

Legal protection of the consumer through jurisdictional rules in e-commerce disputes: A Study in Iraqi Legislations

Lecturer. Dr.Ibraheem Hammood Mhana

College of law - University of Al- anbar

ib.hamood@uoanbar.edu.iq

الحماية القانونية للمستهلك من خلال قواعد الاختصاص القضائي في منازعات التجارة الإلكترونية
(دراسة في التشريعات العراقية)

م.د. إبراهيم حمود مهنا

كلية القانون - جامعة الأنبار

ib.hamood@uoanbar.edu.iq



This work is licensed under a

[Creative Commons Attribution-NonCommercial 4.0 International \(CC BY-NC 4.0\)](https://creativecommons.org/licenses/by-nc/4.0/)

Abstract

E-commerce uses the Internet as a mean of conclusion transactions and contracts. Online consumer contracts are an international character and can raise the question of whether the traditional rules of jurisdiction can applied as standard to determine which court is competent to deal with disputes that may arise between the parties. This article is aimed to study the rules of jurisdiction in Iraqi Legislations (determining the competent court to deal with disputes in e-commerce contracts) and to analyze the extent to which such rules are protecting the consumer in this type of trade, by adopting an analytical approach based on analysis of the jurists of law on the jurisdiction, with the statement of opinion on the issue through research. The findings reveal that the rules of jurisdiction do not provide sufficient protection for the consumer in electronic commerce because of the nature of electronic transactions based on intangible data, and the jurisprudential and legal opinion is likely to adopt the criterion of the consumer's home as the weak party in the contract of consumer electronic commerce for the effective protection of the consumer in this type of contracts.

Keywords: consumer - consumer protection - e-commerce – e-transactions - jurisdictional

ملخص

تستخدم التجارة الإلكترونية الإنترنت كوسيلة لإبرام المعاملات والعقود. تتسم عقود المستهلك الإلكترونية بطابع دولي، مما يثير التساؤل حول إمكانية تطبيق قواعد الاختصاص القضائي التقليدية كميّار لتحديد المحكمة المختصة بالنظر في المنازعات التي قد تنشأ بين الأطراف. تهدف هذه المقالة إلى دراسة قواعد الاختصاص القضائي في التشريعات العراقية (تحديد المحكمة المختصة بالفصل في المنازعات المتعلقة بعقود التجارة الإلكترونية)، وتحليل مدى حماية هذه القواعد للمستهلك في هذا النوع من التجارة، وذلك من خلال اتباع منهج تحليلي للنصوص القانونية، مع بيان الرأي القانوني في هذه المسألة. وتُظهر النتائج أن قواعد الاختصاص القضائي لا توفر حماية كافية للمستهلك في التجارة الإلكترونية نظراً لطبيعة المعاملات الإلكترونية القائمة على البيانات غير الملموسة، وأن الرأي الفقهي

والقانوني يميل إلى اعتماد معيار "مواطن المستهلك" باعتباره الطرف الأضعف في عقد التجارة الإلكترونية الاستهلاكية، وذلك لتحقيق حماية فعالة للمستهلك في هذا النوع من العقود.
الكلمات المفتاحية: المستهلك - حماية المستهلك - التجارة الإلكترونية - المعاملات الإلكترونية - الاختصاص القضائي

1- Introduction

E-commerce is one of the tremendous advances in Information and Communication Technology (ICT).¹ E-commerce uses the Internet as a mean of displaying, advertising and marketing their products and services, this network has become the backbone of the economic transactions, deals and contracts.² Recent statistics indicate that the number of Internet users worldwide reached (6 billion) during the year 2025.³

According to the United Nations Conference on Trade and Development (UNCTAD) report, worldwide Business-to-business (B2B) revenue reached \$ 21 trillion in 2018, compared to in the case of Business to consumer (B2C) transactions, was valued at \$4.4 trillion, up by 16% from 2017.⁴

The statistics indicate that the number of users of websites specializing in sales and purchases are increasing very rapidly, and we can point to the site (eBay) as an example of one of the most famous websites on the Internet, the number of people registered to the first quarter of 2025 and from around the world more than 134 million are selling and buying through this site.⁵

In the Arab world, the number of Internet users is growing exponentially. According to recent data from independent research firm E-Marketer, total approximately 348 million, representing 70.2 percent of the total population of 496 million.⁶

The results of the "Forecast of Internet Users in the Arab World reflect the extent of the expansion of the ICT sector in these countries, including Iraq, where the number of Internet users increased in the years, between 2000 and 2024, to 38,000,000 (Out of the total population of 46,000,000 million), with a penetration rate of 82.9%.⁷ There is no doubt that this increase in the number of users and the continuous penetration of the Internet gives an indication that ICTs have developed in Iraq reasonably.

¹ Al-Jaber, M. (2012). The Impact of Privacy Regulations on the Development of Electronic Commerce: Jordan and the UK Comparative Study, p.1.

² Ibrahim, K. M. (2011). Conclusion of the electronic contract: A comparative study. Alexandria: Dar Alfikr Aljamey. P.7.

³ Christy Tila, Global number of internet users 2005-2025. Retrieved from <https://www.statista.com/statistics/273018/number-of-internet-users-worldwide/> (Accessed Dec 30, 2020).

⁴ Un trade and development (2020, Apr 27). Retrieved from <https://unctad.org/news/global-e-commerce> (Accessed Dec 30, 2020).

⁵ yaguara. (2025, Sep 16). *eBay Statistics 2025: active buyers, Sellers and Revenue*. Retrieved from <https://www.yaguara.co/ebay-statistics/> (Accessed Dec 30, 2020).

⁶ Arabian Business, Report (2025, Apr 15). Retrieved from <https://www.arabianbusiness.com/middle-east/arab-internet-users-reach-348-million-as-digital-transformation-accelerates-report> (Accessed Dec 30, 2020).

⁷ Iraqi Ministry of Communications, Retrieved from <https://www.moc.gov.iq/?article=1053> , (Accessed Dec 30, 2020).

