

Distinguishing Between the Distinct Performance Standard and the Idea of Referral in the Electronic Signature

Mohammed Gamal Azzaz Abu Rehab

Faculty of Law, Assiut University

Abstract:

In the context of talking about the idea of outstanding performance and referral in the electronic signature, we will divide the paper into three basic sections. In the first section: we will discuss in it the advantages of the distinct performance standard and the reasons for its introduction. In the second section, we discuss in the extent of the possibility of adherence to the idea of distinctive performance in the electronic signature, while in the third and last section, we deal with commitment to the law of will without resorting to the idea of referral.

Key words: Electronic signature, distinct performance standard, assignment idea, applicable law.

Introduction

This study summarizes in distinguishing between two main criteria from the basic criteria by which the applicable law is determined and these two criteria are:

1 - The distinct performance standard: - Through which we deal with the advantages of this standard in terms of one of the main criteria represented in the extent of its ease, flexibility and the possibility of taking it through determining what distinguishes the contract signed by the two parties to challenge one of the most important main controls or the main criterion by which the law can be determined Applicable in the event of a dispute between the signatories to the contract, especially if this signature is an electronic signature and we also explain the reasons that led to the adoption of this standard and the extent to which this standard can be applied to the electronic signature explained through that The electronic signature differs from the traditional signature, which makes applying the distinct performance standard to the electronic signature characterized by difficulty in the application from applying the distinct performance standard to the traditional signature, but due to the flexibility characterized by the distinct

performance standard through which it can be applied to the electronic signature without the occurrence of confusion or the emergence of problems Facing its application.

2 - The criterion of referral with the existence of the will law: - indicating the extent of the possibility of adopting the law of will without resorting to the idea of referral, whereas in the event that the applicable law is defined, resorting to the assignment is necessary despite the agreement of the electronic signature parties to apply a specific and predetermined law while signing the The contract, which requires the application of the will law, which is the original in relation to determining the applicable law, because it is the agreed upon choice of the signatories to the contract. As for the referral, it can be taken in the event that the will of the signatories to the contract does not tend to challenge the applicable law because the will of the parties to the signature is the original in Determine the applicable law.

The first topic

Advantages and reasons for the emergence of the idea of a distinct performance standard

First: the merits of the idea of the performance-coded standard:

The performance standard is distinguished by its simplicity and flexibility when compared to other attribution controls whose value had a real role in the emergence and uniqueness of the idea, despite the stability of the introduction of the officers of the place of conclusion and the place of implementation from ancient times and the widespread use of them in the absence of the parties choosing the law of the contract, but with the legislator stipulating the law of a place Conclusion expressly in Article 19 of the Egyptian Civil Code, many difficulties have arisen in its application, the most prominent of which is the determination of the place of conclusion in the present time, after what has become the Internet as a major means for concluding international contracts.

In addition to his vulnerability and his freeness in pushing some to say that "we do not think that he was in himself to be considered the subject of the distinguished performance in the contract" as well as the weakness of the context of the place of implementation, which is difficult to implement, especially in cases of implementation in more than one country, even if these controls have the

support and appreciation to carry them a large aspect It is true, but it is characterized by rigidity and cannot be applied to all types of contracts, which prompted the jurisprudence to adopt a more flexible and appropriate officer for all types of contracts, which was {Distinguished Performance Officer} (Khalifa 2005, p. 136) .

On the part of the joint citizenship officer, he enlarged a course in the field of family relations and matters of personal status, and this role seemed specific in the field of financial relations, especially international contracts, due to the lack of personal consideration in those relationships, and he found him with only a little jurisprudence. Of support and wrapping around it are the majority of jurisprudence and was taken by the Egyptian Civil Law in Article 19 thereof and many other laws on which the habitat or residence of ordinary residents relied not for both contractors but to take them only and he is committed to fulfilling the distinguished performance (Al-Kurdi, 1995, 1107).

