

The Contractual Liability of Deputy (Contract) in Electronic Contracts

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Abstract

This research deals with the civil liability of deputy in the electronic contracts, and answers the question that, Are general rules sufficient in the theory of civil liability in its traditional form to address shortcomings or breach of the obligation of electronic deputy, and is this breach of deputy subject to the contractual or tort liability. One of the most important forms is the electronic agent, or do we need special rules to be more responsive than the traditional rules to address the civil liability of deputy (agent) in electronic transactions.

Introduction

The world witnesses significantly a tremendous and accelerating development in communication technology to the extent that modern means of communication, especially the Internet have become indispensable. This is due to the tremendous development in communication networks. As a result, the geographical boundaries have been eliminated and electronic transactions have emerged. It is possible to enter into a contract between a person and a machine or between a machine and another by pre-programming and preparing the computer to conclude contracts and transactions. This means that the contract in its traditional meaning is concluded between a person and another and its application is subject to the general provisions in the contract, raising the question of to what extent these provisions can be applied to the electronic deputy through which transactions are conducted?. This agent is subject to provisions of the electronic environment and what those rules are if any, in addition to the question about the liability of the electronic deputy in case of breaching obligations.

These questions are perceived. It is clear to us that concluding transactions electronically through the electronic deputy is a new stage for lawyers. Also, the traditional rules are not enough to answer all these questions and find solutions without allowing the rules of electronic commerce to practice its role in this area.

My methodology to examine the legal responsibility of the contracting agent in concluding electronic contracts is the comparative approach, by presenting, analyzing and discussing the issue in question, in the light of the comparative legislation - if any - from one hand, and the views of civil jurists on the other hand, indicating my view when necessary. My research will be limited to the legal responsibility of the contracting agent in electronic contracts in the area of contractual liability without researching in the area of liability of tort, in order to devote, deepen and limit the research. To achieve objectives of research and attempt to answer its questions, I put the plan of research as follows:

In this light, we will divide this research into three topics. In the first topic, we discuss the requirements of the (electronic) contracting agent. In the second topic, we discuss types of agency (contracting agency). In the third topic, we address dimensions of contracting liability.

The First Topic

The First Requirement:

Requirements of proxy in electronic contract

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The proxy shall have three requirements:

1-The will of the deputy shall replace the principal's will. 2- The deputy shall contract in the name of the principal not in his own name. 3- The deputy shall not exceed the limits of his proxy.

1-The will of the deputy shall replace the principal's will: it is said that the proxy is replacing a will to another. Therefore, the deputy shall express his own will but not the will of the principal, resulting the following:

1-Examining deficits of will is in the proxy, not in the principal. If there is a claim of a mistake or coercion, this mistake or coercion should be discussed by the deputy, but not the principal (Mustafa, without a publication year). As well as for the electronic proxy, investigating deficits of will is in deputy but not the principal. 2- If the matter is related to good or bad faith, we consider the intention of the deputy in the electronic contract but not the intention of the principal as the deputy expresses his will. But the will of the principal should not be excluded when the deputy is in line with his plan as the case of the contracting proxy. None can act on behalf of him in purchasing something in which he knows that there is a defect without telling the agent. It is not entitled to claim that there is a mistake in the contract because the deputy does not know the defect (Article (113) of the Jordanian Civil Code). In terms of eligibility in the proxy of electronic contracting, we shall distinguish between the contracting and legal or judicial proxy. In the first one, the principal shall have the eligibility required for concluding the conduct in which other person acts on behalf of him. But the deputy requires only the eligibility of discrimination. In the judicial and legal proxy, the principal is not eligible to conclude the conduct and this is the reason for erecting his deputy. The latter shall be fully eligible. (Mustafa, unpublished year). Finally, it shall be noted that this requirement is the basis of distinguishing between the deputy and the courier. The latter does not express his will but rather expresses the will of the principal and he is considered a conveyor of such will, resulting many issues: 1-The contract shall be between two absentees in the case of contracting by a courier and that the other contractor and the courier are in one place. But in the proxy, the contract shall be between those present if the deputy met with the other contractor in one place. 2- The courier is not required to be eligible as he is a conveyor of expression only. The deputy is required to be eligible in distinguishing or fully eligible as we see. 3- When investigating deficits of will, the principal's will in contracting by a courier and the deputy's will in electronic contracting are considered. A person may have the status of the deputy and courier at the same time when he expresses his will in some issues and conveys the will of the principal in others. (Mustafa, unpublished year).

