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The legal system for negotiating in the electronic contract

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Abstract

The study aims to discover the importance of the legal system for negotiation in the electronic contract.

Through what was offered for electronic negotiation, the following results and recommendations were reached: The period of negotiations prior to the contract is no less important than the period after the contract. Because it is a period of preparation for the contract, and whenever the preparation was good, the contract was good and achieved the interest of the contractors and included the conditions that prevent the disputes between them.

The study recommended to: we hope the Jordanian legislator to provide a legal organization for the negotiation stage with focus on the principle of goodwill. The negotiating parties should take this into account when negotiating so that they have a legal basis for those who violate the obligations imposed by the principle of goodwill when negotiating. Therefore, we propose to the Jordanian legislator a third clause to the text of Article 202 of the Jordanian Civil Law to be as follows: The parties to the contractual negotiation must abide by the obligations imposed by the principle of good faith.

Keywords: *legal system, negotiating, electronic contract.*

I. Introduction:

The great technological development in the field of communication and information technology, which we live in today, has led to the emergence of a new type of dealing with previously unknown, which was called electronic transactions where various means of communication and information technology, especially the global information network (Internet), were used to conclude contracts. , There are many transactions and contracts concluded daily through the Internet, and electronic contracts concluded through this network are part of this trade called e-commerce.

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The electronic contract can be defined as an agreement in which acceptance in the affirmative of an open international network for remote communication, appears through audio and visual means that creates interaction between positive and midwife. These means are not limited to the Internet and its multiple services, but rather include other electronic means of communication such as fax, telex, fax, telephone .This means that the electronic contract is one of the most important characteristics that distinguishes it from the traditional contract.

The most important thing that distinguishes the electronic contract from the traditional contract is that method that passes through its path. It is through an electronic environment in which modern communication methods are used, especially the Internet, which has contributed greatly to obtaining a kind of physical dimension between the contracting parties in such the type of contracts, which reflected on the nature of both the affirmative and acceptance formed for the cornerstone of the gatherings in the electronic contract.(1) Because the latter is held without the two parties having a physical presence in the contract council at the time of its meeting, where each party is in a different place from the other party's location and separated between them after a geographical and linguistic difference Legislative in addition to the Internet, which is considered the mediator in this contractual relationship, is characterized as an open network, meaning that it allows any person to enter it, without a condition other than being linked to the web, and including the electronic contract is a special type of contract concluded remotely, He must respect the rules for this range of contracts.

The electronic contract usually precedes the negotiation stage in which proposals and exchanges are substituted and is known as the pre-contract period. Also, know the possibility of concluding the contract without going through this stage, and a dispute arose about the nature of the liability resulting from cutting negotiations whether they were short or contractual. a Dispute arose about the legal nature for the electronic contract whether it is a compliance contract or a consensual contract.

The importance of the distinction between the affirmative and the invitation to negotiate is evident in determining whether it is possible to revoke the affirmative.(2) Since the association of the affirmative with acceptance leads to the conclusion of the contract and the obligor is not able to revoke his positive. In the case of the invitation to negotiate it remains the right of the advertiser to revoke his declaration until if coupled with acceptance. There are conditions for an electronic offer, including that it must be clear and directed to a specific person or persons and be sufficient and specific enough, and if the electronic contract belongs to the group of contracts concluded remotely, which are held by electronic media without the physical presence of the parties.

Then its proof and its fulfillment are carried out in special ways different from the traditional contract. Initially, these contracts faced several challenges, including the difficulty in determining the personality of the contractors and verifying the existence and integrity of the contractors and the extent of the seriousness of this contract and the fact of its content and how to prove it. As a result of these problems and the large number of electronic contracting, many countries have pushed for legislation that addressed the

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content of the electronic contracting process. The United Nations has issued the UNCITRAL Model Law on Electronic Commerce, and America, Britain, Germany, Canada and other countries have issued legislation related to electronic commerce. Also a number of Arab countries have issued legislation in this field, as has happened in Jordan, Morocco, Tunisia, the United Arab Emirates, Bahrain, and Egypt.