With the increasing number of Internet users worldwide and the development of e-commerce contracts, the idea of consumer protection has become more necessary, because the consumer in e-commerce is the weak party and is often being cheated when e-contracts are concluded and implemented at a time when legal legislation at the local and international levels does not provide adequate protection to the consumer, especially since the contractual relationship over the Internet is a transboundary relationship and often involves foreign element.¹

Practically speaking, online consumer contracts do not differ from their counterparts in our daily lives, except in terms of the way they are made. However, it is not easy in the legal terms, because these contracts are necessarily of an international character because their parties are persons and belong to different states and the international character of these contracts can raise the question of whether the traditional rules of jurisdiction can applied as standard to determine which court is competent to deal with disputes that may arise between the parties, especially as they are regional rules based on spatial concepts that do not respond to the nature of electronic transactions in terms of their Intangible data. In the Internet environment, the borders and geographical boundaries disappear as the spatial competencies of the judicial authorities disappear.

What calls for this question is the weakness of the laws and legal procedures governing consumer protection in e-commerce contracts in Iraq. The Iraqi Consumer Protection Act No. 1 of 2010 does not contain any legal provisions for the protection of transactions conducted by the consumer through the Internet. The Electronic Signature and Electronic Transactions Act No. 78 of 2012 did not address the issue of jurisdiction in e-commerce contracts, leaving them to the provisions of the general rules of the Civil Law.

Based on the above, the aim of This research is to study the rules of jurisdiction (determining the competent court to deal with disputes in e-commerce contracts) in Iraqi legislations and to analyze the extent to which such rules are protecting the consumer in this type of trade, by adopting an analytical approach based on analysis of the statements jurists of law on the jurisdiction examining the legal texts in Iraqi legislation related to jurisdiction.

Snice Islamic Fiqh (jurisprudence) has focused on protecting the individual in civil transactions - not only the consumer but all individuals - it has also addressed the issue of determining jurisdiction when considering disputes between parties. Therefore, we have chosen to study the opinions of Muslim jurists on this matter.

2- Jurisdiction in law

The Jurisdiction according to jurists is two types domestic and international. The domestic jurisdiction is defined as "the power vested by the legislator for a judicial body to adjudicate disputes and the cases before it, or the power of the court to judge a

¹ AL-nuaimi, A. Y. (2005). The legal protection of consumers in electronic commerce contracts. the Faculty of Law, Nahrain University, p.3.

particular type of litigation or cases under the law."¹ It is a jurisdiction relating to national legal relations and is determined by civil procedure rules, while the international jurisdiction refers to the statement of rules determining the jurisdiction of State courts in disputes involving a foreign element over other courts of other States.²

The domestic jurisdiction of national relations is governed by the rules of civil procedure, while international jurisdiction of legal relations with a foreign element is governed by the rules of international jurisdiction. It is recognized that the rules governing the conflict of jurisdiction are objective rules based on certain criteria or controls (spatial or personal).³ These rules are made of the national legislator in each state.⁴ He determines the jurisdiction of the courts of the state, whether domestic or international, and he is free to do so, and his authority only limited by some of the restrictions found in international agreements or conventions.⁵

On the other hand, the rules of international jurisdiction are objective rules, not rules of attribution, because they directly determine the cases in which the national judiciary is concerned, and they do not care to identify the competent foreign judiciary.⁶ Such a limitation would be useless because the foreign judiciary is not subject to the rules issued by another legislator.⁷

3- Rules of international Jurisdiction in Iraqi Law

International jurisdiction is the set of rules that determine the competence of state courts in disputes involving a foreign element against other courts of other states. For example, the rules of international jurisdiction in Iraq clarify for the Iraqi judge whether the Iraqi courts are competent or not to consider the dispute that includes a foreign element.

The jurisdiction of the courts is determined either on the basis of the defendant's domicile, or in respect of the court in which the parties agree to submit their disputes to it (the chosen jurisdiction), Or that the jurisdiction of the court will hold in the place of conclusion or execution of the contract, which we will discuss in succession.

3-1- The Standard of the court of the defendant's domicile

In accordance with the rules of international jurisdiction, the court in which the foreign defendant is located in shall have jurisdiction over all disputes to which the foreigner is a party, irrespective of the subject matter or cause of the case.⁸ This standard

¹ Khaled, H. (2001). International Private Judicial Law. Alexandria: Dar Al-fikr Al-jamei, p.37.

² Ibid, p.37.

³ Al-Hadawi, H. (2001). International Private Law: Conflict of Laws. Amman: Dar Al-Thaqafa for Publishing and Distribution, p.233.

⁴ Karim, A. R. (2009). The Impact of International Jurisdiction on Conflict of Laws. Kufa Journal of Legal and Political Sciences, 160-173, p.163.

⁵ Al-Manzlawi, S. J. (2008). Jurisdiction of International Private Disputes and International Recognition and Enforcement of Foreign Judgments. Cairo: Dar Al-jamieat Al-jadidata, p.25.

⁶ Riad, F. A. (1969). Principles of Private International Law in the Lebanese and Egyptian Laws. Beirut: Dar Al-nahdat Al-earabia, p.424.

⁷ Ibid.

⁸ Al-Manzlawi, S. J. (2008) , Ibid, p.67.

does not differentiate between a national or a foreigner under the jurisdiction of the Iraqi courts. What mattered is the foreigner residence in Iraq and it will be considered his location. Therefore, if any disputes are raised in connection with one of his commercial transactions, the Iraqi judiciary will be competent to consider this dispute according to the provisions of Article 15/1 Of the Iraqi Civil Code No. 40 of 1951, which states that "a foreigner shall be tried before the courts of Iraq in the following cases: a. If his location was in Iraq ...". The mere presence of a foreigner in Iraq is sufficient for the Iraqi judiciary to be competent in the consideration of the dispute. The basis is the presence of a foreigner in Iraq is at the time of filing the case.¹ Whatever was the reason for this presence and its duration, even if it is merely for passing through, it is not necessity for the foreigner to be a living or a resident of Iraq.²

This standard represents a general rule for the Iraqi courts to operate within the framework of internal jurisdiction. Article 37/1 of the Iraqi Civil Procedure Code No. 83 of 1969 state that "a case of debt or transaction shall be held in the defendant's domicile court ...". According to this provision and the text of Article 29 of the Code of Civil Procedure, which refers to the general jurisdiction of the Iraqi courts, the plaintiff may institute all proceedings before the court of the defendant's domicile, whether he was Iraqi or foreigner.