2-The deputy contracts in the name of principal but not his own name (Article 114 of the Jordanian civil code): As long as the effect of proxy goes to the principal but not the deputy, the deputy shall disclose his status, i.e., he is a deputy not a principal, and he contracts in the name of the principal, not in his own name. If he does not declare that we will be faced with the alias case in which the effects of the act are moved to the agent but not the principal. (Mustapha, unpublished year). The electronic deputy shall declare his status as a deputy in electronic contracts. However, the mentioned article excludes two cases from its provisions: A) if the circumstances stipulate that the contractor shall contract with an agent not with a principal as in the case of the customer who enters a mall and find several workers. Circumstances inevitably indicate that those are deputies but not principals. B) If he is equal to the other contractor, he shall either contract with the principal or with the deputy. In the previous example, the worker's deal with principal or deputy is equal.

3- The deputy shall act within the limits of his proxy: To investigate the effects of proxy, the deputy shall act in the electronic contract within the limits of his proxy. These limits are specified by the law in the legal and judicial proxy. Such limits are determined by the agreement in the contracting proxy. But if the deputy exceeds his limits of proxy in the electronic contract, the effect of conduct does not move to the principal and the principal is considered away from the conduct. The person who assigns another as agent to sell his house and the deputy hires the house, the principal is considered away from this contract. (Article 109 of the Jordanian Civil Code).

However, there are exceptional cases in which the effect of conduct moves to the principal and there is an exceeding from the agent in the electronic contract. Such cases include the following: A) the principal may authorize this infringement. In this case, the declaration is effective retroactively from the date of concluding the contract, not from the date of the infringement according to Muslim jurists' say:

“Subsequent infringement is as the previous agency”(Mohamed, 2007). B) The agency in the electronic contract has expired for some reason without notifying the agent and others that the agency is expired. The aim of moving the effect of conduct to the principal in this case is to make transactions stable as the contrary will make others refrain to contract with the agent, fearing that his agency is expired without being aware (Abdul Majeed, Baghdad, 2008). C)

If the agent in the electronic contracting is obliged to infringe the agency without notifying the principal and circumstances appear that the principal would have agreed to the infringement if he knew (Hussein, 1954).

The second Topic

The First Requirement:

Types of Proxy:

The proxy is divided in terms of its source into three types. It may be legal, judicial or contracting. We will address the contracting proxy only in order to determine the civil liability of the contracting deputy.