The electronic contract can be defined as the agreement in which acceptance in the affirmative of an open international network for remote communication converges, by audio and visual means that creates interaction between positive and midwife. These methods are not limited to the Internet and its multiple services, but rather include other electronic means of communication such as fax, telex, fax, and telephone. The means by which an electronic contract is held is one of the most important characteristics that distinguish it from the traditional contract.

II. The negotiation stage of the electronic contract

The negotiation that takes place between the contracting parties before the conclusion of the contract and the responsibility incurred during this stage. Any contract usually passes before its conclusion by a period called “the pre-contracting stage” during which it is in the formative stage. This period usually begins from the moment when one of the parties announces his desire to contract to the other and ends at the moment when the contract is completely concluded and enters into the implementation phase. The content of the pre-contract period varies according to the type of contract that is concluded.

And negotiation is extremely important that would overcome the difficulties that are represented in the legal and technical complications to which the parties to the contract are exposed. Because it limits the serious risks that the contract can face in its completion and contract considering that the electronic contract is held without the physical presence of the two parties. So, resorting to Negotiations would reduce legal problems that may arise in the future due to non-compliance with the contract or because of ignorance at one of the parties. Therefore the importance of electronic negotiation is highlighted.

Any contract usually passes before the conclusion of an initial period called the pre-contracting period during which it is in the formative stage. This period usually begins from the moment when one of the parties announces his desire to contract to the other party and ends at the moment in which the contract is completely concluded. It enters into the implementation phase and the content of the pre-contract period varies according to the type of contract that is concluded. If the contract is without negotiation, it goes through one stage, which is the stage of concluding the contract. (4)The conclusion of the contract without going through negotiation, as accuracy in electronic negotiation appears in determining time, place and responsibility in the event of a breakdown in the negotiations, as well as the problem of defining the applicable law (5).

What is negotiation in the electronic contract?

Some defined it as "dialogue and exchange of proposals between two or more parties with the aim of reaching an agreement that leads to the settlement of a dispute or issues between them and at the same time achieving and maintaining common interests" (6).

Another defined it as "the parties of the future contract relationship to exchange proposals, opinions, studies, technical reports and legal consultations, and to discuss what they put together or by setting one of them suggestions and opinions in order to reach the best results that achieve their interests and to determine the outcome of the final agreement between them from Rights and obligations of each of them (7). It also means "the joint discussion between opposite parties regarding the elements of a future contract and this joint discussion is the one that entails some obligations on the competing parties" (8).

Despite the importance of negotiation and its important and effective role in preparing the contract, some civil legislation, including the Egyptian, Jordanian and French, has been devoid of any text that regulates the previous stage of contracting, which makes this task one of the tasks of jurisprudence studies and the jurisprudence of the judiciary (9). However, we can rely on some texts that indirectly referred to the stage of negotiations.

In view of the Jordanian civil law, It referred to negotiation in the second paragraph, stipulating in Article (90) of the Civil law that (the contract is concluded once the affiliation is linked to acceptance, taking into account the specific conditions determined by it to hold the contract). As stated in Article (100/1) from the Jordanian Civil Law that it “matches the positive acceptance if the two parties agree on all the fundamental issues that they negotiated. For agreeing on some of these issues, it is not sufficient for the commitment of the parties even if this agreement proves in writing” (10).

Accordingly, the Jordanian legislator did not address the text of the previous stage of contracting, but merely referred to it.

And Article (89) of the Egyptian Civil Law No. 131 of 1948 stipulates that "the contract is concluded once two parties’ exchange expressions of identical wills, taking into account the specific conditions established by the law above that of the contract being held. Also Article (95) Egyptian civil law states that it is (If the two parties agreed on all the fundamental issues in the contract. They kept detailed issues to be agreed upon later and did not stipulate that the contract does not take place when no agreement is reached. So, the contract is considered to be concluded.) (11).

It is inferred from these texts that the Jordanian and Egyptian legislators recognize contractual negotiations as a means that may lead to the conclusion of the final contract in the event of agreement on all fundamental and substantive issues in the contract, even if the parties did not reach agreement on the detailed issues unless they suspended the contract agreement on their agreement on these issues (12).