The determination of the concept of domicile presented in the previous text as a basis for determining the international jurisdiction requires reference to the code of the judge who will hear the dispute, because it's related to the issue of the interpretation of a domicile rule and it is also a matter of adaptation,³ pursuant to article 17 of the Iraqi Civil Code, which states that "Iraqi law is the authoritative source when it comes to characterizing and defining the nature of a relationship in cases where conflicting laws are at issue and it is necessary to determine which law is applicable.". According to this provision, the Iraqi court will examine the issues of jurisdiction in accordance with Iraqi law and it is competent to consider cases filed against a foreigner, whether he is the natural or legal, who is in general resident in Iraq, or has a specific place for carrying out certain business, or has a legal place for those who are incapacitated, absent or missing or have chosen Iraq as a home.

The Fiqh justifies assigning jurisdiction to the Iraqi courts to consider the dispute before it based on the standard of the foreign defendant's domicile in Iraq by the principle of territorial jurisdiction that covers all persons located in the Iraqi territory. Second, the attribution is the defendant's interest who is resident in the territory of the state and ensure the future implementation of the sentence. Third, stability of the defendant in the territory of a certain State indicates that there is a link between, since the defendant's domicile is the place where his interests and activities are located, and finally, this attribution is based on the principle that the basis is the innocence of the defendant

¹ Al-Hadawi, H. (2001), *Ibd*, p.246.

² Al-Qadi, M. (1952). *Multaqaa AL-bahrayni*. Baghdad: Mutbaeat Al-eani, p. 32.

³ Riad, F. A. (1994). *Conflict of Laws and International Jurisdiction and the Effects of Foreign Judgments*. Cairo: Dar Al-Nahda Al-Arabiya, p.418.

until proven otherwise, and as long as it has not yet proved to be guilty is not fair to bear the hardship of moving to the location of the lawsuit.¹

We may also add to these justifications another practical justification related to the last one which is referred to by fiqh, this justification is based on the practical assumption that failure to meet the standard of the defendant's domicile will make the latter at the mercy of the plaintiff, who may deliberate the case in a place far from the defendant domicile, which means that he will suffer the hardship of transfer and incurs excessive expenses without a reason, and since a lawsuit is "A person requests his right from another before the judiciary,"² the one who has the right to face another must seek and demand his rights in his home.

3-2 Consumer protection through the court of the defendant's domicile standard

The National Court jurisdiction allocation based on the defendant's domicile standard in the context of e-commerce contracts raises many difficulties, including the difficulty or impossibility of determining the defendant's domicile in the case of that the defendant is a website that has been dealt with.

Where the contractors through traditional means of electronic communication such as fax, telex or telephone, know in advance the country they contact and the location and identity of the other party in the contract, through the code number they request, while online dealers lack this identification, this is because dealing across network based on email addresses, not on real addresses.³

These addresses do not give a clear or correct indication on the real address.⁴ There are web sites with country-specific addresses; however, there is no real workplace location in the conventional sense, addresses not related to specific countries, as well as addresses that are not country-specific, as in the web address end with .com or .org.⁵

On the other hand, the implementation of this standard makes the idea of protection given by the legislator to the consumer in e-commerce contracts useless for him, because its implementation leads to the obligation of the consumer to bear all of the burden of the prosecution of the defendant.⁶ In addition to the problems that may case to the courts of the countries that don't have legislation regulating the provisions of e-commerce or electronic transactions, or the courts of countries where there is no legal regulation for electronic signature and the extent to which the national legislator complies with the computer outputs as proof of evidence.⁷

¹ Al-Hadawi, H. (2001), *Ibd*, p170.

² Article (2) of the Iraqi Civil Procedure Code No. 83 of 1969. This definition is the same as that taken from Article (1613) of the Ottoman Civil Code (Majalla).

³ Al-Manzlawi, S. J. (2008) , *Ibd*, p.81.

⁴ Salama, A. A. (2000). *Special International Private Law*. Cairo: Dar Al-Nahda Al-Arabiya, p. 39.

⁵ Kamal, F. M. (2008). *Legal Protection of Electronic Commerce Contracts* . Cairo : Faculty of Law, Cairo University, p. 678.

⁶ Faraj, T. A.-B. (2007). *Consumer Contracts between the Judiciary and the National Judiciary*. Alexandria: Dar Al-fikr Al-jamey, p. 175.

⁷ *Ibd*, p. 690.

As a result of the difficulty of locating parties in e-commerce, United Nations Commission on International Trade Law (UNCITRAL), through the 1996 Model Law on Electronic Commerce, which had been incorporated by most states in their national legislation,¹ and the United Nations Convention on the Use of Electronic Communications in International Contracts of 2005 adopted some rules that would locate contracting parties via the Internet, where websites recommended to reveal their geographical location when they made offers online, as well as adopting a broad standard for the disclosure of the country and place of business of the parties through the second paragraph of Article (6) Of the Convention, which states that "If a party has not indicated a place of business and has more than one place of business, then the place of business for the purposes of this Convention is that which has the closest relationship to the relevant contract, having regard to the circumstances known to or contemplated by the parties at any time before or at the conclusion of the contract."²

It is clear from the above text that the Convention left the power to determine the place of business of the parties was left to the Judiciary through the standard " the place of business for the purposes of this Convention is that which has the closest relationship to the relevant contract." in case of the absence of indicating the place of business by the parties or when indicating more than one place of business their website. It is noted in this standard that, in determining the applicable law, the judge must consider the circumstances in which the contract is associated, which requires the application of this standard by him for each case by itself. The judge may decide the most relevant location for the contract through correspondence between the parties about their physical place of business outside the network, or through telephone numbers of a party that holds a key to a specific state.³

3-3 The standard of the chosen legal competence

The standard of the chosen competence or what some call the standard of voluntary submission, means the acceptance of the contracting parties to the jurisdiction of the judiciary either by explicit or implicit agreement, such as the defendant attendance before the competent court without stating that it's not- competent.⁴ Equally if the agreement of the contracting parties stated the jurisdiction of a court in the contract or subsequent agreement, and this agreement could be prior to or subsequent to the dispute.⁵ Under this standard, the contracting parties will be able to choose the court that will have

¹ United Nations Commission On International Trade Law, Retrieved from; https://digitallibrary.un.org/record/286739/files/19-04970_ebook.pdf (Accessed Dec 30, 2025).

