading techniques such as virtual money, the methods of performance corresponding to virtual contracts are different from traditional contracts in which the allowance is paid in the traditional, customary manner. If the contractor's obligation is to deliver a particular goods or service, this is done in traditional contracts through the physical delivery to the shop but on virtual contracts concluded over the Internet, thanks to the services provided by the network, the contractor can fulfill his obligation to provide the service or his products electronically, especially if the shop is a virtual or digital product such as CD-ROM, computer software, books, newspapers and magazines, this is by allowing the buyer to obtain the goods or service by downloading the product or service. Thus, contractual obligations can be implemented electronically even if the contracting parties are located in remote geographical areas, thanks to the Internet's cross-border nature of countries' political and geographical boundaries. There may be a similarity between the virtual contract and some remote contracting images, but the virtual contract remains distinct from these contracts in other respects, Internet and its multiple services are the most important way to give privacy to the virtual contract [35].

### **The legal nature of virtual contracting**

The legal nature of virtual contracting or online contracting: Whether it is a contract between absentee or present, or what, and whether the virtual contract is such as a contract of submission or a contract of negotiation? These may be some of the questions that many have in mind, and I do not see a reluctance to refer to them and try to answer them in a nutshell. In the first question, the competent person shall immediately go to article 88 of the Iraqi Civil Code (contract (by phone) or by any similar way between lecturers in respect of time, and between absent in relation to the place). He will say that the virtual contract through the World wide

Web is a contract between attendees in terms of time, and between absentee in terms of place, based on the word (... or by any similar means ...) contained in the text of the above-mentioned article, the same means shall be deemed to be the Internet, this is because the time difference between the declaration of acceptance and the stipulator knowledge of it is almost non-existent, as for the location, the legislator decided to take the contract provision under way by these devices the same provision as it decided on the contract between absentee persons, i.e. the contract is not held until the positive actually knows of acceptance, thus, stipulator and the consenter are located in two different places, since it is the conclusion of the contract through these devices that the positive has already learned of the other party's accepting. However, there are those who say that online contracting is not always a contract between attendees in terms of time and absentee in terms of location, relying in which that often there is also a time difference between offer and acceptance via the Internet, this is in many cases of virtual mail contracting, for this type of contracting is carried out between absentee in terms of time and place, as a time-and-place contracting, the contract being conducted through online Civil Code No (41) of 1951 viewing and face-to-face chat is more like the traditional (real board) contracting between the attendees, but the department also sees it as a contract of a special nature<sup>43</sup>. As for whether the virtual contract over the network is by negotiation contracts or by means of acquiescence contracts, this is also a matter of dispute and the legal doctrine on it is<sup>44</sup>. However, a third section of the doctrine has viewed to choose (the criterion of the possibility of negotiation) in the online contracting process, if the virtual contract allows negotiation, review, and amendment of some of its terms, it is then a negotiation and out of compliance, even if it does not allow thereby is a compliance contract <sup>45</sup> [36].

### **Elements of virtual contracting**

The contract shall be held in accordance with the text of the Article No. (73) of Iraqi law as soon as the affirmative is bound by acceptance in a manner which reflects his effect on the convened, since various contracts can be entered into over the Internet, the same traditional contract that can be entered into outside the network, they are subject to the same legal rules, but subject to certain particularities of the virtual contract, as it is a contract that is remotely concluded through modern means of communication. Elements of virtual contract was based on the same elements of the traditional contract as satisfaction, place and reason<sup>47</sup>, but each of these elements in relation to the default contract is specific, stemming from the specificity of the default contract mentioned earlier. While it appears that the doctrine did not find any privacy with regard to the element of the cause of virtual contract<sup>48</sup>, there are some specifics of virtual contract that are reflected in the two elements (consensual) and (place) [37]. Indeed, the elements of the said contract and the manner in which the contract is being held are very thoroughly discussed in the general theory of the contract and in many explanations, much has been written on this subject, some of which can be consulted and referred to each other. What is important here is that these elements relate only to virtual contracting, i.e. what has been developed in this field can be added to the traditional elements of the contract, with a brief reference later to the subject of negotiation, which is a stage preceding the virtual contract, due to the lack of time and resources, we will consider only in our paper virtual (offer and acceptance) consensual here, and we refer to the negotiation in brief, as we mentioned, we can divide this theme into three demands. The offer is usually defined as: (The expression of the will of a person which is directed to another person who offers to contract on certain grounds or conditions, for it is the first will that appears in the contract) <sup>51</sup> [38]. The definition of offer in virtual contracts goes only in terms of taking into