The contracting proxy

It is the proxy whose source is the agreement between the principal and deputy (Muhammad, 2007). The authority of deputy is determined in this case depending on this agreement (Abdul Majeed, 2008). One of the most prominent forms of this type of proxy is agency. The agency has several definitions stated by jurists. It is defined as an authorization of others to act on behalf the principal (Hussein, 1954) and it is a contract under which a person who called the principal gives another person called the agent the necessary permissions to represent him (Charbel, 1998). It is also defined as an authorization for others to do a known conduct that can be represented unconditionally (Muhammad, 2007). With regard to the law, the Jordanian Civil Code defines the agency as a "contract under which the principal appoints another person to act on behalf of himself in a well-known act" (Article 833) of the Jordanian Civil Code). The Agency however is a form of the proxy and it is the most practical application, both shall be distinguished to make each independent. On one hand, the proxy may exist without agency as in the legal proxy (the state) and the judicial proxy (trusteeship and guardianship). On the other hand, the agency may be concluded without including the proxy, as in the case of the latent agency. It is the agency in which it is agreed that the agent concludes contracts in his own name, not in the name of the principal, provided that the effects of these contracts are later transferred to the principal (Al Hakeem, 2008). The latent agency constitutes the first form of the Agency's contract, by which the deal begins, if the agent contracts in his own name for the benefit of the principal. The representative agency did not appear only after a long historical period. Whether the agent is exploited or acts on behalf of the principal, he works in both cases for the benefit of the latter. If the representative agency is the most important and most common in dealing among people, the principal can adopt the latent agency. The agency contract requires that the contract is concluded in the name of agent, which is called the Alias contract (Sharbel, 1998). The Western jurisprudence declares the proxy principle but this declaration did not add that the agent acts on behalf of the principal. When the agent acts in his name, the western jurisprudence shall not move the effect of conduct of the agent to the principal directly as in the alias. The alias is an agent, like all the agents, related to its principal with provisions of agency contract but the agent is not deputy. He acts as agent for the principal, but in his own name, not in the name of the principal. Therefore, this situation does not involve a proxy due to the absence of dealing in the name of the principal (Jamal, 1954). The agency varies depending on the part through which it is viewed. It may be viewed according to the part of disposition being as absolute and restricted. It may be viewed according to the specific time to terminate the agency. The agency terminates by death of the agent or the principal, being one of them ineligible, completing the assigned work or terminating the specific term of agency (Muhammad, 2007). The principal is entitled to remove the agent or to restrict his agency. The agent is entitled to remove himself with no consideration to any agreement. But if the right of third parties is related to agency, the removal or restriction may not be authorized without consent of this third party. The agency's termination is achieved by isolation only after telling the second party. If the agency is paid, the person who decides the removal shall be obliged to compensate the second party for the damage caused by the removal at an inappropriate time and without an acceptable reason (Article 863 of the Jordanian Civil Code). Terminating the agency shall not damage the third party who in good faith contracts with the agent before being aware that the agency terminates. The agent shall complete the works that he initiated not to damage such works when terminating (Article (866) of the Jordanian Civil Code).

We discuss the contracting proxy with regard to the normal agent controlled by general provisions. Under the tremendous development in revolution of communication and information the electronic agent appears in the electronic transactions. It becomes possible to conclude the electronic contract between a man and a machine and between an electronic machine and another. Accordingly, a computer can conclude a contract with another computer or with a man. The electronic agent is being used increasingly in electronic commerce contracts. The response and acceptance is done automatically depending on the elements and information programmed between the computers through the Internet.

The Second Requirement

The legal acts done by the electronic agent

Article (833) of the Jordanian civil code defines the agency contract as: “The Agency is a contract under which the principal appoints another person to act on his behalf.” we note in this definition that the person acting on behalf another is general and unspecified. Thus, he may be a natural person or an electronic agent. This article refers that the agent shall be committed to act legally. Therefore, the power of attorney is in the sale, purchase, rent and mortgage. This is also applied to the electronic agent. It is right for the latter to conclude such contracts and others acting as electronic transactions following all legal results. The law of Dubai defines electronic transactions as: “they are transactions concluded or carried out partially or completely by electronic means or records in which such works are not existing or records are not subject to any follow-up or review by any natural person, as in the ordinary context of establishing and executing contracts and transactions” (Article (14/1) of the Dubai Law on Electronic Transactions). This law authorizes contracting by an electronic agent, stating that: “A contract may be made between certified electronic means including electronic information or more. Such information is prepared and programmed in advance to do such tasks. The contract is valid and produces its legal effects, although there is no any natural person interfering in the process of concluding the contract in such systems.” This law also states: “the contract may be done between a certified electronic information system of a natural person if the latter knows or is supposed to know that the system will be responsible for concluding or executing the contract” (Article 14.2 of the Dubai Law on Electronic Transactions). The draft convention on international contracts concluded or evidenced by data messages and prepared by the United Nations Commission on International Trade Law (UNCITRAL) was the same in article 12.1 stating that "unless both parties agree otherwise, the contract may be done between a protected computer system and a natural person or between two protected computers, even if no natural person reviews all individual measures implemented by such systems or the resulting agreement) (UN UNCERT No. 95).

