

The Negotiation Phase in Electronic Contracts

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Abstract

The objective of our research which marked by "negotiation stage in electronic contracts" is to reach solutions and recommendations of the necessity of commitment in the negotiation stage in electronic contracts that is to build good framework of legislation for such actions. And this framework of legislation to be a catalyst for development and progress, and should not be an impediment. What are the ways by which can be reached that goal? Through the adoption of methodology of this research, which based on the application of an analytical comparison study without extensively focusing in details while attempting a general theoretical and doctrinal conclusion.

Our research is divided into two sections:

First: the essence of negotiation: through clarifying and determining the concept of negotiation and its components.

Second: we addressed the nature of the electronic negotiation and the pertinent responsibility, and in the conclusion we have reached to the results and recommendation.

Introduction

The phase of negotiation in any contract is the foundation on which the contract is built. During this phase the importance of negotiation arises especially in international and complex contracts, which go through sequences and complicated procedures of many contractual issues, both financial and technical, negotiations aim to maintain the safety of the contractual stage through anticipating and regulating expected problems that may occur.

This led the parties of negotiation in most cases to enter into binding contractual agreements at this stage of contraction; to maintain healthy functioning of the negotiation process; and determine the responsibility of the parties of the negotiation. When was to document this stage of contraction, any prejudice in applying this document lead to the application of rules of contractual responsibility but not the liability, because they are a phase of the contract although it previously to its conclusion.

Importance of the study:

Recently emerged practices of contraction at the global level, by using the internet. on the assumption of adopting the interest and the unity of ends between the two parties of contract. Because of the development and wide use of internet in contract's conclusions by data messages required a high degree of duty of the media and to draw attention and cooperation, which start from pre-contract- mail to the next phase of the contract.

Problem of the study

The problem with this study that the legislature does not have to address this stage prior to the conclusion of the contract in the laws or regulations; because it is traded contracts and necessary in our daily lives, we find that many of the companies, and institutions, but most of them are organized managed all by computer programs. Forcing us to try to view this problem and try to study to find appropriate solutions according to the general rules for electronic transactions law and civil law in Jordan.

Division of the study

In light of the above will offer our study by a statement the essence of negotiation, through the study of the concept and importance of the negotiation elements, and good faith in negotiation, both in separate subject, and statement of the nature of negotiation mail, and if will result on this stage a legal responsibility or not? All this can be clarified through the division of the study as follows:

- First topic: the nature of negotiation.
- Second topic: the nature of electronic negotiation.

First topic:

What is negotiation?

In any contracts negotiation has been the main stage in negotiation process. Because through we can reach the foundations of agreements, and because of its importance in electronic contracts, we should study it carefully and in analytical way, and this study must be rooted to reach main concept, and to understand the nature of law of this stage of action, and to discriminate whether is adhesion contract or not.

In this topic we will discuss the concept of negotiation, its importance, and main components.

First requirement

“Concept of negotiation and its origins”

In abroad sense negotiations-idiomatically- means: any dialogue, consultation, communication, or any situational kinetic expressive, between two or more parties; on a case to display exchange, approximation, harmonization, and adaptation of views. And use of all methods of persuasion to keep the interest, and to gain the benefit by forcing the opponents to take action or to refrain from action in the context of a specific correlation between the parties of the negotiation process toward themselves and toward others. Negotiation includes all communication reciprocity in the pre- contractual stage¹.

In Jordanian civil law, we find that the negotiation is merely work of a purely physical, which does not entail any legal contractual consequences,. Every negotiator is free to cut the negotiation in any time this is according to French and Jordanian law is not fault in itself; but must be accompanied by events to prove the mistakes. If the wrong is proven, the responsibility is entered on the negotiator, in accordance with the rules of tort and not contractual.²

The question that always comes to mind is what negotiation? Is a natural behavior used by human interacting with the surrounding? And is a process of constant communication between two parties to reach a deal meets their interests.

Negotiations continue to our current time and become the foundation of any traditional or classical behavior, and cope with all developments. Despite the importance of negotiation and its key and effective role in the conclusion of contracts, however some civil altgueninat was empty of text organized this stage prior to the conclusion of contract and has been postponed to the jurisprudence and the judiciary.