account the privacy consideration of remote virtual contract, whereas: (The European Directive on Consumer Protection) defined offer as: (Each remote communication includes all the necessary elements for contracting so that the consignee can accept contracting directly, and is excluded from this scope by mere advertising). The online positive is in the form of an e-mail display, posting online perceptions and indexes, posting advertisements in discussion forums (called chat sites), in news groups, or through the virtual location of a professional or merchant. The subject of the language used in the virtual affirmative and online contracting raises a peculiarity surrounding the virtues and raises many problems, as it created the Internet's universality - in terms of connectivity and access to services from anywhere, the issue of the language used in the affirmative, there is no problem with conventional contracting between two parties to a single contract board because their common language or method of understanding before the commencement of the contract board will go to the contract board and they will be understanding the same language or method as they were before the commencement of the contract board, as for Internet contracting, the language issue is specific, the French legislator resorted to avoid problems that it raises to (requiring) that the consensus shall be in French, and considered this rule of public order as its violation entails a criminal penalty as well as a civil penalty. In order not to waste the benefits of the Internet at the international economy, and for language not to be an obstacle to the universality of the network, as Internet contracts are international contracts made through a global network, French legislator has already liberalized the use of the Internet in contracting from the limits of the national language, this ministerial publication was issued in implementation of the European Directive on 21 May 1992, which authorized the use of foreign language alongside the national language of the European Union countries and thus did not make the language an obstacle to online contracting [39]. The other issue raised by the virtual consensus for the traditional consensus is the scope covered by the default consensus, online consensus may be directed to an unlimited number of people, when stipulator channels his offer by means of a public-type communication medium, opened to all visitors, it may be addressed to a particular number, or individual, when a stipulator chooses a particular communication method over the network such as default messages in which the positive reaches the particular person or persons assigned by their default mail. If a stipulator is entitled to direct his consensus to a given or unspecified number, he also has the right to limit consensus in terms of time or place, which is called temporal or spatial (coverage)..., and if the stipulator has bounded his consensus with a certain scope, he then should stick to his consensus within the scope of the spatial coverage is intended for stipulator to determine a place and/or places to be covered by the affirmative coming from him, neglect of others, i.e. to declare that offer is to be valid in the territory of the Republic of Iraq or to be applicable only in Iraq, Saudi Arabia or in the Jordanian and Saudi states only, and so on this makes the consensus in this case, effective and valid for creating legal stimulation only in the designated place or places 59. In fact, the spatial extent of the positive and the spatial extent of the delivery must not be confused, given the latter's relevance to a later issue of the contract, and how it is carried out, as if the professional or trader in his online presentation required that the locations where the delivery was made geographically restricted<sup>60</sup>. In fact, there is a fundamental difference between the two conditions, namely, that the contract is not originally convened when the consensus is limited by a specific spatial or geographical scope and that the acceptance is made by an outside person, the limitation of delivery to a particular spatial or geographical scope and of an acceptance by an outside person, then contract is concluded, but a stipulator will only be bound by delivery where the delivery is pledged in his scope. The French model contract for virtual commerce in clauses III and IV referred to the

question of the identification of the area covered by consensus and resulting from the Sale Contract, Master Thesis, submitted to the College of Law Council, Baghdad University, 1984, p. 42. geographical area covered by delivery, this limitation is calculated to avoid the advantage of the French merchant, who determines a geographical range of his goods, to avoid problems arising from the texts contained in some foreign laws from cases in which handling is prohibited, or establish conditions and limitations for undertaking consumer protection against professionals and traders of all this – we can define the virtual consensus that it is – (an expression of the will of a remote contracting desire, where an international communications network is conducted by an audio-visual means, and includes all the elements necessary for a contract to be concluded so that the addressee can accept a contract directly). From this, we can draw a sentence from the conditions that should be met in the virtual consensus to be true, complete and acceptable for the contract to be concluded once it is faced by matched acceptance, which is by extrapolating the 1997 European Directive on Consumer Protection, French Consumer Law and French Model Contract for Virtual Trade, which are 64 [40]. Consensus is to be expressed using clear terms by any modern means of communication. In the event of a trader, supplier or professional wishes to determine a range of spatial coverage, he should expressly state this explicitly in the affirmative formula. Consensus shall include sufficient data to identify the stipulator, to identify his trade institution, his business center, his main management center and his telephone. Consensus shall indicate the duration of the offer for which the merchant is obliged to stay bounded to his consensus. Consensus should include adequate data on the commodity in terms of its description, name, type, quantity, characteristics, and advantages, and the risks arising from it, if any, etc. provided that the description is accurate, through which the commodity or service can be accurately identified. Consensus must include a precise and clear price definition, which includes taxes, determines delivery costs and, if so requested, deliver the goods to the consumer or buyer's home. Consensus shall include an indication of how the price is paid and how delivery is made to the convened thereto, and the period at which such delivery is made, which shall in any event not exceed thirty days from the date of the request. Consensus to clearly state the right of the buyer to reply or review sales within seven days from receipt date of the person convened to [41].