Second: The reasons for the emergence of the idea of distinctive performance

It is considered one of the most important reasons that led to the emergence of the idea of distinctive performance in the contract as a support officer to be taken to determine the law to be applied when the will of the parties is silent about his identification is what marred the other attribution controls, which were called rigid attribution controls of flaws, and what was subjected to criticism that made jurisprudence He is busy thinking and exploring for a flexible support officer who meets the defects of rigid support controls, and the European jurisprudence has had a preference for the emergence of the idea of distinctive performance as well as many international agreements such as the Hague Agreement of 1955 AD and the law applicable to the international sale contract for international movables , As it has become accustomed to the seller's usual place of residence as the obligating performer of the contract as the primary support officer for setting the contract law.

It stated in Article 3 thereof that "according to the law applicable by the parties, the sale will be governed by the law of the country in which the seller resides at the time of receipt of the purchase request and when the purchase request is received by the seller's facility, the sale will be judged according to the rules of the law of the state in which It contains this facility.

Anyone who has committed to perform one of the core obligations that expresses the social and economic center of gravity of the contract process is thus

considered the holder of a distinguished performance, in addition to allowing the judge in the event that the parties not expressly choosing the law applicable to the content of the signature (the contract) to the application of the law are closely related Contracts, they are flexible and clear because they are based on the objective focus of contracts in light of the special nature of each contract. Regardless of the circumstances and whoever performs a distinct performance is considered a person who has committed to perform one of the core obligations that express the social and economic center of gravity of the contract process, it is in addition to allowing the judge in the event that the parties not expressly choosing the law applicable to the content of the signature (contract) to the application of the related law Closely related to the contract, it is flexible and clear because it is based on the objective focus of the contracts in light of the special nature of each contract and regardless of the contract conditions and circumstances for each case separately (**Farghali, 2016, 477- 478**).

The Rome Convention of 1980 on the law applicable to contractual obligations concluded between the European Community countries that relate to the law applicable in the field of contractual obligations adopted a distinguished performance officer in Article 4/1 of them, which determined that in the absence of the will law, the most relevant state law applies to the contract Contract.

Then came the second paragraph of the same article to set the context for its articles that the law of the countries most connected to the relationship is the law of the state in which - at the time of the conclusion of the contract - the debtor's homeland exists with the main distinct obligation of the contract.

From the text of this article, we can extract the following:

- 1- That the contract is more relevant to the country in which the contractual obligations are fulfilled.
- 2- If the person committed to the distinguished and main performance is a natural person, then the applicable law is the law of the residence of this person.
- 3- If the obligated person is a company, he shall be bound by the law of the country in which he is headquartered.
- 4- If the subject of the contract is movable property, then the contract is more related to the country in which the property is located (**Farghali, without publication year, 479**).

The second topic

The extent of the possibility of applying the idea of outstanding performance in electronic signature

But despite the fact that the distinctive performance theory is characterized by flexibility and is called in the law flexible reference and allows the judge to link the conflict with the law of the state to which the signature is closely related and the ease of the distinguished performance officer and its flexibility in determining the law to be applied without stubbornness and its preference in comparison to other attribution controls that led to its stagnation The seriousness of the idea of distinctive performance, but its application in the field of electronic signature will lead to: -

(A)The application of the law of one of the signatories if there is an agreement between the two parties to define the applicable law, in the event that the applicable law is not specified, the judge is obligated to define the applicable law through the distinct performance standard and the distinct performance standard in the electronic signature is determined according to the nature of the contract Concluded between the two parties, if the electronic signature

party has entered into a commercial contract represented in the practice of commercial activity, then there will be consideration of the commercial law for the circumstances of the signature and the search for distinctive performance in both laws in order to determine the applicable law in accordance with the The distinguished performance, after referring to the commercial law of both sides of the signature.

But if the electronic signature is a sale contract between two different parties in two different countries, then the law governing the sale contract in the country of the two parties is referred to to reach the distinguished performance criterion, and if it had previously stipulated the Rome Agreement of 1980 related to the law applicable to contractual obligations On determining the law of the country most closely related to the contract, at the will of both parties

Distinguishing between the distinct performance standard and the idea of referral in the electronic signature

Likewise, if the electronic signature is a signature on a maritime transport contract, then it is necessary to refer to the maritime law of the two parties to sign in order to determine the distinctive performance standard in the state law of the two parties to the signature and this is in contrast to the law applicable to the maritime transport contract subject to the electronic signature determined by the standard Outstanding performance as a result of reference to the law of the signature State Party.