The United States Electronic Transactions Act, in its Article 5, authorizes concluding electronic contracts by electronic agents stating that "the operations of electronic agents that are consistent with a contract or disclose an agreement may be a contract even if no human element intervenes in completing or reviewing transactions" (Article 5 of the United States Act). The Jordanian Electronic Transactions Law authorizes this deal in Article 13 as the information message is considered as a means of expressing the legally accepted will to express the affirmation or acceptance in order to establish a contractual obligation. Also Article (14) considers the information message is issued by the producer whether it is issued from or for him or by an electronic medium prepared to work automatically by the producer or on his behalf (Jordanian Electronic transactions law). It is noted from the texts of the above-mentioned articles that they authorize concluding the legal actions by the electronic agent. Thus the electronic transactions carried out by the electronic agent follow all legal effects of the contract concluded by individuals in the conventional ways. Therefore, the effects of contract are transferred to the principal. The two parties of the contract are the principal and the electronic agent. The principal has his own rights arising from the contract and the debtor has his obligations. So, if a person likes to buy a flight ticket through the internet, he will be able to check the dates of flights and the price of tickets and then book a seat in the plane after paying the value of the ticket through an electronic payment method or credit cards and go to the office of the contracted company to have the ticket in the airport. In this case, a contractual relationship is established between the natural person and the electronic agent. The obligations of seller, the owner of the electronic system are committed. The ticket is received when the buyer is prepared to buy this ticket by paying its value. But, what happen if the electronic agent breaches his obligations? Is the electronic agent subject to the general provisions? Or are there special rules answering these questions? These questions will be answered through the following topic:

The Third Topic

The First Requirement

Definition of contractual liability

In this requirement, we will study the definition of contractual liability, which requires research for its pillars, and distinguishing it from tort liability.

The First requirement:

Pillars of contractual liability

The Jordanian legislation in the Jordanian Civil Code no. (43) / 1976 deals with the contractual liability in separate texts. It states that the contract shall be executed according to the items included and in a way consistent with its good faith (Article 202/ 1 civil). It also states that obligation (right) is enforced on the debtor (Article 313 /1, Jordanian Civil Code). It also states that "the contract is the canon of contractors" (Article 241, Jordanian Civil). The right shall be fulfilled once the legal entitlement is fulfilled. If the debtor fails, he shall be enforced to execute the entitlement in kind or in compensation (Article 315, Jordanian Civil). The debtor shall be compelled, after his excuses, to execute his commitments in kind whenever possible. (Article 355/1 Jordanian Civil)

The three pillars of contractual liability are: error, damage and causal relationship, the following three branches have been allocated to it.

The First Branch

Breach of contract obligation

The breach of a contract obligation, or (contractual fault), is the first pillar of the contractual liability. The interlocutors of civil law differed in defining the contractual fault. Some of them have defined it as: "A deviation in the behavior of debtor in obligation, which the natural person does not have if he is in the same circumstances as the ordinary debtor (Sarhan, 2002). Others define it as a "positive or negative deviation in the behavior of debtor that leads to its hindrance" (Anwar, 2000). It is also defined as "the debtor's failure to perform its obligation arising from the contract" (Abdel Razzaq, unpublished year). A contractual fault is the non-implementation of the whole or part of obligations, its flawed implementation, or its delayed implementation (Ibrahim, 1995). This definition is more accurate than the other definitions. In the first definition, the fault is limited to the criterion of the normal man, but not the personal criterion on which the fault may be based. In the second definition it is unanimous, but it is not objectionable as it is not limited to the contract only as a source of obligation. This definition is comprehensive, interdicted, limited to the contract alone.