### **Virtual Acceptance**

Acceptance is usually defined as: (Absolute expression of the will of the party to which the consensus was expressed, for it is the second will in the contract). Thus, the concept of virtual acceptance is no different from the traditional concept of acceptance, except for it is done via electronic media through the Internet, for it is a remote acceptance which identical to acceptance. The online consensus is not enough – solely – for the contract to be concluded, unless a corresponding acceptance is made by the other contractor, which is consistent with the wording of article (73) of the Iraqi Civil Code. As the consensus in the virtual contract has its own characteristics, acceptance as well as the consensus does not require a certain form of expression, and it is true that it should be made by modern means of communication, including the Internet, which has been either seen or released, in the absence of a legislative obligation, acceptance must be formulated in a specific form based on the principle of the power of will, which favors forcing the contractor to express its will in a special manner, such as writing, although the practice in the field of international trade has been based on the use of writing to express acceptance, regardless of the character of this writing, whether it is via the Internet by means of a mail or telegram, a telex, a Fax or an oral address through modern instant communication devices, which is

confirmed by a written letter or telegram. This absolution in the absence of a specific formula for acceptance made it possible to express acceptance by any means of codification of human thought and to be easily referred to as needed (68) without the requirement of writing in the traditional concept enhanced by the usual manual signature, which has contemporary concepts 69. From the above, it can be said that online acceptance can be done in any conduct that does not leave the circumstances of the situation in doubt of its meaning to be positively approved. Within this concept, all new means and methods made available by modern means of communication are to express the will and to adopt the behavior required in producing the legal effect. Acceptance shall be not identical to consensus<sup>71</sup>, neither increase nor decrease it because the combination of consensus with more or less is deemed a new consensus that the contract can only be concluded if the acceptance of the other party that has addressed the first consensus is approached. Acceptance must also be made when it is expressed that agreement is on substantive issues, whereas, Article 86 of the Iraqi Civil Code provides. Acceptance is identical to consensus if the parties agree on all the substantive issues in which they have negotiated, as for agreement on some of these issues is not sufficient to oblige the parties even if this agreement proves in writing. If the parties agree on all substantive issues of the contract and retain detailed issues that they agree upon subsequently and do not provide that the contract is not convened when these issues are not agreed, the contract shall be deemed to have been concluded, if there is a dispute had raised over matters that have not been agreed on, the Court shall be carried out to rule on them in accordance with the nature of the subject and with the provisions of law, custom and justice). It often happens that the parties agree on the substantive issues of the contract and retain the detailed issues that they agree upon later and they do not require for contract to be concluded when these detailed issues are not agreed upon. In this assumption, the contract is deemed to have been concluded as long as the parties have agreed on the substantive issues of the contract, and in the event of disagreement between the parties on the detailed issues that have not been agreed upon, the court shall order them in accordance with the nature of the transaction and with the provisions of law, custom and justice article 86 of the Iraqi civilian, it should be noted that in such event, the judge completes the will of the contractors and contributes to the conclusion of the contract, which goes beyond the ordinary judge's task of interpreting the contract. If, however, the contractors discuss the detailed issues of reaching an agreement and indicate that their intention was to suspend the agreement to reach a solution, the contract would not be concluded in such case. It should be emphasized herein that Internet contracting is usually accurate and up-to-date with all essential terms and topics, since online contracting is more prudent and cautious than regular contracting because contractors often do not recognize each other, unless contracting through a closed network. On the subject of virtual acceptance, silence is raised as a means of expressing acceptance, and is silence on the Internet acceptable or not? According to the general rules, silence without any circumstance is not acceptable, for it is not said that silent person has told so and so, nor it is said that he is satisfied due to his silence, since satisfaction is a positive act and silence is a negative act <sup>75</sup>. By applying this to the Global Information Network contract, we have come to the conclusion that: The person to whom he was positively addressed through this network in the form of a digital message, for example, includes that if he did not respond to the offer within a specified time period, he could neglect such a message and what it contained, additionally, he would not need to reply with a refusal without his silence promising<sup>76</sup>. According to the exception made in article 81 of the Iraqi Civil Code, which states: (... But silence in the face of the need for a statement is acceptable) we see the existence of a contrary (for an abstract silence), which is (confusing silence), which means that stipulator does