(2) Applying the idea of distinctive performance to an electronic signature opens the door for fraud and fraud, as if there is bad faith on one side of the electronic signature, it changes its usual residence and settlement in a country that provides its legislation with greater protection and overwhelms its laws with more sponsorship than any other country, so that it can Benefiting from the provisions of the laws of this country in achieving his personal interests, especially if the legislation of this country gives one of the two parties to sign for a way — the maritime transport contract increases the obligations of the shipper and reduces the obligations of the carrier and increases the cases of exemption from liability — in this case it gives the opportunity to bad people E-dealing with the electronic signature according to the liking, which leads to the presence of many cases of fraud and deception and the conclusion of electronic signatures and legal protection For both sides of the electronic signature, which is what we are looking for and we hope to reach.

(3) Adopting the idea of distinctive performance in the electronic signature may lead to damages to electronic commerce in Egypt, through one of the two parties to the electronic signature, one of which is a seller and the other a consumer because the majority of the Egyptian people depend on purchasing more than selling, especially in dealing between countries and each other He does not have sufficient experience to be able to protect himself from any fraud or deception that occurs as a result of the conclusion of an electronic signature, whether by buying or selling, which leads to many fraud and fraud operations, due to lack of knowledge and lack of knowledge of the applicable law and also the non-issuance of the trade law except Egyptian electronics to date, which makes it vulnerable to flop and refer to any law.

(4) Adopting the idea of the distinctive performance in the electronic signature leads to one of the two parties to the signature being subject to a strange law that he does not know or familiar with before and who is not familiar with it, which is the law of the other party to sign, which requires the first party to travel far or exorbitant costs in order to get On his right from the other party, which may end up giving up his claim, and this is the security of the other party and violates the rules of justice and fairness.

(5) The idea of a distinctive performance in an electronic signature can be taken into account if the contract to be signed is not subject to compliance contracts — meaning — that is, it is not correct to take into account the idea of distinctive performance in an electronic signature and the contract has been concluded by only one party and there is no option for the second party other than signing , And clicking on the icon, whether by accepting or rejecting this contract, in this case the contract is considered to have been concluded by one party and is considered one of the compliance contracts. In this case, the party who concluded the contract is fully aware of the terms of the contract and the applicable law in the event of a dispute because it has stipulated in the contract for that, whether by specifying the applicable law directly or by stipulating the resort to the idea of distinct performance.

In this case, he may have come back and read the law that knows very well that the distinct performance standard will be applied to the contract signed by the electronic signature. Therefore, the electronic signature must precede some negotiations on the one hand and the differentiation memoirs on the other hand, and there will be a preliminary drafting of the terms of the contract (Draft) It is viewed by the other party in order to be fully aware of all the terms of the contract and have sufficient opportunity to refer to the laws referred to in the contract subject to the conclusion. In order for him to finally be able to determine the reality of what he signs, given the obligations and duties that the contract imposes on him, he must implement it by simply signing the contract or pressing for approval.

This is the case, in which the two parties can adhere to the idea or standard of distinguished performance, but otherwise it is considered a compliance contract, and the two parties cannot adhere to the idea of distinguished performance.

Distinguishing between the distinct performance standard and the idea of referral in the electronic signature

From the aforementioned, we have clarified the standard of distinguished performance and the extent of its ability to be taken into the electronic signature, through which it passed the possibility of taking it or not. We will now sign the assignment role in the electronic signature as well and clarify through that that each state has legal rules that govern it and is divided into two types 1 — the first is called objective legal rules and the second is called conflict rules which fall within the rules of private international law and that arise in the case of a foreign element, And the application of the assignment theory is achieved when it is decided that they are concerned is the applicable, and only the provisions related to the conflict of laws resolved by another law are applied from this competent law without reference to the substantive rules from it. Thus, it appears that the judge's consultation with the specific rules of attribution in the relevant law means acceptance of the assignment, whereas the direction of this judge is to implement the substantive provisions in this law, which means his refusal of the assignment, and in this way the assignment theory is defined as {a theory that says applying the rules of private international law in the applicable foreign law }

The Egyptian legislator stipulated in Article 39/1 of the Egyptian Control Law No. 27 of 1994 AD that {1 — the arbitration board applies to the subject of the dispute the rules agreed upon by the two parties, if they agreed to apply the law of a specific country, they followed the substantive rules in it without the rules for conflict of laws Unless otherwise agreed }

Jurisprudence has settled on the rejection of the issue of raising the assignment theory in relation to the choice of the law applied to the contract by the contractors. The refusal of the assignment in the article of the contracts is due to a very important issue which is the expectations of individuals, but some jurisprudence goes to the opposite so that it sees the necessity of taking the case and considering that the selection of the parties to the law A certain means at the same time their approval of the law to which the latter refers .