Through the previous definitions, it can be said that electronic negotiation is the stage prior to the contract in which the terms of the contract are discussed and studied between the negotiating parties through

an electronic means and allowing each party to choose what is appropriate for it and achieves its interest and learns about its rights and obligations.

Thus, negotiations are a stage prior to the stage of affirmation submitted by one of the parties because the affirmation is mostly based on information exchanged during negotiations. The affirmative is a categorical expression of the will of one of the parties to commit to a final commitment while negotiations do not express the will to adhere but rather the possibility of commitment.

Electronic negotiation features.

It is clear from the previous definitions that for several characteristics, it is a temporary contract: "The negotiation contract, although it is often not fixed for a term, but there is nothing to prevent the parties from setting a specific period for negotiation. Then this temporary contract can be defined as (13)" the agreement who creates one or both parties with temporary obligations to regulate the relationship during the negotiation of the final contract "(14).

An introductory contract: "According to this contract, the negotiation process that paves the way for the conclusion of the final contract begins," and if the rule is in accordance with the "principle of the will of the will that there is no legal obligation to negotiate to conclude a contract, only the introductory nature of the electronic negotiation contract creates an obligation" for each party to negotiate and Walk in accordance with the "requirements of good faith" (15).

This preliminary nature of the negotiation contract does not confer any of the two parties a "final" right that has a financial nature, whether it is a "personal" or in-kind right. And it is also not valid for "signing a reservation," whether it is a "conservative" or "executive" reservation (16).

A consensual contract binding on both sides: Because the electronic negotiation contract is carried out in accordance with the acceptance with the affirmative of entering into the negotiating process through electronic means of communication and proceeding with it until the contract is established. It is also a binding contract for the two sides where it arranges reciprocal obligations on both parties together "where it arises upon each party an "agreement" commitment to continue negotiations and to conduct them in good faith (17).

A real contract: because it contains the necessary elements of the contract for each contract in general, which is consensual and the place. The reason is sufficient for the conviction that the agreement between the two parties take place to enter into negotiation and this is achieved if one of the parties sends an invitation to the other party and the latter accepts this invitation acceptance of "conformity" and that each party be eligible "to negotiate and its will is free of defects (18)."

III. The nature of responsibility in electronic negotiation:

There is a great disagreement among the jurists about the nature of the responsibility that arises from the breach of any obligation in the negotiation stage for the contract, where the first opinion and at the head

of the German jurist (Aharng) see it as a contractual responsibility. Because each party in the negotiations has an implicit obligation to take responsibility for the damage caused the other party resulting from his mistakes that he commits during the contract negotiations "(19). Therefore the provisions of the contractual responsibility apply to his perpetrator, whether this mistake resulted in the contract not being concluded or led to its nullity, which entails the right to claim compensation as a contract and not as a material fact.

And based on the foregoing, the judges of the Supreme Court in Germany considered that the previous stage of the contract should be based on trust and honesty from both parties, taking into account the care in each other's behavior towards the other. Because German courts obliged the party that intentionally caused or by neglecting the possibility of concluding the contract with full knowledge of the impossibility of such compensation on the basis of contractual liability (20).

As for the second opinion, it was considered that the negotiations are non-binding physical activities and have no legal effect in themselves. Every negotiator is free to interrupt the negotiations without responsibility, and he is not required to provide a justification for his withdrawal, and therefore the parties do not have any obligation. So, the failure to negotiate is not a reason. “Liability is only if it is arbitrary” in withdrawing, or actions from it inconsistent with honesty and goodwill have been issued, or they constitute “wrong” behavior. In this case, liability is considered negligent. In this case, liability is considered negligence on the basis of a fixed error and the burden of proof is found on the aggrieved. What the Egyptian Court of Cassation settled on by saying that "negotiations are nothing but a" material "act that does not have any legal effect, so every negotiator is free to interrupt the negotiation at a time that he wants without being exposed to any responsibility or demands a statement of justification for his remedy. If only an error is associated with it, the tort liability is investigated if it harms the other negotiating party (21). The French Court of Cassation also identified the error which is to refrain from cutting, cutting or withdrawing from it as the error based on the will of the damage or the error that is attributed His love is bad intention and not just an ordinary mistake (22).