However, the Jordanian legislator separates himself away from others in the civil law. He referred to negotiate in the second paragraph of article (94), which was considered in the event of doubt in the publishing, advertising and pricing, and offers addressed to the public invitation to negotiation. The same applies to the second paragraph of article (100) of the civil code. They noted the negotiation has to explicitly without addressing the previous phase of the contract.

We find that some modern legislation has addressed the stage of negotiating openly and directly, example of that legislation is the code of obligations of the Lebanese and Greek civil law.³ Often negotiation take place orally and in direct contact or through data message through e-mail that has emerged strongly in the transactions of international trade, because the conclusion of electronic contract cant help the parties of the contract of stand fully on all the items of the contract, demonstrating the importance of negotiation between the parties of the relation ship for the issuance of a positive and full acceptance, to enter into contract. ⁴

Negotiation is a preparatory phase preceding the final acceptance of the contract, which issued as a result of presentations and proposals between the parties of the relationship. And when this full acceptance was released, remains waiting identical expire to the negotiation stage. If these actions remain under possibility is not essential element of the arrival of the two parties to the agreements, which ending this phase at the conclusion of the contract without negotiation.⁵

The second requirement

“Importance of negotiation and its component”

The importance of negotiation:

The importance of negotiation arises from two main angles:

1. Necessity: the necessity of negotiation science and its importance drives from the contractual relationship existing between the parties of the negotiating matter.
2. Inevitability: the science of negotiation draws inevitability of being as the only main and possible outlet can be used to address the negotiating issue and reach a solution to the problem of disputed.

The stage of negotiation came to overcome the difficulties of the law complexity to both parties of contracts. And to reduce the risks that may face completion and conclusion. The basics of contracts concluded are the internet that takes time, and effort in doing the contractual negotiation besides the need to specialization to reduce the legal problems that could arise in the future, due to lack of commitment or ignorance of one of the

1- Alpa· G . (Italian report)in Handius· E . (ed) pre – Contractual Liability 1991 p199

2- 15 year Book of Commercial Arbitration 1990 p 38

3- 3 Khaled Mamdouh: held the electronic contracts comparative study, 1sr edition pub daralfikre Alexandria, 2006, page 208.

4- 4 Almomani, Bashar al-Talal: electronic contracting problems of online comparative study. The first edition, pubalem alkotob alhadeeth,amman 2004, Page (46).

5- 5 Aljammal, Samir Hamed: contracting through modern communication techniques, a comparative study, pub dar alnahda alarabia,cairo, 2006, Page 96

parties to the contract.

The dynamic of preparation of contraction is the reason behind the importance of negotiation stage through the processing of research about all the technical and legal aspect of the contracts; and statement of a person of the other party, and his legal and technical situation, in addition to determining the content of the contract and the mechanism of preparation according to interest of both parts of relationship, and stay away as possible from the confliction that may occur, and determine the applicable law.¹

Negotiation which conducted through internet and in the field of electronics highlights the necessity from the long distance between the parties. Which lead to more ambiguity and uncertainty for the scientific aspects of contract, as legality and identity and personality of the contractor through the stage of contracts; and how to be sure if this particular person is intended or not. Also to be sure of the nature of the subject matter of contracts, and guaranties that are provided to achieve the purpose of contracting and ways to fulfill the obligations; whatever it is to make sure of these accurate technical aspect during the test to seek the assistance of the experience and expertise in some cases.

The importance of negotiating is reducing the difficulties for typical contracts that are used by every one, and including general conditions which do not accept negotiation or discussion with the client; these conditions are not subject to amendment, provided for in the most of contracts, for service subscription and creation of website on the internet.