The reference, then, by the contractors to a specific law in which he understands the material content of the law that was determined by their will, because the purpose behind their choice is to assign the contract to the substantive rules found in the chosen law without the rules of the conflict, and therefore the application of a specific law to the contract that the contractors set out shows a certain desire

Among them is to resolve their potential disputes directly in light of the content of the law that was done specifically because applying the rules of conflict in that law means subjecting the relationship to a different law that does not reflect the intention that the contractors wanted, which leads to prejudice to the interests and expectations of individuals. (**Abdelke rim kouka, without publication year, 116-160**)

On our part, we see that, if the distinct performance standard is characterized by flexibility in the ability to take it, but it does not have specific controls and standards that can be taken or agreed upon in order to be able to adopt this standard, which makes adherence to this standard is a standard that is not characterized by stability and differs from one case to another, which makes the possibility of measurement It is difficult, which requires the establishment of fixed controls for this standard through which it can be resorted to. These controls are to challenge the language of the contract as a distinct standard or the place of concluding the contract as a distinct standard or the place of implementation of the contract as a distinct standard..... Etc.

All these controls can clarify the extent of the possibility of adopting a distinct performance criterion or not so that this standard does not become without controls and becomes subject to intellectual whims of the judge of the matter.

The third topic; Adherence to the will law without resorting to the idea of referral

If the judge addresses the work of the base of attribution and indicates the application of a specific foreign law — the question arises about what is meant by this law, does the judge refer to the private international law in it that might refer the referral to another law, or does the judge have to refuse the referral and go directly to the substantive rules in the pleural law He applies it to the fact of the lawsuit without violating the rules of conflict contained in this law?

The answer to this question in one way or another necessarily reveals our position on the problem of assignment, a position that is linked to the facilitation of the national base of support, and the intended meaning of the foreign law that indicated its competence.

It goes without saying that the assignment problem does not make the slightest difficulty if the rules of support in both the judge and the foreign country

unite, as if the Egyptian judge presented a dispute regarding the eligibility of one of the French, as there is no dispute regarding the necessity of applying French law in this case as the law that indicates it has a support base in both Egypt and France.

Rather, the difficulty is visualized if the base of attribution in the foreign law differs from that of the judge's law, as in the case of if a case was presented to the French judiciary, for example, a dispute related to the endurance of an English citizen in France. The conflict over the latter indicates, on the contrary, the application of French law as the law of the homeland.

Hence the problem of assignment arises, does the French judge resort to the English base of referrals that refer to the provisions of French law, or applies the substantive rules in English law without being preoccupied with what the rules of support refer to in this law.

The jurisprudence used to designate the assignment from the foreign law to the judge's law as mentioned above by referring from the first degree.

However, the assignment may be of the second degree, and that if the foreign attribution base was referred to a law other than the judge's law, as if the dispute before the Egyptian judiciary was, for example, related to the eligibility of an English citizen residing in France, as the Egyptian attribution rule requires the application of the English law (Nationality Law) referring the rule of English attribution to French law as the law of the citizen. **(Sadiq — Abdel-Al, 2008, pp. 90-91)**

Within the scope of the assignment, a large part of the jurisprudence in favor of the assignment tends to exclude two cases in which it is not permissible to accept the assignment of any kind, namely: -

(A) The case of adopting the law of the will of the contractors, if the contractors choose a specific foreign law for the rule of the international contract concluded between them, the judge does not have to evoke the rules of attribution included in this law, but rather he must resort directly to the substantive provisions in the chosen law, and apply it to the case of the case

This is due to the fact that the will officer is inconsistent with the referral in this regard, as long as the contractors have chosen the Italian law, for example, for the ruling of the international contract concluded between them, it is no longer

palatable to provoke the rules of attribution in this law and accept their referral to another law.