not expect to receive a reply from the addressee of consensus if he decided so – but reply is to be - expected in the event of refusal<sup>77</sup>. A case where a prior transaction exists between the contractors and the positive relates to this transaction, an event in which, if the consensus results in the interest of those who are directed to it. A case of purchaser' silence after he received the goods he purchased, for his silence to be deemed as an acceptance of terms and contents listed in the quotation (if such silence is traditionally accepted). These exceptions or the three applications in online contracting need to be handled with caution, because – as some doctrines believe – they can be perceived only if there is prior interaction between online contractors, this, in turn, is not free from that a contract may be imposed on the consumer, claiming that the merchant is used to deal with the network, as if some merchant sent an e-mail to a consumer who had previously contracted with in this way, including a phrase that the non- reply within a specified period is deemed an acceptance, this would force the former contractor with consensus under the pretext of applying the general rule in the aforementioned confusing silence, although he might never want to contrac<sup>78</sup>t, we therefore support the doctrinal view that, in the event of prior interaction between the parties over the Internet, silence should be associated with another circumstance, which would make it likely that silence would be accepted by the contracting client <sup>79</sup>. From the above, the possibilities of applying the general rule (silence in the case of the need for a statement is considered to be an acceptance) - in a virtual environment - have been found to be weak, since most of the offers that are directed through the Internet are public offers that are geared towards everyone, hence, it is difficult to say that the silence of everyone whom message has reached to, includes the online offer is an acceptance of contracting. However, to refer to a question of default acceptance as long as this type of contract has imposed new methods of accepting the contractor such as the code, button, or icon, is it sufficient to simply touch the (icon) of acceptance or press the consent button to express acceptance? Theoretically, there is no objection to accepting as soon as the acceptance icon is touched or pressed<sup>80</sup>, but this will not be decisive because no one can be sure of pressing the consent icon on the Internet, which leads to known issues or the possibility of claiming that pressing on the admission button was a mistake, or that the touch occurred by amnesty not intended to arrange legal effects, or that the button was pressed, intentionally for some matter other than to accept contracting, and so on<sup>81</sup>. Opinion was therefore finally settled that the acceptance expressed by the international Internet could not be considered as one, except for the consenter to assure it, to definitely refer to his acceptance of the contract, there are several ways to confirm acceptance through the Internet. To express acceptance of the consent button by two clicks instead of one, in order to confirm the determination of whom consensus is directed to in acceptance therein. Contract sentences shall include final acceptance methods to avoid handwriting errors while working on a computer such as the question: (Do you confirm acceptance?) and the answer is either (yes) or (no). The buyer will make the purchase by means of a special document called (Purchase Order) whereas the consumer or customer must write-up on the screen as their positive behavior is to accept the contract, or confirm the purchase order in such a way that the answer is returned with approval to the seller's default location. The last point concerning the default acceptance is the moment of the contract, as it is assumed that the process of contracting online is taking place between two spatial distant persons, who are not provided with the known physical meeting, thus , Internet contracting is close to contracting by telephone, as it is a contracting between attendees in terms of time and a contracting between absentee in terms of place, for which is settled by jurisprudence, justice and legislation in most countries. Thus, the question of the moment of the virtual contract and traditional doctrine is being decided between four theories – one of the time limits of the contract – concerning correspondence or contracting