² United Nations Publications. (2005). *United Nations Convention on the Use of Electronic Communications in International Contracts*. Retrieved from http://www.uncitral.org/uncitral/en/uncitral_texts/electronic_commerce/2005Convention.html (Accessed Dec 30, 2025).

³ Fadl, S. A. (2011). *Disputes arising out of e-commerce contracts under private international law*. Cairo: Dar al-Nahda al-Arabiya, p. 264.

⁴ Al-Hadawi, H. (2001), *Ibd*, p.239.

⁵ Hassani, M. M. (2012). *Consumer Protection in Private International Law*. Cairo: Dar Al-Nahda Al-Arabiya, p.92.

jurisdiction over the international dispute that has arisen or may arise between them in the future.

If the basis in determining the jurisdiction of the national judiciary is to consider the proceedings against a foreign defendant if the latter is on the territory of the state. However, taking into account the interests of the plaintiff, and at the request of the parties to the contract, the legislator will appoint the jurisdiction of the national judiciary, even if the latter is not competent to consider the dispute, and with specific controls so the agreement is not fraudulent, and that there is a legitimate interest of a party to assign the jurisdiction of a particular court, in addition to the need to have a serious link between the dispute and the court that agreed to hold the jurisdiction.

The need for this standard has become necessary, especially in light of electronic transactions made by the Internet because it goes beyond the difficulty of proving the other standards of jurisdiction.¹ It also facilitates obtaining judicial protection by the plaintiff, and extending protection of the private interests of individuals.²

Because the supplier does not wish to be sued by foreign courts, and the buyer in return prefer to resort to the courts close to him to claim his rights in the face of the supplier, if there is no agreement on jurisdiction, especially in transactions conducted through the Internet, the supplier will be subject to the scope of jurisdiction in each country through which that activity is accessed through that Internet, in addition to the fact that this standard reflects the integrity and efficiency of the judiciary, which the contracting parties agreed to hold the jurisdiction for, and the extent of confidence and reassurance in its fairness.³

In contrast to the Egyptian legislature, the Iraqi legislator did not explicitly state the standard of international jurisdiction of the Iraqi courts (the standard of the chosen law). However, the jurisprudence of private international law in Iraq considers that there is nothing to preclude the adoption of this standard based on the concept contrary to article (7) of the Implementation of foreign provisions Code in Iraq No. ٣٠ of 19٢٨, which designate the jurisdiction for the foreign court to consider the dispute if the defendant attended before it by his choice, or if he agrees to the court's ruling in his case, as well as the text of article (3) of the Iraqi Civil Code, which states that “the most common principles of private international law should be followed on issues of conflict of laws for which no provision has been made in the law”. This standard has become a common principle in many national legislations and international conventions.⁴

3-4 Consumer protection through the chosen competence standard

If the contracting parties of the international contracts agree on the choice of court that will have jurisdiction to consider the dispute that arose or may arise between them in

¹ Salama, A. A. (2000), *Ibd*,p.39.

² Sultan, N. B. (2009). *The Electronic Jurisdiction of the Iraqi Courts*. Tikrit University Journal of Legal and Political Sciences, p210.

³ Hassani, M. M. (2012),*Ibd*,p.87.

⁴ Hafez, M. A.-K. (1973). *International Private Law According to the Iraqi and Comparative Laws*. Baghdad: Dar AL-huriyat liltabaeat, p. 376.

the future, thus consumer contracts in e-commerce go beyond this rule because the consumer is the weak party that needs protection, International agreements, including Brussels Regulation No. 44/2001 on Jurisdiction and Enforcement of Provisions, Article 17 thereof,¹ which recognized the validity of the electronic agreement on the appointing the jurisdiction of a particular court in consumer contracts when this agreement was subsequent to the emergence of the dispute and does not contradict with the laws of that State.

Some have attributed this exception to the considerations that the consumer does not have to waive in advance the jurisdiction of the judge of his state or place of residence. It is not permissible to waive that advantage before his right has been established. The right of the consumer to this advantage shall not be established except after the dispute. Another consideration is that the consumer may approve with jurisdiction of a court outside his country to complete the deal, which may cast doubt on the integrity of his approval of this condition.²

On the other hand, the implementation of the chosen jurisdiction standard may raise several problems, including that the state of the chosen court may not recognize e-transactions, therefore it is difficult for the judge to hear the case because there is no legal basis for it on, which leads to wasting the rights of litigants, in addition to the implementation of the judgment in the case in another country may take a long time and this does not suit the speed required in electronic transactions.³

3-5 The place of conclusion or implementation of the contract standard

Article 15 of the Iraqi Civil Code state that "a foreigner shall be tried before the courts of Iraq in the following cases: ... c. If the subject of litigation is a contract concluded in Iraq or to be implemented in Iraq ...".

In accordance with the provisions of section (c) of the mentioned above article, the jurisdiction of the Iraqi courts shall take place in a case which one of the parties is a foreigner if the commitment was in Iraq, or to be implemented in Iraq, whether the contract has been concluded between those present in Iraq or absent. It should be noted that the competence of the Iraqi courts in the mentioned above cases is an obligatory jurisdiction, because foreign judgments issued by foreign courts cannot be implemented on issues related to contracts that were concluded or to be implemented in Iraq.

3-6 Consumer protection through the standard of the place of conclusion or implementation of the contract

This standard, like the previous, raises the difficulty of determining the place of conclusion of the contract in the field of e-commerce because of the physical considerations that do not correspond to the reality of contracts in this type of trade in general. As to determining the place of implementation of the commitment, the

¹ The Publications Office of the European Union, Retrieved from <https://eur-lex.europa.eu/eli/reg/2001/44/oj/eng> (Accessed Dec 30, 2025).