And when looking at these views, we find that the most correct opinion is the second, which considered the negotiations as "material, non-binding, and not arranged for any legal effect. Therefore, abstaining from them does not entail any responsibility unless it is accompanied by" arbitrariness or bad intent, then a fault-based liability is assumed. The constant and the burden of proof is on the aggrieved person, as it is very difficult to take the first opinion, which arranged to breach any commitment in the negotiating stage as a contractual responsibility. Because the contract of guarantee that was assumed and the quality of (jurist Aharing) and on which the contractual error was arranged is an implicit default and is not tangible and therefore unreliable to determine the nature of liability (23).

The bottom line is that the responsibility that arises in the negotiation stage is a default responsibility based on the error as a result of a violation of the principle of good faith, (24) The Egyptian Court of Cassation also settled on the rule that the responsibility in the negotiation stage is a tort liability and not a contractual one, because the negotiations are merely material actions (25) that are not binding and not It lives up to the

level of agreement behavior, and this limitation shall entail nothing but tort liability if it results in harm to the other party.

Here, it must be pointed out what is stipulated in the third paragraph of Article 217 of the Egyptian Civil law. It falls void "every condition requires exemption from liability resulting from the illegal work, which means that the default responsibility from the public order and it is not permissible to agree in advance" between the two parties to electronic negotiation on exemption from it, and every condition contrary to that is considered void "(26), which is also stipulated in" Article 270 of the Jordanian Civil Law "Every condition requiring exemption from liability arising from a wrongful act is invalid" (27)

IV. Obligations arising from electronic negotiation

A - Obligation to enter into negotiation: If the parties agree, in accordance with a preliminary contract, to enter into negotiations with a view to reaching a final contract, this places an obligation "on each party to enter into the negotiation process already (28)". And that begins by discussing the final contract to be reached. Within the specified time for that, then the obligation to negotiate finds its direct source in the negotiation agreement, and neither party has the right to refrain or delay from entering into negotiations, except that it is considered "responsible for any harm that may occur to the other party."

If each party is obligated to "commit to achieving its outcome, which is entering into negotiations, then its commitment during negotiation is an obligation" to exert care, since each party must take the required care to make negotiations successful. If any party actually committed "that would lead to the failure of negotiations or obstructing it, it contravenes "his obligation to take care, which compels him to follow the usual course of behavior of the usual person and who agrees with the requirements of good faith in implementing the obligations.

B - Commitment to good faith in negotiation: The commitment to negotiate in good faith is the essence of the commitment in the stage of negotiations that may precede the conclusion of the electronic contract because negotiation does not take place without it. Because negotiation must be characterized by integrity, honesty, honesty and trust, and commitment to good faith is considered a commitment Reciprocal is the responsibility of the negotiating parties, as it is an obligation to achieve an end, not an obligation "to exert care" (29).

The basic principle of contractual obligations is their subordination to the principle of the will of the will, which states that the parties will not be bound except by what they agreed to upon the conclusion of the contract, but recently emerged. The two parties have other secondary obligations that derive from it and perform neighborhood and embodied in each of the commitment to the media before the parties. Other secondary obligations derive from it and perform neighborhood and embodied in each of the commitment to the media before contracting and the commitment to cooperate with a view to bringing the negotiations to a logical conclusion and the conclusion of the desired contract. Jurisprudence has settled on the necessity to

negotiate in good faith "(30) Good faith means: it is the integrity of transactions in an acceptable manner legally" and ethically "and respect for laws and pledges and excluding all manifestations of fraud, fraud, deception and good dealing, and can be viewed from two sides, the first side, which is positive from it, which means the commitment of the contracting parties to honesty and truth, and the second side, which is negative in good faith and embodied in the lack of knowledge of the defect (31).

In order for the negotiator to be in good faith, he must take a constructive stance during the course of the negotiations, by discussing the other side about the terms of the contract very seriously and with a real desire to reach a final agreement and refrain from anything that would hinder or frustrate the negotiations. So, he does not resort to procrastination, trick, or prevarication. Otherwise, he would be ill-intentioned and subject to liability. However, the obligation to negotiate in good faith does not mean that the negotiator is obligated to conclude the contract already, because that would waste the principle of freedom of contract, since the negotiator remains fully free to contract or not, as it is permissible for him to refrain from concluding the contract, provided that this is done within the framework of good faith, so if he negotiated in good faith and made every effort to make the negotiations successful, yet it failed for a reason he must have or for objective reasons, so he has no responsibility (32).