Negotiation in electronic contracts are to save time and costs through data messages exchanged between the parties to the negotiation; but it arises the problem of identifying the other party of negotiation, that destroy the confidence of the parties to each other. Unlike the negotiation in one sitting and the presence of the parties in one place precision in the negotiation – mail appears to determine the time; place and responsibility in the event of prejudice in negotiation, as well as the problem arise in determining the applicable law.²

- **Element of negotiation:**

Negotiating parties exchange their wanted during the negotiation phase of the data messages that are exchanged over the internet; which called by countless titles, such as a memorandum of understanding letters of internet, letters of comfort, the preliminary correspondence, and other terms. This exchanged letter takes several forms, either be signed by, or an initial agreement signed by the parties. These letters must contain the following three characteristics³:

1. statement of basic needs: by the client to the debtor clearly and complete accurate, to enable the debtor reach the main objective, and the purpose sought by the client, all that is within matter of legal and the authored one, in the case of exit of the general rules, the client must clarify this issues to negotiate about it, because of the necessity of the contract. This situation emerged for contracts concluded on moral rights, because the debtor will be informed and more aware of the client who wants to achieve his goal of this act without giving any importance to the causes and the used means.

2. negotiation through the data page: that is visible on the computer screen include all conditions which every part wants to be available in the subject matter of the commitment; to determine the desires and objectives accurately, and identify the ways proposed to achieve the fundamental purpose o the subject matter of the commitment. Otherwise, the debtor shall bear the liability of failing to clarify the data and if he was in bad faith before. But the client is not outside the scope of responsibility, and he must make the effort and convergence in the access to achieve his objective; by presenting all necessary basic data, which helps the debtor to replace the contract and access to a true and productive contract for all its legal implications.

3. Sending data: included offers of negotiation through which the contract or negotiation is done until the completion of contraction. The importance of these messages or offers in the contraction, emerged in contracts which its subject of matter large and associated with facilities to provide the parties of the contracts, by providing easy method of offering, to the public, and receive different offers about the questioned offer.

The special call for the negotiation should include clear and understandable statements to all, without any ambiguity may lead to confusion in the future, in term of determining date of offer, items, and specifications, and the basic conditions for the negotiation on clear basis and correction.

The second topic

“The nature of electronic negotiation and liability”

Negotiation as any stage in contracting resulted in commitment toward the parties of negotiation.

6- Almatalkaha, Mohammed Fawwaz: brief in electronic contracts, pub daralthaqafa for publishing and the House of Culture for Publishing and Distribution, Amman, 2008, page (48).

7- Mansour, Mohammed Hussein: Electronic Responsibility, pub dar aljmea aljadeed for Publishing, Alexandria, 2007, pp. (44-45)

8- Sari Aldine, Hani Salah: the negotiations in international commercial contracts, pub dar alnahda alarabia, Cairo, (1998), pp. 12-13

Based on these commitment the legal basis of the contract subject, whether it traditional or electronic contract. And this stage of negotiation must bind all parties in a high degree of strict in conclusions of act which called to the negotiation.

The legislator has kept the stage of negotiations and its obligations without organization. They are subject to discretion of Jurisprudence because there are no special legal provisions of negotiation.¹ The jurisprudence settled that it should be negotiated in good faith which would lead to deal of integrity and confidence during the negotiation process and refrain from all that negotiation hinders, or which lead to a revoked or any thwarted attempt by using tricks or evasive or any damage to third parties.

The obligation in good faith requires exchange of respect, between parties of contracts, so as to reach the conclusion of contract, for which it was negotiated. Which result in completion of obligations of the parties of negotiations; and start of cooperation between the parties through providing advice and guidance to the client of the subject matter of contract, and this subject arrange responsibility upon non obligate of these negotiations. In this thesis will examine the obligations to negotiate in first requirement, and the nature of responsibility for the negotiation in second requirement.

The first requirement “Obligations of negotiate”

As any act of behavior, negotiation process in the previous stage of contract conclusion, leads to many obligations, which have legal tincture, and main role in continuity and birth of contraction, these commitments are: commitments to cooperation, commitment to information, commitments to advice and guidance.

First: commitment to cooperation: this intends to define objectives and main purpose of contract. Which two parties of contract seeks to conclude, and to statement the direct actual need of subject matter of contraction, through cooperation between two parties of negotiation, so as each of them can be able to study the conditions of others, and to study abilities to complete and studying the associated circumstances, to accomplish the desired outcome of cooperation which is contract conclusion.