² Naima, G. (2012). Electronic Consumer Protection. Algeria: Faculty of Law and Political Science, Mouloud Mameri University - tizi wazu.

³ Ibid.

application of this standard is not difficult for e-contracts concluded over the network and are implemented outside the network off-line, by traditional means such as delivery, so long as the delivery is physical, the place of the delivery of the goods and the location of the service is the place of the Jurisdiction.¹ As stipulated in the European Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters,² jurisdiction is awarded to the courts for the place of delivery of goods or provision of services - if the dispute is related to delivery - whereas if "otherwise agreed", where it state article 5/b that

"for the purpose of this provision and unless otherwise agreed, the place of performance of the obligation in question shall be:

- in the case of the sale of goods, the place in a Member State where, under the contract, the goods were delivered or should have been delivered,***
- in the case of the provision of services, the place in a Member State where, under the contract, the services were provided or should have been provided."***

As for contracts concluded and executed through the on-line network, such as contracts for the provision of electronic services, audio recordings, software and contracts for the sale of electronic newspapers, it is difficult to determine the place of the implementation of the contract because there is no traditional standard of competence or an agreed modern standard to determine the competence, Some of the Fiqh scholars believe that the place of execution of the contract is the location of the sender of the service (Supplier) and the place of the consignee (the buyer).³

The jurisdiction could be divided between the two places.⁴ However, there are practical problems facing the adoption of this opinion is the difficulty of determining the location of the service provider, is it the place where the computer is or the place of where the information system or the location of the server? Especially since the system through which the sale is made has no relation with the location of the company or the place of the supplier.⁵

Another view of Fiqh jurisprudence - we agree with it - is that, given the difficulty of determining the place of execution in e-commerce contracts, the contracting parties must agree on it from the start.⁶ It is even necessary for the legislator to stipulate this obligation in e-commerce laws So that it becomes a component of the contract as well as determining the applicable law, in case of absence of agreement of the parties, the

¹Sultan, N. B. (2009), Ipd, p. 217

² The Publications Office of the European Union, Retrieved from <https://eur-lex.europa.eu/eli/reg/2001/44/oj/eng> (Accessed Dec 30, 2025).

³ Al-Din, A. S. (2003). The Jurisdiction of Electronic Commerce Disputes. Cairo: Dar Al-Nahdah Al-Arabiya, p. 31.

⁴ Ibid.

⁵ Hassani, M. M. (2012), Ibid,p.105.

⁶ Al-Manzlawi, S. J. (2008) , Ibid, p.143.

jurisdiction of the Consumer Courts of the courts shall be appointed as being the most appropriate with the established rules for consumer protection.¹

3-7 Consumer's domicile standard

In view of the invalidity of the above mentioned standards in determining the jurisdiction in e-commerce contracts, some national legislation and international conventions have tended to make international jurisdiction in those contracts to the consumer court.² The basis of this jurisdiction is due to the legislator's desire to give the consumer as a weak party in consumer contracts special protection, in the face of a professional who has all the economic and technical privileges.³ In addition, consumption contracts are based on the principle of good faith, because the consumer is often make a purchase based on the information provided by the producer or supplier of these goods or services.⁴ On the other hand, the means of publicity and advertising has undergone enormous leaps in development and progress, which has become a tool to pressure the consumer that makes him at the mercy of these means that push him to contract, and therefore the jurisdiction of the court of the consumer's home is to protect him from bearing heavy burdens, as well as the professional has technical, cognitive and procedural privileges and that put him in a position that compromise the principle of good faith.⁵

In that context, the European Court of Justice states in its 1993 judgment, that "The special system established... is inspired by the concern to protect the consumer as the party deemed to be economically weaker and less experienced in legal matters than the other party to the contract, and the consumer must not therefore be discouraged from suing by being compelled to bring his action before the courts in the Contracting State in which the other party to the contract is domiciled."⁶

3-8 The Selected view on e-contracts

After presenting the statements of the Muslim scholars regarding the determination of the jurisdiction of the case, it turns out that every statement has its perspective and standpoint to be considered, and that there is no explicit provision in determining the competent court. Therefore, the matter is governed by the general rules of Islamic law, which are based on fairness and justice for the aggrieved.

It may be appropriate in e-contracts to act on the opinion that the competent judge is the judge of the weak party in the contract, because in the case in the e-commerce contract, the consumer is the weakest party in the contract, if he is affected because of the

¹ Hassani, M. M. (2012), *Ibd*,p.106.

² Salama, A. A. (2000), *Ibd*,p.12.

³ Tang, Z. S. (2015). *Electronic Consumer Contracts in the Conflict of Laws*. Bloomsbury Publishing, p. 66.

⁴ Hassani, M. M. (2012), *Ibd*,p.109.

⁵ Stone, P. (2006). *EU Private International Law Harmonization of Laws*. Elgar European Law,p.113.

⁶ Case C-89/91 Shearson v TVB [1993] ECR1-139, para 18, Retrieved from <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A61991CJ0089> (Accessed Dec 30, 2025).

non-conformity of the item to the advertisement, description or failure to implement the contract as agreed upon and so on, then his judge is competent to consider the dispute

This standard is in line with the national legislation and international conventions as we have seen, as it has appointed international jurisdiction in consumer electronic commerce contracts to the consumer home court as the weak party. This standard provides the electronic consumer with real and important privileges where the legislator can protect his citizens and residents in the territory of his country from the greed of suppliers. In the event that such a standard exists, the supplier will take all the steps that would not expose him to prosecution before the courts of the States in which he is active. Thus, the result of the implementation of this standard of the jurisdiction is that it makes all claims brought to the consumer by the professional under the jurisdiction of the consumer's place court, While the consumer has the option to file a claim against a professional, he may bring the case before a court of his country or follow the professional to his place or company premises, at his personal interest.