between absentee, theory of declaration of acceptance, theory of the export of acceptance, theory of acceptance receipt and the theory of comprehension of acceptance). The study will deal with what the legislator notes from it, which is the theory of (comprehension of acceptance), which was taken by the Iraqi legislator and most of the Arab laws. According to this theory, contracting is only carried out with the actual knowledge of stipulator of acceptance sourcing to whom he was directed of consensus because the general basis of contracting requires that a voluntary expression produce its legal effect only while the stipulator knows it, this is in Internet contracting when a positive opens his default message inbox and reads the message that includes acceptance. As we mentioned earlier, most Arab legislation, including Iraqi civil law, has oscillated this theory. Other national laws have also been adopted without this theory<sup>88</sup>. The question of the introduction of one of these theories does not raise a problem in national law, but the problem arises in the overlap between several national laws, as with Internet contracting, which is widely practiced internationally, especially in the field of virtual trade, as virtual contract is an international contract, which results in different solutions for determining the moment of excitement of online contracts according to different countries in solving this problem. At the international level, the Vienna Convention on the International Sale of Goods, signed in 1980, took the theory of (acceptance receipt), since the contract was entered into in contracts of sale of an international character of movable property upon the arrival of acceptance to stipulator whether or not he had a comprehension of acceptance or not<sup>90</sup>? This means that any international contract made over the World Wide Web is concluded at the moment when the stipulator receives acceptance, as for contracts which are concluded within a single State are subject to national law, but the problem of international contracts between two States that have not regulated one or both of them remains with the Convention. The Model Law on Virtual Trade, adopted by General Assembly of the United Nations in its resolution 51 of 1996, also took the theory of acceptance in article 15 therein. The research goes on to say that theory of comprehension of acceptance in article (87) of the Iraqi civil law is consistent with contracting correspondence with the old technical versions of ordinary messages and traditional mail, however, this theory is not consistent with modern messages of instant communication or communication through modern international networks, including the World wide Web, and is incompatible with the requirements of international trade in terms of speed and accuracy.

## **Negotiation**

Negotiation is increasingly important in the field of informatics, and often precedes the conclusion of the virtual contract, especially important contracts, which may be focused on transactions of a large technical or economic nature, negotiation is an introduction to consensus, so that it can be said that if the consensus is a step towards contract, negotiation then represents a step towards consensus. After this preamble, we can define negotiation linguistically and in terminology [42]:

**First:** Linguistically derived from the verb (negotiated), it is said: delegated the matter to him, i.e. rendered it to him, and made him the ruler therein, he negotiated him in his matter, i.e. keep up with, they negotiated the speech, i.e. got into it, it is said: people negotiated the matter, i.e. they negotiated the matter between one another [43].

**Second:** In terminology, we may define it as: Exchange of proposals, equality, correspondences and reports, technical studies and even legal consultations, which are exchanged by the negotiating parties, for both to be aware of the best legal forms in interest of parties, and to identify rights and obligations of parties that may

result from the agreement. The most important feature of the negotiating stage is the element of probability, since it is not certain to the parties that such negotiations may lead to agreement, either to conclusion of contract and thus to end of pre-contractual period. Dr. Hossam El-Din Kamel, negotiations in the contractual period and stages of preparing the international contract, Journal of Legal and Economic Sciences, Faculty of Law, Ain Shams University, second edition, thirty-eight year, July, 1996, p. 394 or to a stalemate in such negotiations, thus, the failure to continue to negotiate, which cannot be described as an unhappy end, since it is better not to contract in this case than to conclude a dispute-opening contract, Because non-contracting ultimately harms the parties, disrupts their interests, and costs them too much, for which a failed negotiations are better than a failed contract<sup>96</sup>. The negotiating phase of virtual contracts is of paramount importance, given its vital and effective role in the preparation and preparation of the contract, whenever the preparation of the contract is good, the contract is in the interest of the parties, and the conditions that prevent future disputes between them, in particular, such contracts may involve complex, technically and legally complex transactions involving serious economic risks for contractors, which has made it necessary to precede a stage of negotiations for the preparation and preparation of the contract, for the parties of the contract reaches to determine its terms, points, remove any ambiguities and complexity, so that the contract can be concluded on a valid and clear basis, ensuring a measure of success and stability in the future. Given the view that virtual contract is an international contract, because Internet itself is (global), negotiations within this framework – the virtual transaction framework – has a major importance, It is even deemed essential by contemporary doctrines at the stage preceding conclusion of a contract and of strategic importance derived from importance of the International contract itself as linking the interests of major States and global corporations<sup>98</sup>. Negotiations in virtual contracts therefore have a place in national and international trade transactions that outweigh conventional contracting, which that is, traditional contracts – may be of low financial value, or that the parties have prior or immediate relations, accordingly, the contract to be entered into through the Internet had been dealt with in practice by investigating the company, merchant or professional with whom contractual negotiations were to be entered into, in particular, technology transfer contracts, with a view to ensuring that each party is serious in the implementation of its contractual obligations and that the maximum possible reductions are removed by agreement on all contractual matters, including the addition of substantive supplements to technology and informatics issues in place of the contract, further confirmation. In this regard, we would like to address an important issue relating to the subject of negotiation or the stage of negotiations that may precede the conclusion of a contract, which is stated in article 80/2 of the Iraqi Civil Code, stating: (regarding Publication, advertising, the price statement being dealt with, and any other statement relating to offers and requests to the public or individuals are not considered as positive when in doubt, but as a call for negotiation). What we want to make clear here is (Dose the one who announces on the web pages, screens, where they sell, and the default emails about ads, sales offers, and other virtual advertising, is considered a legal consensus? Or just a call for negotiation considering the importance of those contracts – that is, Internet contracts – and their complex terms, technical specifications, and often expensive costs ? Thus, the word (when in doubt) contained in the text of article (80) of the Iraqi Civil Code is applicable to it?! In fact, the doctrine was divided into two opinions from the view that online advertising is only an invitation to negotiate and the other part considered it a legal consensus. In fact, there are contracts, particularly important transactions, which are not characterized by simple contracting, but rather by pre-trial stages of varying degrees and not all of them to consensus levels, the issue