The form of fault varies according to the different types of contractual obligation, as provided in the provisions of the Jordanian Civil Code. It may be the obligation to achieve a result or commit to give care (Abdul Razzaq, unpublished year). It is the will of the parties that distinguishes obligations of method or obligations of purpose. the nature of the outcome that the two parties seek to achieve shall be examined in terms of the relative probability or certainty of their achievement (Abd al-Hayy, 1982).

We conclude from this division that if the debtor's commitment to achieve an aim, he will be sinful if the aim required is not met, and does not accept him to present the evidence of lacking the fault from his part. But this fault has occurred for his failure to implement his obligation (Abdel Nasser, 1999). In selling, it is enough that the buyer proves that sales delivery is not occurred. If the creditor proves this, it is assumed that the fault is done by the debtor (Anwar, 1987). with regard to the case of obligation to give care as in the agency or the deposit or bare, the fault occurs if the debtor does not give the necessary care and standard of non-implementation (fault) in this type of obligation, that is; the standard of the normal man (the natural person) (Anwar, 1987) . Therefore it is stated that: "If the debtor is required to maintain or manage the thing or exercise caution in the implementation of his obligation, the obligation is met, even if he does his best to execute the obligation but the intended purpose is not achieved. Unless the law or agreement provides otherwise (Article (358/1), Jordanian Civil Code), this article provides the obligation to work in tow classes:

The First organizes what obligates the obligor to maintain or manage the thing or to exercise caution in the implementation of his obligations. In other words, it is related to the obligation of the behavior of the obligor. The second includes other forms such as the commitment to repair the machine, and the base of this care is to be similar to what is done by a normal person. It is at the middle among the ranks. The familiar is in the care of all people with their own affairs (Explanatory notes of the Jordanian Civil Code). In certain cases, however, the legislator may replace the general standard (standard of care of the normal person) with a special standard that emphasizes or reduces the required care, in the case of a legal provision or agreement between the contractors.

The Jordanian legislation provides in first paragraph of article 841 in terms of agency that the agent is required to act in accordance with the contract of the agency with the mandate to dispose of the power of attorney without exceeding its limits except in the case of the beneficiary of principal. 1- The agent shall do his best to execute his obligations and give care as his own works in case that the agency is not payable. 2- The agent shall give care as a normal person in case that the agency is payable (Article 704 of the Egyptian Civil Code).

There are some similar cases in law as provided in article (873). 1) The depositor shall save the depositary as the normal person saves his money and shall put it in the same score. 2) He shall save it by himself or by those who trust to keep his money as a member of his family (Article (820/1) Egyptian Civil). The opinion differs regarding the contractual fault. The first approach views that the contractual fault can be done only by lacking execution (Abdul Razzaq, unpublished year). However, the debtor can not be responsible through denying the causal relationship between his fault and the damage caused to the creditor due to lacking execution (Akl, 1995). Another view is that the contractual fault in the case of commitment to achieve an objective, is not achieved only by non-implementation, but it is supposed to be just non implemented (Amin, 2004). Also the contractual fault falls in the responsibility of the contractor for his personal action not for others' actions. The Jordanian legislation does not decide directly responsibility of contractor for others' actions but it addresses this responsibility. Regarding some contracts, the act of the third party shall not be limited to the acts of the third party or his followers, but shall extend to any exposure or damage based on a legal reason issued by any tenant. The principle of responsibility is extracted indirectly from this provision. The liability of the lessor for the acts of exposure issued by another tenant or any person who has received the right from the lessor shall be liable for their faults towards the lessee, as well as for the acts of his subordinates. His responsibility is provided herein (Article 684/2, Jordanian Civil). The debtor is asked for doing things. Thus, the contractual fault is for things, in the event that the debtor does not perform his contractual obligation. The personal act has no role but to do the thing (Anwar, 1987). This is achieved in many cases including, the first case namely; the debtor (vendor) delivers the bought machine to the buyer, and the machine explodes in the hands of buyer caused damage to him or his money.