4- Judicial Authority in Islam

Jurisdiction of Muslim scholars is either public or specific. The general jurisdiction is when the Muslim ruler appoints a judge to prosecute in all provisions and to all litigants. The specific jurisdiction is when the Muslim leader appoints a judge to consider a specific case or cases, or to rule in a particular country or time. Al-Mawardi said:

*"The general jurisdiction is that imam appoint a judge to rule in the judiciary of all the country, and among all its people, in all days ... The specific jurisdiction is when a judge is appointed to prosecute the debts in specific no other cases, and to rule based on recognition without hearing evidence, or to prosecute in a quorum of money in specific no other cases."*¹

The base of Islamic jurisdiction is the general jurisdiction, because the judge is a deputy of the ruler, and all the residents in the country and all the cases are subject to his authority. "The judge has to rule all cases and to prosecute all types of jurisdiction,"². Mohammed bin Ahmed bin Rashid, grandson of al-Maliki said,

*"And what's his Jurisdiction (the judge means)? They agree that the judge rule in all of the rights, whether it's for Allah or people because he is the Deputy for the great Imam in this sense."*³

In Islam, however, there is nothing to prevent the establishment of a judicial system that clarifies its jurisdiction and ensures the implementation of its provisions and guarantees for its members the freedom to administer justice among people.⁴

¹ Al-Mawardi, A. A. (1391). Adab Al-qadi. Baghdad: Al-'iirshad Press, p1/155.

² Al-Nabahi, A. a.-H. (1983). History of the Judges of Andalusia ((alimurqabat aleulya fimin yastahiqu alqada' walfatyaa). Beirut: Lebanon, p.30.

³ Al-qurtabii, A. a. (2004). Bidayat almujtahad wanihayat almuqtasidi. Cairo: Dar al-Hadith,p,4/244.

⁴ khilaf, E. A.-w. (1988). Al-siyasat Al-shariat fi alshuyuw aldusturiat walkharijiat walmalia. Dubai: Dar Al-Qalam,p.56.

The Prophet (peace and blessings of Allah be upon him) placed in his era the first nucleus of judicial jurisdiction. The establishment of Jurisdiction can be derived from his command for some of his companions in the judiciary in a certain dispute or in a specific issue. Although it was not clear at the time because of the lack of rivalry between people and the small size of the Islamic state.

As in narration by 'Uqbah ibn' Amer al-Juhani that he said:

*"two opponents people came to the Messenger of Allah (PBUH) and he said: 'Uqbah you prosecute them 'then I said 'O Messenger of Allah you rule between them as you are here, He said: "you prosecute them, if you are right then you will have ten good deeds, and if you miss then you have one."'*¹

In this case the judge is assigned to consider the case of specific people so as not to judge others.

It was narrated that Ibn Abbas said:

*"The Messenger of Allah sent Ali to Yemen. He said:" You teach them the laws and rule among them." "He said: 'I do not know the judiciary' then he said: "Oh Allah, guide him to judge."'*²

This is the foundation of the concept of spatial competence. This is what happened during the reign of the Prophet (PBUH) and represents the basis for the idea of allocating the judiciary in terms of place, time and people. And then the idea of jurisdiction started to develop in the era of the Caliphs, especially in the era of Omar bin al-Khattab, where various types of jurisdiction appeared in his era, including the specific jurisdiction, and that is in the saying of the Alsa'eb bin Yazid, "he appointed me to small matters," he was prosecuting the cases of the dirham (coin) and similar cases.³

And the substantive jurisdiction, where the jurisdiction of the judges had been limited epically in some of the important cases such as execution.⁴. Omar wrote to the leaders of the armies, "Do not execute without my order,"⁵ and in other narration: "execution is only by Omar judgment ." also the features of spatial jurisdiction established clearly in his era and this represented by dividing the state into the provinces and mandates and the allocation of each state governor for public affairs and a judge for judicial affairs, where Aba Dada was appointed as judge for Al-Madinah and Shariha as judge of Basra and Abu Musa al-Atari as judge of Kufa.⁶

With the expansion of the Islamic state in the Umayyad and Abbasid era and the multiplicity of groups in compare to the Prophetic era, many types of jurisdiction

¹ Al-Hakam, M. b. (1990, No:7004). Al-mustadrak ealaa alsahihayn. Beirut: Dar Al Kuttab Al-Alami.

² Ibid.

³ Al-Baghdadi, A. B. (1947). Akhbar Al-qudat. Egypt: Al-maktabat Al-tijariat Al-kubraa, p.106.

⁴ Musharraf, A. (1966). The judiciary in Islam. Egypt: Sharikat alshrq al'awsat liltabaat, p.

⁵ Shaybah, A. B. (1989). Al-kitab Al-musanaf fi Al-'ahadith walathari. Riyadh: Al-Rashed Library, p.453.

⁶ Madkour, M. S. (1964). The Judiciary in Islam. Egypt: Dar al-Nahda al-Arabiya, p.25.

emerged until the so-called Sectarian jurisdiction appeared, where the jurisdiction of the judge is limited to a specific sect and not any other.¹

And the scholars of the Muslims, may Allah have mercy on them, when they argued the jurisdiction of the judiciary in the era of the Prophet and the Caliphs after him and the successors of the Umayyad and Abbasid state found that the jurisdiction of the Courts was limited and expanded according to place, time, the expansion of the state and the degree of the caliphs confidence in the judges for their intelligence, acumen and integrity, which made them agree that the jurisdiction in Islam can be general or specific to place, time or people.

5- Jurisdiction in Islamic (Fih) Jurisprudence

The Muslims scholars, may Allah have mercy on them, considered the rules of jurisdiction in disputes under the name of the "competent judge." They differed in determining the judge who is competent to hear the dispute between the plaintiff and the defendant when there is a spatial difference between them, and they agree that if the litigants are in one place (same city), the case is held by the city judge, but if they disagree in the location of residence or if the place of the lawsuit is in another city, the scholars differ in the judge in charge of the dispute, according to two argument:

The First argument, the competent judge is the plaintiff's judge. This is the view of the majority of scholars from the Maliki's,² Shaafa'is,³ Hanbalis,⁴ and Abu Yusuf from Hanafi's,⁵ and they argued that the plaintiff is the originator of the dispute, and he holds the right to file the case with his judge or the defendant's judge.⁶

The second argument is that the competent judge is the defendant's judge. This is what is adopted by the Hanafi's,⁷ and some of the Maliki's,⁸ and they have concluded that the defendant is the innocence basically. Justice is against asking the defendant to move before he is proven guilty, because that will lead to the disabling of his business, the plaintiff is the claimant and the one who is asking for justice and he has advantage over the other party, it is unreasonable that the plaintiff summons the defendant to his country to sue him.⁹

Muslim scholars have also authorized the contracting parties to agree on the appointment of a judge to look into a dispute between them or the dispute that may arise in the future. If there is such agreement between the plaintiff and the defendant, it is

¹ Al-Ghamdi, N. b. (1997). Jurisdiction in Islamic Jurisprudence with an Application of the Current Application in the Kingdom of Saudi Arabia. The Kingdom of Saudi Arabia: Umm Al Qura University, p.95.