In that, the officer ignored the will that the street set as a criterion for choosing the law to be applied to contractual obligations.

And since the refusal of the assignment was due to the desire to respect the will of the contractors, it was natural that this direction should be accepted. The referral can be taken if it appears from the conditions of the contract that the contractors have expressed their explicit or implicit desire to comply with what the reference rules contained in the law that he chose to rule the contract indicate. International concluded between them.

For this reason, the assignment opponents themselves agree with this theory. For when the contractors have indicated their desire to invoke the rules of the bonds contained in the chosen law, compliance with this desire shall be complied with as a contracting officer in the articles of the contractual obligations.

(2) As for the second case that the referral supporters have excluded, it is the case concerning the rule of subjecting the form of conduct to the law of the country of its conclusion.

As long as the contractors have emptied their behavior in the form that requires the law of the country of conclusion, then it is not permissible to adhere to the invalidity of the conduct after that, because it did not constitute the form required by the relevant law according to the rules of private international law in the country in which the conduct was concluded.

The basis of this exception is that the excitement of the rules of conflict included in the law of the state in which the conduct was concluded — and the acceptance of a referral thereof to another law — misses the considerations on which the rule of form submission is based on the law of the country of conclusion.

The legislator aims, through this rule, to facilitate the contractors who may find it difficult to know the provisions of a law other than the law of the country in which the contract was concluded

, There is no doubt that accepting the referral of conflict rules in the country of conclusion to another law is a waste of the previous rule's wisdom and ignoring the goal that the legislator seeks from behind its report.

However, since the basis for the refusal of the assignment in this purpose is the work of its attribution rule in matters of form and is the facilitation of the dealers, it

may be envisaged that the desire to this end leads to the acceptance of the assignment. **(Sadiq — Abdel-Al, 2008, pp. 110-111).**

The contractors' choice of a foreign law based on the principle of willpower leads to its incorporation into the contract so that its provisions become merely contractual terms, and this contradicts the idea of assignment whose actions it is assumed that the jurisdiction of the selected law has been carried out according to a rule of conflict and not to the absolute choice of the parties.

The correct view in jurisprudence goes to say rejecting the idea of assignment in the field of contractual ties, on the basis that acceptance of the referral to another law contradicts the objectives of the conflict rule itself, which made the parties' control to support and reject the referral in such matter means that the national judge is obliged to apply the substantive rules in the chosen law and not the rules of conflict in it, the intention of this is that the actions of the rules of conflict in the chosen law will lead to a breach of the expectations of the parties and violate their dealings via the Internet, so their choice of a specific law is based on considerations of their value in it, and acceptance of the idea of assignment leads to the contract being subject to a system A law they had not expected **(Al-Alousi, 2015, pp. 109-110)**

If the parties do not expressly agree to determine the applicable law, that will may be extracted from the provisions of the contract and from the facts of the case, and the judge is usually guided by the availability of this implicit will based on a specific set of evidence: -

The use of a specific form in the contract accompanied by a specific language may indicate the tendency of the parties to choose a specific law to govern the contract.

And subsequent action to conclude the contract may also benefit in extracting the implied will of the parties, and this may be during dispute procedures, one of the parties may refer to the texts of the law of one state without the other party contesting this and without calling for the application of the law of another country and it is noted in this regard that The parties have the right to choose the law to be applied to the contract, not only at the moment of the conclusion of the contract

But at any time after the conclusion of the contract, they can even determine the law to be applied during the consideration of the ongoing dispute between them, in

addition to that there are other clues that may benefit in extracting the implicit will of the parties to the contract, such as the language used in the contract, and the existence of a link between the contract and other contracts. The parties have agreed to submit the basic contract to the law of a country, as this may indicate the direction of their will towards this same law to govern the disputes that may arise from the subcontracts (**Muhammad, 1999-196-197**)

If the express will of the contractors is lacking regarding the choice of the law applicable to the contract concluded via the Internet, and their implicit intent cannot be revealed, then the judge is not permitted to shorten the road and apply his national law, or refuses to settle the dispute, but rather has to strive to reach the contract law determination.