In general, we can say that the legislator has left the negotiations and obligations, as they are subject to jurisprudence. There are no provisions for negotiations. “The jurisprudence has established that it is necessary to negotiate in good faith.(33)” (Also, the text of the Egyptian law in Article 148 - (1) the contract must be executed according to what is included in it. In a manner consistent with what is required by good faith. (2) The contract is not limited to obligating the contractor with what was stated in it, but it also deals with its requirements according to law, custom and justice according to the nature of the obligation (34).

Corresponding to it in the Jordanian Civil Law, Article 202- 1 - The contract must be executed according to what was included in it and in a manner consistent with what is required in good faith. 2 - The contract is not limited to the contracting obligation with what was stated in it, but it also deals with its requirements according to the law, custom and the nature of behavior. (35)

Based on "the foregoing, we can say that one of the most important obligations that derive from the principle of good faith is commitment to the media and is intended" as the commitment that precedes so that one of the parties to the contract is obliged to inform the other of the data that must be available in the contract in order to conclude a contract free of any defect and complete with all its vocabulary as a result of certain circumstances and considerations due to the nature of the person contracted with, or the nature of the contract itself or any other consideration that makes the contract impossible "if specific and necessary data in the contract is kept secret.

The commitment to the media is based on the fact that the traditional protection of contractual will through the theory of defects of the will is no longer sufficient, given that "there are many contracts in which the negotiator needs special and effective protection because of the nature of these contracts, either because one of the negotiating parties is professional and professional, or because the other negotiator does not have

Fully knowing, or that his experience is insufficient with the subject matter of the contract or because of the novelty and novelty of the object of the contract and the complexity of its use (36).

The negotiator must disclose all the information and data he has to the other party regarding the contract subject to negotiation without punishing or concealing, in order to inform the will of the contractors. If it comes to industrial products, a full description must be provided of their descriptions, components, method of use, methods of preservation and maintenance, and drawing attention to all their characteristics. (37).

The importance of the commitment of the internet negotiator to the media is due to the legitimate trust and the principle of goodwill that should prevail in the negotiation process, especially if we were in front of two parties a professional party or an ordinary person (not professional) . This indicates an imbalance between the negotiators in terms of knowledge and Knowledge of the location of the contract. Through this commitment, equilibrium can be reached by informing the basics of the contract to reduce the imbalance and seeking equality between the two parties to the negotiation.

Therefore, national and international legislation made sure to compel the seller to provide the consumer with all information about goods and services, and obligated the producer to display this information (38).

We find that Jordanian and Egyptian legislation permits the annulment of the contract in the event of deliberate silence "on the ground of its effect on contracting. Article (144) of a Jordanian civilian states that" considers intent to silence deliberately on the occurrence or cause of delusion if it is proven that the arrogant would not have entered into the contract if he knew of that fact Or clothing "as well as Article (924) a Jordanian civil" 1 - If the insured conceals an ill-intentioned matter or makes an incorrect statement in a way that reduces the importance of the insured risk or leads to a change in its subject matter or if he fails to cheat by fulfilling what he pledged, the believer would have to A contract termination is required. "

And see Article (1/126), an Egyptian civilian, "It is considered fraudulent intentionally to silence an incident or cause of harm."

It is worth noting that jurisprudence considered the commitment to media to be an obligation to "exercise diligence (39), so that the customer supplier is obliged with all data, information and product attachments and stating the methods of use and the risks that he avoids. But the supplier is not obligated" to guarantee the result, due to the customer's lack of commitment to follow the data and methods of use that are attached to the store. The supplier here has fulfilled his obligation by doing the care imposed on him by the nature of his profession, just as the commitment at this stage is not the result of a contractual effect but rather a pre-contract and there is no contractual commitment on both sides of the relationship.