Through cooperation between two parties of negotiation, provider -professional person- can state the characteristics, he wishes to include in subject matter of contractions, and to balance between the mechanism of preparation of subject matter of contraction, and achieving the client wishes, to be able to meet as much as possible a large amount of these desires but not to reduce them.²

But when not investigate and inquire about subject matter of contraction, and its impact on the result of contract, sought by the client to achieve it be liable for negligence, due to lack of investigation and inquires. Because the supplier provide the subject matter of contracting, as to what has been agreed upon, and based on the data that was sent to him. The responsibility that creates is a liability responsibility resulting from client breaching of its obligation, toward cooperation with provider; who has committed to provide the subject matter of contract that what is negotiated for.³

A commitment to cooperation is characterized by continuity, start from the stage of negotiation until the end of completion the contract, to reach the desired outcome of contract. And this commitment of cooperation characterized of free template what takes an infinite number of forms of cooperation; among them is completion of contracts that the parties of negotiation is looking for; and for which have been entered into previous phase of contract .

In case of final agreement and determining of the different ways of cooperation between the parties of negotiation, each of them committed fully to what has been agreed upon by cooperation among them. The end of this commitment to create right contractual relationship free from any defect or future malfunction could lead to make a problematic defect in the future related to the contract.

Second: commitment to information : the stage of contractual negotiation does not end by commitment to cooperation, but it continues to the next stage by telling one part the other of all data and information that must be met in the contract and to be free of any defect and contain all vocabulary, as a result of certain conditions and consideration, due to the nature of contracting person or due to the contracting itself, or because of any other consideration makes the contraction impossible because of the concealment of specific data in contracting.⁴

As a result of scientific development, and use of electronics media in most of molecules of life, a discrepancy took place between the parties of contract, which affect the subject matter of contract. Because the

9- Alahwany , Hossam El Din : The General Theory of commitment , the first part , , pub dar alnahda alarabia,cairo, Cairo (2000) , pp. 98-99

10- A Mansour, Mohammed Hussein: Electronic Responsibility, pub dar aljmea aljadeed for Publishing, Alexandria (2003) , Page (56) .

11- Al Mehdi nazeeh Mohammed Sadiq , Commitment before the contract by giving data relating to the contract, dar alnahda alarabia Cairo (1999) , pp. 208-216 .

12- Hussein , Khaled Jamal Ahmed : Commitment in telling before contracting , PhD theses Introduction to Assiut University School of Law (1996), pages (85-86)

customer is not sufficiently aware of subject matter of contracting, every thing that sent to him is data through computer screen automation, which include specification and standards concerning the ware about of the contract and that can be sent over internet. It also sent an epitome of the subject matter of contract. In this case will be an obligation on the supplier of the statement in the mechanism to use and the prose and cons of the product to demonstrate the suitability of this product to the customer, in this case the commitment to information is more effectively, and the provider must indicate the extent of suitability of subject of matter of contract, and the need of customer.

It is the right of client to use the expert to continue the negotiation stage with him and guide him for the subject matter of contraction, and to help the supplier and provide him with clear information and at high degree of transparency. This matter would classify negotiator into two different categories: Professional and normal person. That led to an imbalance between the negotiator in terms of knowledge and understanding the subject matter of contract. And this need to restructure the relationship between two parties of negotiation, to restore the balance between them, this done through commitment to information.

Which is located mostly on the responsibility of the supplier, because is one of these professionals who have professionalism. Through this commitment, the equilibrium can be reached through the information to basic of contract to reduce the imbalance and pursuit of equality between the parties of negotiation.¹

Jurisprudence consider commitment to information, as a committing by care and effort, because the supplier should provide the client with all data, information, and product extensions, which explain the fact of subject of matter of contract, and statement of method to be used, and risks to be avoid. But the supplier is not obliged to guarantee the result. Because the client not to follow the data and methods which companied with the subject matter of contract. But supplier will have fulfilled its obligation by doing diligence imposed on him by the nature of his profession. And the commitment at this stage is not result of contractual effect, but prior to contracts, and there is no any contractual commitment upon two parties of relationship.