may begin as soon as a proposal by one party that it wants to seek the other party's opinion and stand by its willingness, If it is found that he wishes to contract, he may enter into contracts that may be extended or shortened and all that fall within the scope of the negotiations shall be an invitation to negotiate and shall not be considered a valid consensus because it is accompanied by an acceptance leading to the conclusion of a contract. Negotiations – especially – in large and cross-border contracts have become what can be called (a self-standing science) no longer just lines in the books of legal doctrines, but rather a science has its own rules, methods and fundamentals<sup>104</sup>, and since the primary objective, the real purpose of advertising online and even other means is to induce subscribers to contract, as well as because modern legislation regulating virtual transactions stands by the consumer and aims to protect it as a weak party to the notional relationship, we would like then to support the view that declaration on the Internet is a call for negotiation and is not a consensus for the applicability of the word (if in doubt) - as we see - of article 80/2 - of an Iraqi civilian to such contracts, which are not always clear, categorical and explicit, If this is what we think, a simple exception must be made to that which is consistent with general rules and legal logic, which is in the event that the intent linked to the contract is available to the advertiser if his declaration encounters a consistent acceptance and this intent is established beyond doubt, and all the essential elements of the contract are available in the declaration, this may be considered positive rather than a call for negotiation<sup>105</sup>. There appear to be many aspects related to the subject of cyber negotiation, such as elements of negotiation, principle of good faith in negotiation, images of errors in negotiation and its proof, nature of responsibility for negotiation, and compensation for damage in negotiation. It is well known in legal doctrine and general rule that negotiations are merely material acts that are not binding which does not in itself have any legal effect, or that it does not create any obligation on the parties, Every negotiator is free to cut off negotiations without responsibility, and he is not required to offer a justification for his withdrawal, a non-negotiation can in itself be a cause of liability only if the other negotiator is too arrogant to withdraw or acts contrary to trust and good faith or constitute a wrong conduct, since the law does not have a legal effect on the negotiations, everyone is free, as we mentioned in the negotiation cut, at any time, he wants to give up the negotiation, and he may be responsible for taking it off if giving up negotiation is combined by fault, the responsibility here is not a contractual responsibility based on disclaimers in itself, but a fault-based liability, and the damaged party is charged herein with proving the fault of the other party, for example, to prove that those who cut off the negotiations were not serious at the time of entering it, or he did not notify him of a timely manner so that he was lost on another bargain, then, the damaged party would be entitled to claim compensation [44].