The vendor is responsible under his contractual obligation to guarantee lumpy hidden defects. In another case, the lessee is liable for the return of the leased property. The tenant enters into the tenant's guard as explosive materials leading to a fire in the property. The debtor does not implement his contractual obligation to return the rented property. He will be contractually responsible. Some view that the responsibility in such cases is not for the personal action of debtor, but for doing things (Abdel-Razzaq, unpublished year). if the contractual liability and the tort liability are combined, The first is applied (Izz al-Din, 1997). It is apparent from these special provisions that the Jordanian legislation provides in the contractual liability of the debtor for the action of others. The following requirements shall be met to achieve such responsibility: First: The agency contract, the contract or lease contract is based on a valid contract between the debtor who is responsible and the creditor who is damaged. If the contract is invalid, then this invalidity leads to denying all the consequences and we shall not have a contractual liability in this case, but rather in the face of a tort liability.

Secondly: A person who is not a debtor shall execute the obligation on the basis of a provision in the law, as is the case with the legal deputy, or on the basis of an agreement with the debtor as in the contractual proxy. If the debtor's responsibility for the action of a third party is proven by the creditor, the debtor may return to the third party, with regard to the contractual liability, if he has been assigned to execute the contract, and with regard to the tort liability, if the third party has performed the contract under the terms of the law (Anwar, unpublished year).

The Second Branch

Damage occurs

The damage pillar is the second pillar of contractual liability. If the creditor proves the fault but the damage is not proved, we do not have a contractual liability (Abdel Nasser, 1999). The Jordanian Court of Cassation ruled that the purchaser obtains the rice at a price lower than the price agreed upon with the seller, proves that the purchaser had not suffered from any damage, leading the Court not to consider it responsibility (Discrimination of rights 269/86). The damage is divided into material and moral. The material damage is the damage occurs in his materials or body. The moral damage is what affects the person in his sensitivity, such as pain, or in his sense of shame as the honor of his reputation such as the author if the publisher has made changes to his book. There is also physical damage (Anwar, 1987). The Jordanian Civil Code expressly provides the compensation for moral damages as well as material damages. Article no. (267/1) states that "the right of security shall also address moral damage. Each attack on others in their freedom, , honor, reputation, social status or financial considerations makes the attacker responsible for security.

But the compensation or moral damage is limited to the damaged person himself, husband and relatives in case of his death. Article 267/2 of the Jordanian Civil Code provides that husbands and relatives of family may be secured from any moral damage they may suffer due to death of the injured." The damage shall be compensated if it is real, checked, expected and direct (Anwar, 1987).

The Third Branch

Existing a causal relationship between the contractual fault and the damage

The Jordanian legislation did not directly states the need for a causal relation between fault and damage, but it is clear through many legal texts that a causal relation between fault and damage shall be established. "If the person proves that the damage is caused by an external cause out of his control, sudden event, force majeure, action of others or action of the damaged person, he shall not be obliged to guarantee unless otherwise required by law or agreement (Article (261) Jordanian Civil). As well as - the depositor shall save the deposit as the normal person saves his money and shall put it in the same score.

The contractual liability shall not establish for just the failure to execute the obligation, only the fault of the debtor is the reason of the failure to execute viz. there must be a causal relationship between the failure to execute and fault. The obligation of the debtor to realize a result shall be by assuming of the existence of this casual relationship. Whereas the failure of the creditor to realize the result, so he assumes that is due to the failure of the debtor only if the debtor denied the fault by proving the failure and delay of execution is referred to a foreign reason. (Lore, 1987) the foreign reason is referred to the force majeure and others' action (Cassation- Rights 825/96). If the damage was referred to a foreign reason not to the fault then the pillar of causal is not existed with the remain of fault exited. Consequently; the causal is a dependant pillar than the pillar of fault (Abdulrazaq, none) the idea of the fault in the Jordanian Law) which shall consequent the liability once the infliction of the actions leads to the damage, if this action was made by in competent (Article (256)) Jordanian Civil. Then the laws influenced by Western Jurisprudence (as the Egyptian Law) which requires the availability of element of fault. So competence or perception are required to establish liability in addition to the element of normal man behavior deviation ((Abdulrazaq, none).