Through the previous action a parties of negotiation seeks access to absolute transparency and openness and statements of what is hidden within the confine of contract by fulfilling the commitment of the information. if contracts has been signed to provide people with site on internet, it must provide a full description of the component, and the description and accessories that are linked to this site and the mechanism used, and the keys and encryption source code and personal, and method of maintenance and preservation of this site and to provide with adequate objectivity, and proper data for the negotiator, and declaring all the defect that can occur as a result of developments, and that supplier is seeks to avoid.

Third: commitment to advice and guidance:

This highlights the commitment in the contracts concluded between a professional and another normal. The presence of varying experience, which emerge particularly in contract for purchase medicines which based on advice and guidance from pharmacist to the customer (buyer), when put medicine through internet, the company must clarify the medicine by a statement of advice and guidance in clear and visible way to all in advertisement through internet².

This obligation is common to all in electronic contacts concluded over the internet without exception. Thus as a result of rapid developments and instant enjoyed by the e-commerce, because it is being updated in real time, which requires a statement of advice and guidance, is essential to any contract entered into through the internet to maintain the contractual relationship sound from any imbalance in the future, and the advice and guidance shows the ability of the client that must be met to sign the contract that will be entered.

The person who committed to advice and guidance is a person who is professionalize and a person with experience to find a balance between his experience and the need of the client who wants to get contract fits his needs and desire. This put the two parts of contract in equal situation. Because the client (customer) Is in lower step of product knowledge, and this may be faced by providing advices and guidance to remove the ambiguity and entered into contract in full balance.³

The burden of compliance of advice and guidance is on the responsibility of a professional, this is what jurisprudence is agreed upon and the person who enjoys a high degree of professional provides advice and guidance to the customer. Because he doesn't have full knowledge about the merits of the contracts, which may be executed through advice and guidance this is binding to the professional, to keep balance between the parties of all issues of subject of matter of contract.⁴

The obligation of supplier built on two main pillars:

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- 13- Mohamed Hussein Mansour : Electronic responsibility, pub dar aljmea aljadeed for Publishing, Alexandria (2003), Page (56).
 - 14- Monteser, Suhair : commitment in insight ,pub dar alnahda alarabia, Cairo (1990), Page (41).
 - 15- Mohamed ali, Gamal Abdel Rahman : the debtor responsibility to producers and wholesalers of pharmaceuticals, PhD theses, submitted to the Faculty of Law, Cairo University (1993), pages (323)
 - 16- Hussein, Khaled jamal Ahmed : Commitment in telling before contracting, PhD theses Introduction to Assiut University School of Law (1996), pp. 81-82.

1- Introduce outstanding service by full vigilance so as to fulfill the need of customer and to satisfy him. And this satisfaction not be easy to revocation by providing the customer (client) by principles of profession and by all the matters relating to contract all of this is in the previous phase of contract conclusion

2- Customer must commitment to advice, introduced to him and follows it carefully, because in the case of bad using of this advice a variety of risks is expected .that may lead to impede the use of the subject matter of contract due to ignorance and lack of commitment to advice and guidance.

This obligation is a complement to cooperation and information, and applied to dealing with things that contain threats to the safety of the community, whether in nature or to an error in their use the same applies to the negotiation to be concluded over the internet; the subject matter of contract is likely to be out of reach of the customer so that he can't use, but information are sent about and some of the forms or catalogues that shows the subject matter of contract, tips and basic instructions for use.