### **Iraqi Legislation and Virtual Contracting**

The State of Iraq is, in fact, one of the States that has not yet enacted special laws in the field of virtual contracting, but the general rules of Iraqi civil law and some other provisions of law can address the subject of virtual contracting. In the texts of those laws, there are clear references to the legality and provisions of this contract, as article 73 of the Iraqi Civil Code states that the contract is: (Association of consensus adopted by one contractor to the acceptance of the other in a manner that proves its effect to the one convened to), which shows from the definition that the legislator's interest has been primarily on the idea of conforming the two instruments (i.e. association of consensus and acceptance), their agreement and their purporting to produce the legal effect that appears on the one convened to, as for the way the will is expressed, how consensus and

acceptance reaches the knowledge of the other Contractor, we believe that they come in second place to the legislator's attention in relation to the question of the congruence of the two wills. As well as what Article 79 of the Iraqi Civil Code also stipulated, that: (As is consensus or acceptance is orally, it shall be as well in writing, and with the common reference, even if it is not an abuser, in actual exchange for satisfactory and in taking any other course, the circumstances of the case do not call into doubt the satisfactory), whereas, this article did not stipulate ways of expressing the will to take place in particular or in a certain situation, since the last paragraph of this text provides legal scope for the default contracting method, An individual's presentation of a permanent and stable web site means that he intends to take a course and a way in which he refers and proclaims to all people the intention of contracting through his website, Dr. Tawfiq Faraj confirms this approach, saying that expressing the will is to take a position that does not call the circumstances of the situation into question the truth of what is meant, for which, prices of Iraqi Law No. 40 of 51 and its amendments. Article 88 of the Iraqi Civil Code also stipulates that the contract (by telephone) or in any similar manner as if it was made between attendees in terms of time and between absentee in terms of place) [45]. This article refers to the legislator's consideration of the means to be developed in contracting or expressing will through the development of contemporary science and technology, so that the virtual contract as well as the default expression may be subject to the provisions of this article by telephone contract. As the word (in any similar way) clearly refers to any medium that is technically close to the telephone and therefore extends to the virtual contracting of the Internet, since the Internet depends mainly on the existence of a traditional or modern telephone network, The concept of communication over the network is also very close to the traditional concept of telephone and can even be transformed into a regular telephone through oral conversation, which is based on the existence of a device, a consignor and (a consignee), as it is only a modern means of communication, this view can be confirmed by Dr. Anwar Sultan's statement: (Contracting by telephone or any similar means only makes it difficult to specify the place of the contract and, in this respect, to contract absentee who are dispersed by the gape of place, as to the time of contracting, telephone contracting or by any similar means does not make a difference in the contracting between attendees, and telephone contracting is considered complete at the time when a person declares to whom he directed his consensus with his acceptance). Moreover, telecommunications have the basis of Iraqi legislation, with article VIII of the Iraqi Telecommunications Act 109 of 1980 113making remote contact by its saying: (Send and receive wireless waves of all types and connections, whether by signal, tag, writing, picture, sound, or any other information of any kind and for any purpose) and we can then measure the Internet on communication devices or as a communications device. Article 1 of the Iraq evidence Act No. 107 of 1979 also indicated that one of the objectives of the evidence Act (expanding the judge's authority to bring proceedings and related evidence to ensure proper application of the provisions of the Act to a fair judgment in the case in question). Articles 3 and 4 therein also stipulate that one of the objectives of Act is to require judge to follow the evolving interpretation of law (The simplification of formality to the extent that it guarantees the public interest and does not diminish the origin of the disputed right). And what was stated in Iraqi Transport Act No. 80 of 1983 114in Article (142/IV): (Signing of a bill of lading by hand and in any other acceptable manner) the issuance of a bill of lading by electronic means may, on the basis of this provision, take place due to the significant development in transport field. These are all clear references in Iraqi law to the legality of virtual contract, the assimilation of general rules in Iraqi civil law, the provisions of the special laws on this subject and the ability to deal with it, the Arab jurisprudence that dealt with the issue of contracting

between absentee people is close to this subject - that is, contracting by default or contracting through the Internet - where there are many references that can be based on in support of what we say, since this doctrine has been widely referred decades ago to the contract by phone or telephone, a method that is very close to Internet communication, measurement herein is originally legitimate, as Dr. Anwar Sultan points out that the contract board is the meeting in which the contract is held, whether it is increased or decreased, and the contract board is true or estoppels, as in contracting by phone or in any similar way<sup>116</sup>. Recent legal scholars have gone beyond the doctrine, referring explicitly to online contracting and even preparing a granted contract that does not deviate from the rules of this law was issued according to the dissolved Revolutionary Command Council Resolution No. 815 on July 28, 1983 [46].