V. Penalty for breach of negotiation in the electronic contract

Dr. Al-Sanhouri believes that it is a default rather than a contractual responsibility. This means that cutting contract negotiations can be a "sufficient" reason to establish effective responsibility in accordance with the "general rules of civil liability in default in the civil law, due to considerations of loss of profits, because it may be the contractor who cut negotiations The other contractor missed the opportunity to contract with a third person (40). The general rules require that there is no contractual liability without a contract or it can be said that two will have to be matched as a minimum in order to say that contractual responsibility exists, as in the case of the promise of a contract issued by a person and accepted by another. This is confirmed by the Jordanian Civil Law, which holds that the contract is concluded (once the affiliation is linked to acceptance) and must be completely matched by it. Article (90) states that "the contract is held as soon as the affiliation relates to acceptance, taking into account the specific conditions established by the law above that of the contract. Likewise, the Journal of Judicial Judgments states in Article (103) that “the contract is the obligation of the contracting parties and their undertaking is an affirmation, which is a correlation of affirmative with acceptance” and stipulates in Article (104).

And if two wills were not agreed on the promise, then the negotiation period is rather far from the contractual scope, and the affected person only has to meet the tort liability to claim compensation for the damage he has suffered.

And the judiciary in France goes to this direction with regard to its judiciary from provisions that can make the reversal of the affirmation as long as it is not accepted. But the reversal of the affirmative necessitates compensation if it happened inappropriately or was surprisingly violent on the basis of tort liability (41).

The bottom line is that liability cannot be considered contractual unless there is a valid contract between the two contractors

It is not correct to consider the error in the formation of the contract as positive for contractual responsibility, but rather the responsibility that entails a tort liability (42).

And he took this opinion, most Arab laws, taking into consideration the idea of error in Egyptian law and the idea of harms in Jordanian law.

According to "the general rules that it is the eviction of one of the parties to implement the obligation entailed by the analyzes of his responsibility from this breach. So, if the behavior of the negotiators deviates from the general principles in the contract that we referred to previously" then it will be before civil default responsibility and we can apply the rule of attribution regarding responsibility for the harmful act in Jordanian Civil Law Article 256 Text of the article: "Any harm to a third party is obligatory, even if it is not distinguished by a guarantee of harm" (43)

The basis for tort liability in some legislations, such as the Egyptian Civil Law, is wrong. Article 163 of the Civil Law reads as follows: - Every mistake causes harm to someone who commits compensation. (44)

As for the Jordanian legislator, it may be that the Islamic jurisprudence is considered the basis of this responsibility is the harmful act, even if issued without distinction. Accordingly, the responsibility of the perpetrator of the harmful act in the Jordanian Civil Code rests on three pillars: the act of harm, the harm, and the causal relationship between the act and the damage, and these three pillars are defined in Article 256 of the Jordanian Civil Law, which states that "Any damage to others is obligatory, even if not distinguished with damage guarantee."

Therefore, legislation differs with regard to the requirement for harm to be achieved in order to achieve responsibility for the harmful act. It is the nucleus after which it searches for the pillars and other tapes, and if these legislations differ in the act leading to the damage, some of them are required to involve error and its consequence of saying that it must be issued by a aware of that that the perpetrator must be distinct and aware of the nature of the act of deviation in the behavior he commits in order to be told of his responsibility for the consequences of that act. In contrast to the other, the Jordanian law did not stipulate that the liability shall be established in the right of the person who commits the act of damages whenever the injured is injured by it regardless of the extent Discrimination and awareness, and in this an increase in the protection of the injured party's right to demand compensation from the perpetrator (45).

VI. Conclusion:

Through what was offered for electronic negotiation, the following results and recommendations were reached:

The period of negotiations prior to the contract is no less important than the period after the contract. Because it is a period of preparation for the contract, and whenever the preparation was good, the contract was good and achieved the interest of the contractors and included the conditions that prevent the disputes between them. The careful and accurate negotiations that did not lead to the conclusion of the final contract could be described as failed negotiations Or not good or negative, on the contrary, it is considered good and has achieved the main goal of it. Because non-contracting is better than concluding a contract that opens a door for disputes and legal violations that always result in harm to the two contracts and their interests being disrupted in addition to expenses, effort and time to settle the dispute between them.