A commitment to advice and guidance has to be complete so as to raise the attention of the customer of risks and disadvantages that may exposed during use. To be the advice and guidance productive we need to clarify all the means necessary to avoid this risk and statement it in detail through the statement of benefits that can be obtained as a result of the use of the product, as well as to demonstrate some of the risks or disadvantages that may appear during incorrectly use.¹

Advice and guidance must be in simple and clear language and must be customer orientation language, by using common sentences and phrases, and without using of professional terminology, which is difficult for the normal to understand. And he may be not familiar with professional language, phrases and instructions. These obligation must be clear and understandable and to appear to the client as a basic to use, but not just a recommendation. And must be at visible place, whether on the means that are negotiated through, or in a brochure supplement with the subject matter of contract, or through computer screen linked to the internet to show the transparency of contraction for everyone who want to sign contraction, the visibility and clarity of contract is important from the beginning, and must enclosed with program and not be separated.²

The second requirement:

“The nature of responsibility for the negotiation stage”

There was a judicial controversy about the nature of a responsibility for negotiation stage in case of any defect in any obligations in the negotiation stage to conclude the contract. Where some of jurist mind the responsibility as contractual, based on the theory of error, when you configure the contract. that the error in the negotiation stage is a contractual error; which follow it effect of contractual responsibility as a result of any defect in this stage, and apply the rules of contractual responsibility whether if this leads to void the contract or not.³

The German jurist Ohernj have adopted the opinion and assumed the existence of an insurance contract for each phase of negotiation to conclude the contract. And each party undertakes during negotiation not to block the contract, or void it. He based on tacit satisfaction to the party of the negotiation, the failure to conclude a contract or annulment is breach to an implied warranty. And the German Supreme Court went to build the negotiation stage with trust, honesty, and certainty in negotiation on both sides. And courts compelled the party who breached the commitment in previous phase of the contract, and intentionally neglect to conclude the contract with his full knowledge of irresponsibility to compensate on the basis of contractual responsibility.⁴

The other went to consider the negotiation physical work and non-binding without any legal affect, and any negotiator is free to break of negotiation without responsibility, and he is not required to provide justification for the withdrawal and therefore no obligation resulted on any party, in case of reverse, so that reprieve is not be a reason of liability, unless if he arbitrary in withdrawal or he acts contrary to the principle of good faith and the cooperation in negotiation.

As a result of previous matters tort fall upon the person who did it, on the basis of fixed error, and on the victim the liability of provident, and this is what settled by the court of Egyptian cassation, saying: “Negotiation is just a physical work not resulted to any legal effect, any negotiator is free to cut bargaining at the time he wants, without being subjected to any liability unless it accompanied by the error achieved with the tort; if it result in damage to the negotiated party.”⁵

We find that the Egyptian court of cassation rejected the idea of the theory of error when configure the

17- Mehdi , nazeeh Mohammed Sadiq : commitment before contracting by giving data relating to the contract , pub dar alnahda alarabia,cairo (1999) , pp. 15-16 .

18- Alahwani , Hossam El Din : sales contract in the Kuwaiti Civil law , University Press Kuwait , Kuwait (1989) , Page (477).

19- Aljmiei , Hassan Abdel Basset : requirements and exemption of hidden defects , a comparative study between Egyptian law and the law of the United Arab Emirates and European laws , pub dar alnahda alarabia,cairo , Cairo (1993) , Page (190).

20- Khalil , Azza Mahmoud : The problems of civil responsibility in the face of a computer virus , pub dar alnahda alarabia., Cairo (1994) , Page (155).

21- Sroor,mohamud shokry , Provisions of the sales contract,cairo;1997 pp25.

contract, but did not neglected this stage, if the parties accomplish a serious stage of negotiation, and what agreed upon was organized definitive agreement of the prior stage of negotiation to the conclusion of the contract. Here the negotiation turns from physical work into bind legal behave and the responsibility turns from tort into contractual responsibility. Jurisprudence and the French judiciary characterized between the two forms of negotiation, if it is accompanied with negotiated agreement the responsibility is contractual, and if it is not, the responsibility is tort. The French Court of Cassation identifies this when considering the error of negotiation withdrawing is the error of will of damage, that is any error of bad faith but not normal, that does not show any damage or bad faith of these who issued it.¹

From the above, we find that the opinion of the Egyptian Court of Cassation is the most likely, because it was consider negotiation as physical work, and the reverse of it is not binding and not lead to any liability unless it is accompanied by arbitrarily or in bad faith. Then be subject to legal responsibility and entailed by tort, on the basis of fixed error and the affected have to prove it.