The liability established on the prejudice to the legal obligation is a default liability and the liability established on the prejudice to a contractual obligation is a contractual liability. Whereas the deputation is a legally organized contract, then the contractual liability shall consequent on the breached party to his obligations. Accordingly; if the deputy failed to execute his obligation in which arose by the contract as well the execution of this obligation turned to be impossible for his fault then he shall ask for a damage compensation which shall be incurred by him (Abdulmajeed Alhakeem, 2008). The will of the deputy in the electronic contracts shall replace the will of the Principal in contracting. The effects of action is out of rights and obligations in forced by the principal directly as the electronic deputy shall not establish his will and powers by himself only its is established by the principal/ (Jameel, 2001). In all cases, the liability of the principal shall not be realized only by the realization of the liability of the electronic deputy, if the damage incurred by others was not referred to the electronic deputy's fault rather to a foreign reason did not permit to others to refer to the principal. In such place the National Conference of Commissioners on Uniform State Laws prepared a draft of this law by distinguishing between the electronic device and the electronic agent (Oliver, 1999) so the Principal shall avoid the liability he may expose thereto in case of the existence of a fault by the computer, if the previously programmed computer shall be considered as just an electronic device, then the principal in such case shall not be fully liable for the faults made by the computer (Baugarten, 2000). The natural person contracted with the electronic agent discharged from the in force of the effects of the contract against him if he proved his ignorance or he was unable to know that he whoever contracted therewith is an electronic agent and such is decided by the Dubai Law for the electronic transactions as completing the electronic contract between the electronic agent and natural person shall require that the latter has to know that he is concluding with an electronic agent, whereas this Law stipulated that: ""contracting between automated electronic information system and a natural person, if the latter knows or ought to have known that such a system will carry out the task of concluding or performing the contract.) (Oliver, 1999). Canada Electronic Commerce Act that this contract which its conclusion is undertook by an electronic information system shall be ineffective against if a natural person which the electronic agent is affiliated thereto committed a physical fault in sending data or the program of the electronic agent failed to have the opportunity to prevent the fault or correcting it (Benjamin, 2000).

The draft Convention on International Electronic Contracting which is preparing by the Uncitral for the same meaning as it contained (the contract concluded by a natural person using an automated computer system belonging to another person shall not have the legal enforcement and shall not be effective if the natural person committed a physical error in sending data letter: A. the automated computer system failed to give the natural person a chance to prevent the error or correct it. B. the natural person informed the other person with the infliction of the error as soon as possible once he knew thereof and he indicated that he had committed an error in data letter. C.

Taking a reasonable steps to return the goods or services he received by error. D. he did not used whatever goods of services he had received. The European Direction issued on 8th June, 2000 in respect of the E- Commerce who offers goods or services through computer to provide means to correct the physical of the entered data (Article (14/2) of Dubai Electronic Transactions Law). The legal actions concluded by the computer shall be deemed characterized with non-error therein in the accounting aspect as it may not insure the deception of the computer in any mean in such aspect (Nicholas, 2000)

Conclusion

After finishing the research of the contractual liability of the deputy (agent) in the electronic contracts through analyzing and discussing some of their pieces and parts of aspects, and we thought of clarifying the most important points through this concise summary that represents the conclusion of what we have reached and the total of what we have proposed, as follows,

In this study, we conclude that the pillars of contractual liability in Jordanian civil legislation only take place if the in-kind-implementation of the obligation arising from the contract is not possible, which is supposedly arising correctly, and that the liability arising from the breach of a legal obligation is a tort liability, The liability arising from the breach of a contractual obligation is a contractual liability, since the prosecution is a legally regulated contract , the contractual liability is incurred by the party that violates its obligation. If the agent does not commit the obligation provided by the contract, and if the implementation of this obligation becomes impossible due to his fault, he shall be asked to compensate for the damage caused. This is the first pillar of the nodal liability and is called the term contractual fault.