We notice that there is an urgent need to organize the stage of negotiations in general in the Jordanian civil law, because our law is free of provisions that regulate this stage, especially in the event that one of the parties refuses to negotiate without a legitimate excuse. This arrangement is harmful to the other party, as if opportunities were lost or rejected by other offers that would have returned he has the same benefit that he was seeking from concluding the contract, knowing that the Jordanian civil law in question is devoid of any

legal text for organizing the contractual negotiation. Therefore the negotiation stage is seen as merely material work, so we hope the Jordanian legislator to provide a legal organization for the negotiation stage with focus on the principle of goodwill. The negotiating parties should take this into account when negotiating so that they have a legal basis for those who violate the obligations imposed by the principle of goodwill when negotiating. Therefore, we propose to the Jordanian legislator a third clause to the text of Article 202 of the Jordanian Civil Law to be as follows: The parties to the contractual negotiation must abide by the obligations imposed by the principle of good faith.

References:

1. Osama Ahmed Badr, Multimedia Multimedia (Comparative Study), d. Osama Ahmed Badr, Multimedia Multimedia (A Comparative Study), Al-Nahdhah Legal Books, Misr al-Mahalla al-Kubra, 2006, first edition, page 149.
2. Bashar Mahmoud Dudin and Muhammad Yahya Al-Mahasneh, The Legal Framework of the Contract concluded via the Internet, first edition, Dar Al-Thaqafa for Publishing and Distribution, Amman, 2010, page 36.
3. See the definition of an electronic contract in the Model Law on Electronic Signatures developed by the United Nations Commission on International Trade Law (UNCITRAL) 2001, at its 85th plenary session on December 12, 2001, as well, Jordan Transactions Law (15) for the year (2015) published in the newspaper Official No. (5343) page (5631) dated 1/6/2015.
4. Abdel-Aziz Al-Morsi Hammoud, Legal Aspects of Contractual Nature (Comparative Study), Arab Renaissance House, Egypt, First Edition, 2005, Page 7.
5. Muhammad Fawaz Matalqa, Electronic Commerce Contracts (Comparative Study), Dar Al-Thaqafa for Publishing and Distribution, Amman Jordan, Third Edition, 2011, page 48.
6. Bashar Mahmoud Dudin and Muhammad Yahya Al-Mahasneh, The Legal Framework of the Contract concluded via the Internet, Dar Al-Thaqafa for Publishing and Distribution, Amman, 2010, page 36.
7. Abd al-Basit Jassem Muhammad, Concluding the contract via the Internet, 1st edition, Al-Halabi Human Rights Publications, 2010, page 153.
8. Muhammad Ibrahim al-Dasuqi, Legal Aspects of Negotiating and Contracts Management, King Fahd National Library, Riyadh, First Edition, 1995, page 22.
9. Ibrahim Khaled Mamdouh, conclusion of the electronic contract "a comparative study", University of Alexandria, 2005, p. 209.
10. Jordanian Civil Law No. (43) was published in the law in No. (2645) in the Official Gazette on August 1, 1976, page No. (2).