² Al-Dessouki, M. b. (n.d.). Hashiat Al-dasuqi ealaa Al-sharah Al-kabiar. Dar Al-fikr, p. 4/135.

³ Al-Sherbini, M. i.-K. (1994). Maghni almuhtaj 'iilaa maerifat maeani 'alfaz Al-munhaj. Cairo: Dar Al-kutub Al-eilmia, p. 6/269.

⁴ Bahouti, M. b.-D. (n.d.). kashaf Al-qunae ean matn al'iiqnaei. Dar Al-kutub Al-eilmia, p. 6/292.

⁵ Ibn Nijim, I. (n.d.). Al-bahr AL-raayiq sharah kanz AL-daqaayiq. Dar Al-kitab al'iislami, p. 7/193.

⁶ Ibid.

⁷ Ibid.

⁸ Al-Kharashi, M. b. (n.d.). Sharah mukhtasir khalil lilkharshi. Beirut: Dar AL-fikr liltabaeat, p. 7/174.

⁹ Ibn Nijim, I. (n.d.), Ibid, p. 7/193.

obligatory to abide by it and implement it, because it's known from many evidences that it's obligatory to fulfill the contracts, agreements and covenants, including the words of the Prophet (PBUH): « Muslims should be held to their agreements, except the ones that make the lawful unlawful, or the unlawful lawful."¹

If the subject matter of the lawsuit is a property, the jurisdiction of the case shall be for the judge of the property location. In this, the Muslim scholars, may Allah have mercy on them, mentioned the case of a man from Al Madina who has a house in in Makkah, this case should be look into by a judge from Makkah. They said that such cases are not related to the judge of the plaintiff or the judge of the defendant, but it is within the jurisdiction of the judge that the subject of the case in his area.

Some scholars, may Allah have mercy on them, also referred to the standard of the weak party to determine the competent judge in the dispute. They said that the competent judge in the dispute is the judge of the state (location) of the weakest party in the dispute, because that should be taken into consideration.

6- Conclusion

The study concluded that the application of the conventional rules of jurisdiction in Iraqi law as standard for determining the competent court to deal with disputes arising from consumer e-contracts does not effectively protect the consumer in this type of contract, due to the nature of electronic transactions based on intangible data. In the Internet environment, geographical boundaries disappear, and the jurisdictional competencies of the judicial authorities are ceased and the burden of proving the elements of the jurisdiction increases, such as the location of the conclusion or implementation of the contract.

On the other hand, given the nature of the international consumption contract itself as a contract between two parties, one of which is weak, who aims to satisfy his personal needs (the consumer) and another is strong who has technical and economic capacity, and aims to achieve profit (professional), This leads the consumer's failure to claim his right, because the rules of international jurisdiction requires that the consumer to go to the defendant's country to file the case for his right, which is impossible for the consumer to do, especially since the consumption agreements are contracts of little value and are even limited, Thus, those rules do not guarantee the adequate and effective protection of the consumer in e-commerce. For this reason, we have accepted the Fiqh and legal opinion that adopt the standard of the consumer's domicile as the weak party in the contract of e-commerce for its effective protection of consumers in this type of contract.

Also the study concluded that the Muslim scholars did not use the term "consumer protection" because their term of protection was used to describe the vulnerable or the weak party. However, they have addressed the issue of determining jurisdiction when considering disputes between parties, They said that the competent judge in the dispute is

¹ Tirmidhi, M. b. (1975, No:1352). Sunan Al-tarmadhi. Egypt: Moustafa Al - Babi Al - Halabi Printing & Publishing Co.

the judge of the state (location) of the weakest party in the dispute, because that should be taken into consideration.

Bibliography:

- Al-Baghdadi, A. B. (1947). Akhbar Al-qudat. Egypt: Al-maktabat Al-tijariat Al-kubraa.
- Al-Dessouki, M. b. (n.d.). Hashiat Al-dasuqi ealaa Al-sharah Al-kabiar. Dar Al-fikr.
 - Al-Din, A. S. (2003). The Jurisdiction of Electronic Commerce Disputes. Cairo: Dar Al-Nahdah Al-Arabiya.
 - Al-Ghamdi, N. b. (1997). Jurisdiction in Islamic Jurisprudence with an Application of the Current Application in the Kingdom of Saudi Arabia. The Kingdom of Saudi Arabia: Umm Al Qura University.
 - Al-Hadawi, H. (2001). International Private Law: Conflict of Laws. Amman: Dar Al-Thaqafa for Publishing and Distribution.
 - Al-Hakam, M. b. (1990, No:7003). Al-mustadrak ealaa alsahihayn. Beirut: Dar Al Kuttub Al-Alami.
 - Aljaber, M. (2012). the impact . jourdan: Montfort university.
 - Al-Jaber, M. (2012). The Impact of Privacy Regulations on the Development of Electronic Commerce: Jordan and the UK Comparative Study.
 - Al-Kharashi, M. b. (n.d.). Sharah mukhtasir khalil lilkharshi. Beirut: Dar AL-fikr liltabaeat.
 - Al-Manzlawi, S. J. (2008). Jurisdiction of International Private Disputes and International Recognition and Enforcement of Foreign Judgments. Cairo: Dar Al-jamieat Al-jadidata.
 - Al-Mawardi, A. A. (1391). Adab Al-qadi. Baghdad: Al-'irshad Press.
 - Al-Nabahi, A. a.-H. (1983). History of the Judges of Andalusia ((alimurqabat aleulya fimin yastahiqu alqada' walfatyaa). Beirut: Lebanon.
 - AL-nuaimi, A. Y. (2005). The legal protection of consumers in electronic commerce contracts. the Faculty of Law, Nahrain University, 61-112.
 - Al-Qadi, M. (1952). Multaqaa AL-bahrayni. Baghdad: Mutbaeat Al-eani.
 - Al-qurtabii, A. a. (2004). Bidayat almujtahad wanihayat almuqtasidi. Cairo: Dar al-Hadith.
 - Al-Sherbini, M. i.-K. (1994). Maghni almuhtaj 'iilaa maerifat maeani 'alfaz Al-munhaj. Cairo: Dar Al-kutub Al-eilmia.
 - Bahouti, M. b.-D. (n.d.). kashaf Al-qunae ean matn al'iqnaei. Dar Al-kutub Al-eilmia.
 - Fadl, S. A. (2011). Disputes arising out of e-commerce contracts under private international law. Cairo: Dar al-Nahda al-Arabiya.
 - Faraj, T. A.-B. (2007). Consumer Contracts between the Judiciary and the National Judiciary. Alexandria: Dar Al-fikr Al-jamey.
 - Hafez, M. A.-K. (1973). International Private Law According to the Iraqi and Comparative Laws. Baghdad: Dar AL-huriyat liltabaeat.
 - Hassani, M. M. (2012). Consumer Protection in Private International Law. Cairo: Dar Al-Nahda Al-Arabiya.
 - Ibn Nijim, I. (n.d.). Al-bahr AL-raayiq sharah kanz AL-daqaqiq. Dar Al-kitab al'iislami.
 - Ibrahim, K. M. (2011). Conclusion of the electronic contract: A comparative study. Alexandria: Dar Alfikr Aljamey.
 - Kamal, F. M. (2008). Legal Protection of Electronic Commerce Contracts . Cairo : Faculty of Law, Cairo University.
 - Karim, A. R. (2009). The Impact of International Jurisdiction on Conflict of Laws. Kufa Journal of Legal and Political Sciences, 160-173.

- Khaled, H. (2001). International Private Judicial Law. Alexandria: Dar Al-fikr Al-jamei.
- khilaf, E. A.-w. (1988). Al-siyasat Al-shareiat fi alshuyuwn aldusturiat walkharijiat walmalia. Dubai: Dar Al-Qalam.
- Madkour, M. S. (1964). The Judiciary in Islam. Egypt: Dar al-Nahda al-Arabiya.
- Mamdouh, K. (2011). conclusion of the electronic contract: A comparative study. Alexandria : Dar Alfkr Alarabe.
- Musharraf, A. (1966). The judiciary in Islam. Egypt: Sharikat alshrq al'awsat liltabaeat.
- Naima, G. (2012). Electronic Consumer Protection. Algeria: Faculty of Law and Political Science, Mouloud Mameri University - tizi wazu.
- Riad, F. A. (1969). Principles of Private International Law in the Lebanese and Egyptian Laws. Beirut: Dar Al-nahdat Al-earabia.
- Riad, F. A. (1994). Conflict of Laws and International Jurisdiction and the Effects of Foreign Judgments. Cairo: Dar Al-Nahda Al-Arabiya.
- Salama, A. A. (2000). Special International Private Law. Cairo: Dar Al-Nahda Al-Arabiya.
- Shaybah, A. B. (1989). Al-kitab Al-musanaf fi Al-'ahadith walathari. Riyadh: Al-Rashed Library
- Stone, P. (2006). EU Private International Law Harmonization of Laws. Elgar European Law.
- Sultan, N. B. (2009). The Electronic Jurisdiction of the Iraqi Courts. Tikrit University Journal of Legal and Political Sciences, 200-235.
- Tang, Z. S. (2015). Electronic Consumer Contracts in the Conflict of Laws. Bloomsbury Publishing.
- Tirmidhi, M. b. (1975, No:1352). Sunan Al-tarmadhi. Egypt: Moustafa Al - Babi Al - Halabi Printing & Publishing Co.

Reports:

- (UNCTAD), U. N. (2015). Information Economy Report / unlock the potential of e-commerce for developing countries. New York and Geneva: United Nations, Retrieved from https://unctad.org/system/files/official-document/ier2015_en.pdf

legislation and Conventions:

- The Implementation of foreign provisions Code in Iraq No. 30 of 1928.
- The Iraqi Civil Code No. 40 of 1951.
- The Iraqi Civil Procedure Code No. 83 of 1969.
- the Model Law on Electronic Commerce 1996.
- United Nations Convention on the Use of Electronic Communications in International Contracts (New York, 2005).
- The Iraqi Consumer Protection Act No. 1 of 2010.
- The Electronic Signature and Electronic Transactions Act No. 78 of 2012.

Websites:

- Christy Tila, Global number of internet users 2005-2025. Retrieved from <https://www.statista.com/statistics/273018/number-of-internet-users-worldwide/>
- Un trade and development (2020, Apr 27). Retrieved from <https://unctad.org/news/global-e-commerce>
- yaguara. (2025, Sep 16). *eBay Statistics 2025: active buyers, Sellers and Revenue*. Retrieved from <https://www.yaguara.co/ebay-statistics/>

- Arabian Business, Report (2025, Apr 15). Retrieved from <https://www.arabianbusiness.com/middle-east/arab-internet-users-reach-348-million-as-digital-transformation-accelerates-report>
- Iraqi Ministry of Communications, Retrieved from <https://www.moc.gov.iq/?article=1053>
- United Nations Commission On International Trade Law, Retrieved from; https://digitallibrary.un.org/record/286739/files/19-04970_ebook.pdf
United Nations Publications. (2005). *United Nations Convention on the Use of Electronic Communications in International Contracts*. Retrieved from http://www.uncitral.org/uncitral/en/uncitral_texts/electronic_commerce/2005Convention.html
- The Publications Office of the European Union, Retrieved from <https://eur-lex.europa.eu/eli/reg/2001/44/oj/eng>
The Publications Office of the European Union, Retrieved from <https://eur-lex.europa.eu/eli/reg/2001/44/oj/eng>