This pillar, which we found to be a violation of the commitment of the agent, with the realizing this breach as a deviation from the behavior of an average man who represents the mediator between people in terms of care, attention, intelligence, experience, integrity and honesty. This error is governed by Article 315 of the Jordanian Civil Code, which has included the general rule of contracts in the area of its implementation that the debtor is responsible once the contractual obligations are not fulfilled.

It has also been revealed that the debtor is originally responsible for his personal fault, but the debtor may be liable for the act of others, or for the acts that are in his custody. As for the actions of others, we do not find explicit provisions regarding the liability of the contractual actions of others rather than tort.

In the case of proving the contractual fault, the legislator adopted the general rule that the creditor has the burden of proving that the debtor had not discharged its obligations, but the implementation of this rule, in general, might face obstacles in the context of certain specific obligations, with respect to obligations to achieve a result, especially the obligation to give something or to do a job, it's not practical for the creditor to prove that the debtor has not performed its obligations because he is obliged to prove a negative fact, which is practically impossible, so in this case the solution is to resort to the General rule of making a proof: "The creditor has to prove the obligation and the debtor has to prove that he has been disposed of." This is what was adopted in the jurisprudence of the Supreme Court.

Nodal liability is only possible if there is a damage caused, by the mistake of the contractual debtor and is the second pillar of the contract, as it was found for the repair of the concrete and moral losses, as a result of the failure of the debtor to perform its contractual obligations. If the damage is concrete and moral, concrete damages affect the financial liability of the contractor, and the Jordanian legislator had provided a text relating to concrete damage and confirmed the Jordanian legislator in Article 186 of Civil Law that damage is a fundamental pillar of the contractual liability of the debtor.

We conclude that the principle adopted in the law is that there is no contractual liability in the debtor's right, as long as it has not been proven that the non-performance has not harmed the creditor. In the contractual liability, and to prove such damage to the creditor so that he may claim compensation. In regards to the causal relationship, we reached that the Jordanian legislator decided that the causal relationship between error and harm is imposed by a simple legal implication, meaning that it can be proved contrary. If the debtor proves the damage that he has suffered and the mistake of his creditor, then the causal relationship between them is in the text of the law, the payment of liability is only by proving the foreign cause, which is force majeure or sudden investigation or it may be the act of the creditor or the act of the debtor and this is confirmed by the Supreme Court in its judgment as mentioned above.

In this way, we have concluded that the contractual liability can only be achieved if the elements of the contract are fully met by the debtor's fault to cause the damage and the causal relationship between them. The Jordanian legislator has made cases that enable the debtor to decline this responsibility, making it impossible to assume the failure to implement its contractual obligations in all cases.

The Jordanian legislator is blamed when it comes to the liability of the third party for the acts of others, and for doing things that he did not come up with explicit texts of their own, which made the law's interpreters and jurists extract these two types implicitly, through the interpretation of some articles in the civil law, its liability in tort. We suggest that the legislator should adopt explicit and specific texts governing both types so that there is no question of whether to adopt them or not and to go from implicit to frank.

In addition, the Jordanian legislator has established a provision to compensate for the moral damage, but the text of the article requires clarification of the meaning of freedom, honor, and reputations so that their limits and content can be clarified, to enable the judge to reach the facts presented before him. Moral compensation and the law and jurists should provide in-depth studies on this.

Moreover, the Jordanian legislator did not establish special rules regulating the liability of the agent (the electronic agent), but leaving this type of agency to the provisions and general rules, which stand helpless in this type of transactions, which can not regulate this type of transactions and even if organized by the shortage. The ambiguity and shortcomings will be settled by the order of the instability of transactions.

We propose to the Jordanian legislator to deal with the provisions related to contractual liability in electronic contracting, especially since we live in a developed microcosm world, so that the possibility of communication and its means are making great progress and has become accessible to the majority, and this is evidence of the possibility of reaching the simplest information through the means of communication.

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