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11. Egyptian Civil Law No. (131) for the year (1948) published in the Egyptian facts, issue (108) bis dated July 29/1948.
12. Adnan Al-Sarhan d. Nuri Khater, Sources of Personal Rights (Obligations), Dar Al-Thaqafa for Publishing and Distribution, First Edition, 2000, page 92.
13. Ahmad Abdul Karim Salama, Special Quality Law (Electronic, Tourism, Environmental), Dar Al-Nahda Al-Arabiya, First Edition, 2002, page 99.
14. Rajab Karim Abd Allah, Negotiation in the electronic contract (a comparative study) PhD, Ain Shams, 2000 p. 496.
15. Rajab Karim Abd Allah, Negotiation in the electronic contract (comparative study), Ph.D. thesis, previous reference, page, 987.
16. Mohamed Hussein Abdel-Aal, The Organizing Agreement for Contractual Negotiations, Arab Renaissance House, Egypt, 1998, p. 110.
17. Khaled Mamdouh Ibrahim, Electronic Contract, PhD Thesis, University of Alexandria, 2005, p. 233.
18. Mohamed Hussein Abdel-Aal, The Organizational Arrangement of Contract Negotiations, Previous Reference, Page 102.
19. Adnan Al-Sarhan d. Nuri Khater, Sources of Personal Rights (Obligations), previous reference, p. 94.
20. For more, see Hussein Muhammed Abd al-Zahir, Legal Aspects of the Pre-Contract Stage, Arab Renaissance House for Printing, Publishing and Distribution, 2002, p. 90 and beyond.
21. Civil revocation: the session of February 9, 1967 Q18 page 334, citing "Dr. Muhammad Hussein Mansour, previous source, page 52.
22. See, Khaled Mamdouh Ibrahim, conclusion of the electronic contract, previous reference, p. 243.
23. Khaled Mamdouh Ibrahim, conclusion of the electronic contract, previous reference, p. 243.
24. The Court of Cassation ruled that the negotiations are only a material act "and do not have any legal effect on their own. Every negotiator is free to discontinue the negotiation at a time he wants without being exposed to any responsibility or demands a statement of justification for his revocation - Appeal No. 862 S 52 BC - Session 1911- 1986 The set of legal rules decided by the Court of Cassation in five years 1980-1985, page 861, citing "Dr. Khaled Mamdouh Ibrahim, the conclusion of the electronic contract, previous reference, page 242.
25. Look at that d. Muhammad Hussein Mansour, previous source, page 62.
26. Egyptian Civil Law No. (131) published this law in the Egyptian facts in No. (108) bis (A), dated July 29, 1998.

27. Jordanian Civil Law No. (43) This law was published in No. 2645 of the Official Gazette on August 1, 1976, page No. (2).
28. Rajab Karim Abd Allah, Negotiation in the electronic contract (comparative study), PhD, previous reference, page 410.
29. Bilal Abdul-Muttalib Badawi, principle of goodwill in the pre-contractual negotiation stage in international trade contracts (comparative study), House of Speeches, 2001, page 64.
30. Husam Al-Din Al-Ahwani, The General Theory of Commitment, Part One, Dar Al-Nahda Al-Arabiya, page 99-98.
31. Roman Munir Zidan Haddad, Good Will in Contract Formation, Thesis for a Master's Degree in Law, Al Al-Bayt University, Jordan, 2000, p. 2.
32. Rajab Karim Abd Allah, Negotiation in the Electronic Contract (Comparative Study), previous reference, 2000, pp. 421-422.
33. Mohamed Hussein Mansour, International Contracts, New University House, Egypt 2007, page 56.
34. Article (1/148) of the Egyptian Civil Code, previous source.
35. Article (1/202) of the Jordanian Civil Code, previous source.
36. Nazih Al-Mahdi, The General Theory of Commitment, Dar Al-Nahda Al-Arabiya, 2001, page 394, referred to by Dr. Ibrahim Khaled Mamdouh, conclusion of the electronic contract, "a comparative study", previous reference, page 239.
37. Mohamed Hussein Mansour, International Contracts, previous reference, page
38. Salim Saadawi, Electronic Commerce Contracts (Comparative Study), Dar Al-Khaldouny, page 25, the memory of Colonel Akli Muhammad Okaj, Ph.D., entitled (The Sultan's Principle of Will in Electronic Contracts), Institute of Law, Bouira, Algeria 2012, page 38.
39. Hussam Al-Din Al-Ahwani, Sales Contract in Kuwaiti Civil Law, Publications of Kuwait University, Kuwait, 1989, page 477, mentioned by Dr. Muhammad Fawaz al-Mutlaqah, previous reference, page 52.
40. Al-Sanhouri Abdel-Razzaq, Mediator Part 1, Theory of Commitment in General, Sources of Commitment, Monsafat Al-Maaref, Alexandria, 2003, page 220
41. Hussein Amer, Civil and tort liability, previous reference, p. 50.
42. Suleiman Morcos, Al-Wafi in Explaining the Civil Law, M1, No. 5, Cairo, 1992, p. 50.
43. See Jordanian Civil Law No. (43/1976), Article (256).
44. See Egyptian Civil Law Article (163).
45. See Article (256) of the Jordanian Civil Law, a previous source.