And have been exclude the first opinion which considered the entailed responsibility on the negotiation stage as contractual responsibility; because it is difficult to introduce the principle of the guarantee contract in the negotiating stage. Because the contractual error, is virtual, tacit and intangible, which cannot be relied on to determine nature of responsibility because the contractual error is caused by a breach in the conditions of the contract, and here we find that the contract has not been entered and not will start to cause defect to it. Or result in a mistake.

But in the principle of French law we find the responsibility built on the thesis of: negotiation which accompanied with negotiation agreement, is not considered as contraction lead to liability, Because the agreement is not define as a contract only if it is origin, or carrier to comply, but if not accompanied by agreement shall be considered in tort, And not contractual availability of error as a result of bad faith.

If there are all the elements of tort and the error involved in the default implementation of the commitment with the availability of causal relationship, the victim deserves compensation for the damage as required by law.

And the study text of article (270) of the Jordanian civil law “null and void every requirement exemption from liability for tort”. we find that the legislator has considered the tort of public system, and therefore, any agreement contrary to discipline of public system is null and void, and not to be agreed previously by two parties of electronically negotiation to be expected from responsibility result on negotiation stage. All negotiation agreed upon and be contrary to public rules to be null and void.

Conclusions

The theme of the “negotiation phase in electronic contracts” is the topics that the researchers did not address in their studies significantly, because it is a modern and new subject.

Attempted in this study to view this subject in order to demonstrate, and explain through the opinion of legislators and Jurisprudence to reach a new vision about it and to provide information on this topic, to help the contractors, to benefit of them, and for researchers and scholars in the future.

Having completed the research in this topic all of its elements, and made clear the majority of its different aspects, must indicate findings of this research, results, and then put the recommendations and operation and legislative proposals.

First : results,

- Because this contract characterized by imbalance between the will of the parties, the nature of contract require to make the negotiation stage to reach a true contract without any ambiguity.
- The negotiation stage stand on the possibility element. And there is no consensus among scholars on the nature of liability in case of non-completion of the negotiation or not conclusion of the contract.
- Advice and guidance must be sent in clear language and must be client oriented, so as to be understandable and by using common phrase and not to use profession terms that are difficult for average person to understand.
- The commitment between the parties of negotiation is a double between: the usual man to make attention to reach contract suitable to circumstances of two parties and the extent of its relevance to them, and the extent of benefit from it and some of the risks that may confront them.
- In the case of the completion of the negotiation and when the negotiator arrive at a properly conception. He must fulfill the obligation of the fundamental contract, which was the conclusion of the agreement agreed upon, and he must not claim that he unable to complete the contract. Otherwise he will be legally accountable, because he violates the commitment of basic obligations placed upon him.

22- Muhammad Ali , Mohamed Waheed dept responsibility of the pharmacist , PhD theses submitted to the Faculty of Law , Ain Shams University (1993) , pp. 117-118 .

- Any agreement contrary to rules of public order is null and void, and it should not be agreed upon in advance between two parties of electronic negotiation, to exemptions from the responsibility of negotiation stage.

- If there is all the elements of the tort of error of shortening of implementation of the commitment, with the availability of a causal relationship, the victim deserve compensation for the damage as requires by law.

Second: suggestion and recommendations,

- These suggestions are summarized as follows:
 - The legislator must address this act in laws and regulations. Because it has become the necessities in our daily life, we find that many companies and institutions, but most of them are regulate their negotiations by electronic contract.
 - Reliance on principle of typical and negotiation to consider the electronic contract as consensual contract and not a contract of adhesion.
 - Consider the stage of electronic negotiation as a core obligation for its parties particularly in the contractual stage, so as to find a balance between the will of two party of contract to indicate extent of its suitable to client needs, and the availability of contract balance.
 - Activate of this legal obligation, and conclude it by helping of lower, so as to preserve the rights of the parties particularly the client, because of his lack of knowledge about electronically negotiation.

Reducing of standard contracts which contain a lot of imperfect things, find that there is some of contract indicate waiver of the mental rights in contract subject. This contract is not true, because the actions concluded to mental right is waiver of the rights of use, and not a waiver of all moral and financial rights.