The judge may search for the law to which the electronic contract is closely related and its seriousness is serious. As stated in the Rome Agreement of 1980 AD, “within the limits in which the law applicable to the contract has not been chosen, the law of the country in which it has the most reliable bonds is applied to the contract. The ruling that was conveyed by the German Private International Law of 1986 (Article 28/1 Civil) and the Swiss in 1987 A.D. 117 (1). For this reason, the judge shall resort to resettling or concentrating the contract in a specific country, in which most or all of its effects are produced, to end up with the law of that state It is the law of the contract, and perhaps in the idea of distinguished performance, what it provides is a real help for the judge in it A connection. (**Safety, without the year of publication, p. 85-86**)

We define assignment as that idea that provides for the application of the rules of attribution in the foreign law pertaining to the rule of relationship according to the national rules of attribution when they differ with the latter and the conflict between them was negative.

Others define it as the theory that states that the provisions of the rules of attribution should be taken into account in foreign legislation that indicated the application of the national rules of attribution — when the provisions of attribution were different in the legislation.

A cross-referral or cross-reference is the result of differing attribution rules between countries — for example, a country attributes the rule of the will to the recommended nationality law, while another country assigns its rule to the law of the testator, which raises a conflict between the attribution rules, which requires

the need to find a solution to this problem Where we must refer in a hurry to the pictures of the conflict as follows:-

(1) Positive conflict: This means establishing the rule of support in each of the countries whose laws are disputed with the jurisdiction of their national legislation to rule the conflict.. This does not raise difficulty in resolving this conflict because a stage is due to the judge's law

(2) Negative conflict: - It means attributing the base of support in each of the countries whose laws are disputed, the rule of conflict, the law of another Inheritances and financial systems for marriage, in countries that observe the law of will in relation to these issues, and this is justified in these countries that the tendency of the contractors to choose a specific law to govern their relations implies in itself a desire to subject them to the substantive rules of that law, and that in subjecting them to another law in application The rules of attribution included in the same law, which violates their expectations.

And the Egyptian legislation went like other legislations that reject referral, as most Arab legislations followed, following the example of the Egyptian legislator in his refusal to accept referral. We mention from these legislations, for example, Kuwaiti Law No. 5 of 1961 (Article 72)

Country or another foreign law. (Salaam, without publication year, p. 92)

Nevertheless, it is worth noting that the majority of legal systems that allow referral to be taken in this way unanimously exclude the adoption of them when the applicable law is the law of will, as is the case with contracts And the text of the refusal to refer in the Egyptian law has actually come in a general formulation that does not pertain to a specific issue but rather applies to all matters, personal or financial. The legislator stipulated in Article 27 of the Civil Law that {if it is determined that a foreign law is applicable It applies only from its internal provisions without those relating to private international law }

The Egyptian legislator has relied on its general refusal to take referral in this way, that {the attribution rule when making the legislative jurisdiction of a specific law emanates from it special considerations and in accepting the assignment, whatever its scope, it is to overlook these considerations and contradict the truth of the ruling established in that rule }

The most correct Egyptian jurisprudence welcomed this decisive stance by the legislator in his refusal to take the assignment in absolute terms, whether in the matter of adopting the application of the Egyptian law or foreign law, with the exception of a few class of jurisprudence called on unfoundedly the need to take the referral from the first degree in Egypt any referral Which leads to the application of the Egyptian law, which is inconsistent with the frankness of the text — and a side of contemporary Egyptian jurisprudence believes that it is more appropriate at the future amendment of the provisions of conflict of laws, that the legislator adopts a more flexible position, by deciding to take the assignment whenever it appears appropriate. (**Kurdish ,2005, 128—129**)

Therefore, legal jurisprudence sees at the present time that the electronic signature, according to the traditional method of conflict of laws, is subject to the law of will, i.e. the law that the signatories have accepted, including its commanding rules, whatever their characteristic, meaning that they are merely jus cogens or necessary rules, as it comes out of this original in relation to a law Will, and is subject to other laws, whether it is the laws of the judge on the dispute or any other foreign law provided that there is a fundamental link in the electronic signature, and between the legal rule that applies outside the law of the will, the original is the law of will, yet other rules apply to it, provided that The fact that its application is necessary, Perhaps the reason for this is that the legal assessment is necessary to strike a balance between the freedom of the signatories to choose the law that governs the signature on the one hand, and the need for this relationship to be subject to the imperative provisions of the signature owner's law in order to prevent.