### **Contract theory**

Since the computer has entered into force contracts, particularly in the area of contracting through banks and airlines, Computer contracting is a contract between attendees in terms of time and between those who are absentee in terms of place, Computer contracting terms are performed only if there is a means of communication between these virtual machines, i.e. a computer network by which the subscriber in that network can communicate directly with any other participant who owns the same device according to a particular tag, signal, or word. We believe that there is no objection to following the example of the developed countries in this field, as the American Virtual Banking Act of 1978 was issued, In France, the law regarding Legal acts has been issued, in which by means of immediate Communication with Automated Processing of 1980, American Information Protection Act of 1984, United States Information Trade Act was enacted, in previous years, virtual trade laws have been enacted in many countries, The United Nations - regarding the contract for the international sale of goods - also adopted the Vienna Convention on 11 April 1980, which allowed for consensus and acceptance to be carried out by telephone, telex or other means of instant communication<sup>118</sup>. The Model Law, accompanied by a Guide to legislation prepared by the United Nations Commission on Trade Law (UNCITRAL), was also promulgated in June of 1996, wherein establishment and validity of contracts and the time and place of transmission and receipt of data messages were recognized. Furthermore, in 1994 the European Union Commission had prepared the European Model Agreement on virtual Exchange. We cannot fail to mention that the origin of the contract is the freedom of consent that requires transactions, contracts and embarrassment. Individuals are free to create and guarantee the types of contracts they want – the law can impose restrictions on freedom of contract except for the protection of public order and morals<sup>120</sup>. The reason why Iraq has not yet passed legislation on electronic commerce may be that the phenomenon of virtual trade is not widespread and tangible, and that the basic requirements of this trade are not available, primarily the existence of a sophisticated communications technology infrastructure. The Arab countries that started the field of virtual contracting include Tunisia, Jordan, Tunisia, the Kingdom of Bahrain and the Egyptian draft of the Egyptian virtual trade law, while the countries that preceded the Arab countries are the United States of America, France, Canada, Japan, South Korea and most of the European countries [47].

## **II. CONCLUSION**

At the end of this research, in which three topics were presented, where they were presented for virtual contracts, and mentioned the general concept of contracts, the concept of electronic commerce, and virtual contracts, as well as presented the position of the Iraqi legislator regarding virtual contracts, and also dealt with

in the second topic the most important characteristics of virtual contracts, showing the means used in Contracts, as presented to the commercial contract, as well as the concept of the electronic pillar, then presented the most important characteristics of contracts, which are proof and fulfillment, as well as the legal nature of virtual contracts, and in the third topic: I mentioned the most important pillars of virtual contracts, which is the affirmative The default, the default acceptance, and finally the negotiation, and in the end she reached some results and recommendations, as follows:

The computer and the tools and programs attached to it are necessary for contracting through the internet, but it is a modern and not more than a way for a person to express positivity and acceptance before it was methods such as the phone and be after it, thanks to the continuation of scientific research. The hypothetical contract through modern means, including the Internet is permissible and legitimate, for the legitimacy of expressing the will in light of certain texts of Iraqi legislation. The Internet - even if it is just a means - except that it has set a new model for the contract board, because it can be assumed and imagined (a contract board) between absentees and from different places as if (contracting between attendees) through the technology of conversation and chatting through the Internet. As if the contract was between (attending). An offer or via the Internet specify a spatial or temporal range for his response. It is preferable to use a foreign language in addition to the national language to express will on the Internet, lest language be an obstacle to contracting via the Internet. The most important consequence of holding the hypothetical contract is determining the location of the contract - which, in Iraqi civil law, is the place where the positive person knows the acceptance of the person to whom the affirmation is based on the theory of knowledge of acceptance (Article 87).

### **III. RECOMMENDATIONS**

The statement that the general rules in the Iraqi civil law can handle the hypothetical contract - which is a correct saying - but this does not mean that the Iraqi legislator should not interfere to find some legal texts or rather the issuance of the hypothetical dealing law that includes all kinds of hypothetical transactions, including the hypothetical contract As contracting is a kind of deal. Given that Iraq and many Arab countries still have not followed the international virtual trade in the world strongly, the study recommends that the difference of language should not be an obstacle to using the global network to conclude legal contracts and behaviors, and that there is a text of a law that includes the use of the Arabic language or is accompanied by the translation of the language Arabic.

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