References

- Ibrahim , Khaled Mamdouh held the electronic contracts comparative study , the first edition of Dar thought university Alaxandria , (2006)
- Al ahwany , Hossam El Din , (1989) : electronic contracts in the Kuwaiti Civil law , Kuwait University publications .
- The General Theory of commitment. The first part dar alnahda al arabiah , Cairo , 2006. • Aljamal ,sameer hamed contracting through modern telecommunication media comparative study. dar alnahda al arabiah , Cairo , 2006 .
- Almatalka , Muhammad Fawaz , : the brie in the electronic contracts , dar al thaqafa for Publishing and Distribution , Amman , 2008.
- Almomani , Bashar Talal : electronic contracting problems of online comparative study . The first edition , lalam al kotob , Aman 2004 .
- Jmiei , Hassan Abdel Basset al , (1993-- Aljmiei , Hassan Abdel Basset : requirements and exemption of hidden defects , a comparative study between Egyptian law and the law of the United Arab Emirates and European laws , pub dar alnahda alarabia,cairo , Cairo)
- Hussein , Mohamed Abdel Zaher : : Legal Aspects for the previous aspects befor contracting (2001) .
- Saad Ahmed Mahmoud , (1995) : Towards establishing a legal system to hold informational advice , the first edition dar alnahda al arabiah , Cairo
- sanhory , Abdul Razzaq , (1964): the mediator to explain the Civil law , the first part dar ehiae alorath , Beirut
- Shanab , Mohamed Labib (1976-1977) : Lessons in the theory of commitment, dar alnahdaa alarabia , Cairo
- Abdul Salam , Said Saad (2000) Disclosure of contracts, dar alnahdaa alarabia, Cairo.
- Ali , Jaber mahjoob , , (1995) : ensuring consumer damage for industrial defective products , a comparative study between the French law and the laws of Egypt and Kuwait , Dar Al Nahda , Cairo .
- muntaser , suhair , (1990) : commitment foresight dar alnahdaa alarabia, Cairo.
- Mansour , Mohammed Hussein : Electronic liability , dar aljamaa aljadedeah Publishing , Alexandria , 2007
- Mahdi , nazieh Mohammed Sadiq , (1999): commitment before contractinge Ments relating to the contract , the Arab Renaissance House , Cairo

theses

- Ismail , Tharwat Fathi , (1987) : Responsibility deptor for professional seller , manufacturer , distributor , PhD theses Faculty of Law Ain Shams University in 1987
- Hussein, Khaled Jamal Ahmed, (1996): commitment indiscloure befor contracting , PhD theses submitted to to assute University ,Law college
- Khalil, Azza Mahmoud, (1994):civil responsibility the face of the computer virus , PhD theses , submitted to the Faculty of Law , Cairo University
- Rashidi, Mohammad Sulaiman Falah al , (1998) : The Theory of the commitment to ensure safety in the

- framework of the development of responsibility Streptococcus ,comparative study , PhD message submitted to the Faculty of Law , Ain Shams University
- Rifai , Ahmed Mahmoud , (1994): consumer Civil Protection contents , PhD theses submitted to to Zagazig University Law School in 1994
 - Arabs salameh fares , (1998) : the way of reatment of imbalance in contracts of international trade law , PhD thesis submitted to the Faculty of Law, Cairo University
 - Ali, Gamal Abdel Rahman Mohamed , (1993) : Civil Responsibility for producers and wholesalers of pharmaceuticals , PhD Thesis submitted to the Faculty of Law, Cairo University
 - Ali . Mohammed Wahid Mohamed Mohamed , (1993) : Pharmacis civil responsibility , PhD theses submitted to Faculty of law Ain Shams university .
 - Mabrook , Mamdouh Mohamed Ali , (1998): the Tighten of selling knowing and its applications beside progress in modern technology comparative study between civil law and Islamic jurisprudence , PhD theses submitted to Cairo University Faculty of Law .

Research

- Fezia , Anwar Ahmed , (1994): advise contract in the field of access to electronic Computers system ,research published in the Journal of Law, issued by the University of Kuwait, the second issue .