To cheat and to protect the weak party in the signature, which is entrusted with accepting the offer, and accordingly the opinions of jurists agree with the desire of the legislator to protect the signature holder (Al-Qubaisi, 2003, p. 1611).

- The Egyptian Evidence Act also stipulated that “permission for one of the litigants to prove the fact of witness testimony requires that the other opponent always have the right to be exiled in this way.” (Article 69 of the Egyptian Evidence Law)

Likewise, Sudanese legislation gave the right to prove to the litigant to prove what he claims by the means specified by the law, so the opponent has the right to

cite witnesses in cases where the law permits evidentiary evidence at the same time, The other opponent is given the right to discuss these witnesses and prove their lack of credibility, and also with this right he can appeal the forgery if the evidence presented by the other opponent is an official document because the official document is the only way to challenge it is forgery, but if it is normal to appeal the forgery in addition to denial, and also It is the right of the opponent to direct the decisive oath, and it is permissible for the person to whom it was directed to return it, and the law stipulated that the decisive oath “is the oath directed by the opponent, who has the burden of proving any incident in dispute to his opponent in any case that requires the case to settle the dispute.” (**Article 45, Sudanese Evidence Act of 1994**)

Although the law gives the opponent the decisive oath direction, this matter is not absolute, as the judge can prevent it.

If it does not meet the conditions, this means that the court has the right to prohibit in the event that the conditions are not met, and the law has addressed the conditions in the text that are:

A) If it is not permissible.

B) If it is not related to the dispute.

C) If it is unproductive.

A) If the opponent is arbitrary in directing it (Article 114, the Egyptian Evidence Law corresponds to Article 45 of the Sudanese Evidence Law)

Just as the Egyptian law gave this right to the opponent in directing the decisive oath, he also gave the other opponent three options, namely.

A- NATO, B- Response, C- Negligence

These are mutual rights between the opponents, and the judge has the right to prevent them if none of these conditions are met, because the judge has control over the opponent in directing the oath.

With the stability of what was reported, we find that the law allowed the plaintiff to prove his claim even by directing the oath, and balanced this right and the right of the other opponent with three options, as for swearing and winning the lawsuit and ending the litigants in facing it or neglecting the loss of the lawsuit or response, and it also governs the discretion of its face to it and will be at the end That he also responds to this affiliation with the alliance or denunciation, and with

this measure equality for his opponent will prevail (**Abdel Karim, without publication year, pp. 71-72**) .

On our part, we see that the assignment and the law of will are two parallel criteria. The assignment may be the result of the direction of the parties 'will to apply a specific law, but the opposite is not true. The law of will is not the result of the assignment. When the will is the applicable, then the judge of the matter will have no obligation but what was agreed upon by the parties If the dispute is brought before the trial judge, and there is agreement that a specific law is applied, then the judge of the matter will have to refer the case to the competent court according to the agreement of the parties, so this is a first-class case according to the agreement of the parties, and the judge of the matter is not entitled to adhere to the consideration of the case because it is in In this case, the judgment issued by it will be void.

This study aims:

- 1- A brief presentation of the distinguished performance.
- 2 - How is it possible to differentiate between the two?
- 3- How can you determine the correctness of choosing the most accurate?

Study methodology:

This study is mainly based on the inductive comparative and analytical method.

Results and conclusions:-

- 1 - Distinguishing between the distinct performance standard and other criteria.
- 2 - The importance of adopting the distinguished performance standard in the electronic signature.
- 3- Distinguishing between the distinct performance standard and the will law
- 4 - The importance of setting controls to choose the distinct performance standard as a standard for determining the applicable law.
- 5 - Ease of taking the standard of performance that is distinct from the standard of assignment.
- 6 - The controls for adopting the referral standard are more accurate and clearer than the distinct performance standard.

7 - Establishing specific controls for choosing the distinct performance standard as a legal standard.

References

- 1- Abdul Karim, Emotions Imam Abdullah, Evidence of the electronic contract in Sudanese legislation "a comparative study" - Khartoum - El-Neelain University.
- 2- Al-Alousi , Eklace Mokles Ibrahim ,2015, Conflict laws in the company's electronic bonds .
- 3- Al-Kurdy , Jamal Mahmoud , 1995-1996, The Brief in Private International Law (General Theory of Private International Law - Conflict of Laws, International Jurisdiction , First edition.
- 4- Al-Kurdy, Jamal Mahmoud ,2005, Arab Renaissance House , Cairo.
- 5- Al-Qubaisi, Issam Al-Din, 2003, The legal jurisdiction of two countries has been disputed in the field of electronic commerce.
- 6- Farghaly , Ahmed Abdel-Mawgoud Mohamed, 2016, Settlement of disputes arising from the contract for the carriage of goods by sea within the framework of private international law , a comparative study in domestic legislation and international agreements, Assiut University.
- 7- Khalifa, Ali Pasha, 2005, Conflict of laws regarding the maritime transport contract, Cairo University .
- 8- Kuaka, Abdelkarim, le contract de transport maritime de marchandises an France et an tuners.
- 9- Muhammad, Ashraf Wafa , 1999, Conflict of Laws in the Field of Mental Rights The Author - Arab Renaissance House - First Edition .
- 10- Sadiqi, Hashem- Abdel-Aal, Okasha Mohammed, 2008, Private International Law “conflict of laws”, University Press House.
- 11- Salama, Specific Private International Law - Arab Renaissance House - First Edition – Cairo.
- 12- Salam, Ahmed Rashad, Without a year of publication, International jurisdiction for Egyptian courts and implementation of foreign rulings in Egypt.

التميز بين معيار الاداء المميز وفكرة الاحالة فى التوقيع الالكترونى

المستخلص

يتميز معيار الأداء المميز ببساطته ومرونته اذا ما قورن بضوابط الإسناد الأخرى التي كان لقيمتها دور حقيقى فى ظهور الفكرة وتفريدها , فعلى الرغم من استقرار الأخذ بضابطة محل الأبرام ومحل التنفيذ منذ القدم وشيوع استخدامها عند غياب اختيار الأطراف لقانون العقد إلا انه مع نص المشرع على قانون محل الأبرام صراحة فى المادة ١٩ من القانون المدنى المصرى ظهرت صعوبات جمة فى تطبيقه ومن ابرزها تحديد محل الأبرام فى الوقت الحاضر بعد ما اصبح الانترنت وسيلة رئيسية لأبرام العقود الدولية , اضافة إلى عرضيته ومجانيته فى دفع البعض إلى القول بأن " ولا نظن انه كان بذاته لا اعتبره محل الأداء المميز فى العقد " وكذلك ضعف قرينة محل التنفيذ والذى يصعب إعماله خاصة فى حالات التنفيذ فى اكثر من دولة وان كانت هذه الضوابط تحظى بتأييد وتقدير لحملها جانباً كبيراً من الصحة الا انها تتصف بالجمود ولا يمكن تطبيقها على كل أنواع العقود وهو ما دفع الفقه إلى تبنى ضابطاً أكثر مرونة ومناسبة لكل أنواع العقود فكان { ضابط الأداء المميز }

أهداف الدراسة :

١- عرض موجز لفكرة الاداء المميز .

٢-كيفية المفاضلة بين المعيارين .

٣-كيفية الوقوف على صحة اختيار المعيار الادق والافضل .

منهجية الدراسة :

تعتمد هذه الدراسة على المنهج الاستقرائى التحليلى المقارن .

النتائج والتوصيات :

١ - التمييز بين معيار الاداء المميز والمعيار الاخرى

٢ - مدى اهمية الاخذ بمعيار الاداء المميز فى التوقيع الالكترونى

٣ - التمييز بين معيار الاداء المميز وقانون الارادة

٤ - اهمية وضع ضوابط لاختيار معيار الاداء المميز كمعيار لتحديد القانون الواجب التطبيق

٥ - سهولة الاخذ بمعيار الاداء المميز عن معيار الاحالة

٦ - ضوابط الاخذ بمعيار الاحالة ادق واوضح من معيار الاداء المميز

٧ - وضع ضوابط محددة لاختيار معيار الاداء المميز كمعيار قانونى

الكلمات الدالة :

التوقيع الإلكتروني ، معيار الاداء المميز ، فكرة الاحالة ، القانون الواجب التطبيق .