

Following the breach of contract with the client by the electronic authentication authority in Jordanian legislation

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Abstract

If the contract is valid, it gives rise to obligations under each of the contracting parties and the duty of each party to perform the obligation incurred. If one of the parties breaches the obligations incurred, refrains or refuses to perform the obligation, then, in the present case, the contractual liability incurred by the breaching party as a result of the breach of its legal obligations. Accordingly, nodal liability is considered an effect of the obligation, arising out of a breach of a contractual obligation, and therefore if a contract arises between the applicant for the electronic authentication service and the provider for the electronic authentication service. If the elements of the contract liability are present, compensation must be awarded to the electronic authentication authority or the right to avoid the contract between the parties.

Introduction

Improved human performance in all aspects of our lives has been driven by the development of technologies to achieve these goals and by the development of these goals from the traditional to the electronic. The computer that has been introduced to develop information-based transactions and the integration of information and technological technologies has been used, making life faster and easier.

This was a motivation for seeking ways to reach the protection of these transactions. States have therefore sought to establish rules governing the proof of these transactions in order to build a close relationship between clients so that the concepts of reliability and security in this electronic environment can be enhanced by finding appropriate and appropriate means to deal with this electronic environment, which documents such transactions in such a way that the parties to the relationship feel that the legal rules and the bases on which such transactions are based achieve reliability by making them easily accessible when needed.

Building on the above, the legislative approach has been to motivate and encourage parties to use this environment to engage in their dealings by creating the means and mechanisms to maintain this excellence, creativity and progress. The electronic authentication service or the electronic authentication service provider, which has taken an important place in this virtual environment, has come from the role and functions it plays in this electronic environment because of the ambiguity and uncertainty with which the transactions take place.

At the same time, the parties may be unaware of each other, so caution remains the basis for dealing in this environment, so it was all driving the search for a safe and secure approach.

All of this is verified by the failure to provide a certificate to confirm the authenticity of the signed information and not to falsify or manipulate it. The authentication authority plays an essential, vital and important role in the conclusion of the contracts. This body gives the electronic authentication certificate, which is an electronic record that gives the dealers the confidence and security to conduct their transactions with the utmost confidence and confidence that their rights are preserved and their transactions documented. Based on the foregoing, we recognize the important role played by the electronic authentication service in electronic transactions. We have many questions, including whether there is legal liability for breaches of obligations and what type of liability? These questions will be answered through our research on the subject by showing the adequacy of the rules governing liability arising out of breach of contractual obligations, and these questions will be answered by dividing this research into:

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First: Nodal responsibility

The stature of the electronic authentication service provider prompts us to seek to determine its liability through the Electronic Transactions Act, the Electronic Authentication Authority Regulation System, as well as the Universal Model Law and, finally, the application of general rules on civil liability in the absence of special civil liability regulations.

Second: Impact of the liability report on the electronic authentication contract

Liability arising from breach of contractual obligations of electronic authentication

The liability of the electronic authentication service provider in Jordanian legislation is incurred when it breaches one of its agreed obligations, as provided for or imposed by law, as in the case of issuing an electronic authentication certificate or maintaining the confidentiality of the information.

In order to provide for three conditions, a valid contractual relationship, and subsequently a breach or default of the contractual obligation and finally damage to those to whom the contract is based, contractual liability is necessary.

Elements of nodal responsibility:

Contractual liability has three pillars: fault, damage and causation between fault and damage.

1. Contract error. The Jordanian Civil Code provides for a statement of the act giving rise to nodal responsibility in the form of a breach of the nodal obligation, through the failure of the electronic notary to carry out its obligation, whether willfully or negligently (imprint, 2002).

It can be argued that in the event that a party to a contract has made an error in the performance of the obligation, this deviation, whether positive or negative, is not only for the mere reason of non-performance of the obligation, arises in the event that the debtor takes a course or methods leading to its accounting as a result of its values in this act (Sultan, 2019).

This course of deviation has a criterion that goes back to the usual person, and this idea is based on the middle person between the neglected person and the eager person, in order to determine whether the person has been neglected or overextended in the same trade, caste, work or profession (Fetlaui, 2014).

The usual man does not do such work if he is exposed to the same circumstances as a debtor (Al-Sarhan,...).

Only those whose obligations to third parties are unusual or not, unless there are reasons to prevent them from fulfilling their obligations that are beyond their control (Al-Jubouri, 2011)

If the debtor fails to perform its obligation, it is deemed to have deviated from normal conduct and is mistaken on the basis of this act of non-performance of obligations, whether in its entirety or in part or late in its performance, which determines the existence of nodal liability and which the debtor is obliged to pay compensation to the creditor (Sultan, 2019).

Based on the above, the cases of breach of contract with the electronic authentication authority are summarized as follows:

- The issuance of the certificate of certification is not in accordance with the formal and objective requirements of the law agreed upon by the parties.
- The late issuance of the certificate of certification by the authentication authority, which would result in the disablement of the applicant's interests. - Delivery not in conformity with the certificate to be issued.
- The authentication authority has abandoned the issuance of the certificate without informing the party requesting the certificate and without legitimate reasons;
- Giving information or data about the client without his knowledge or consent

The deviation of the electronic authentication authority and the failure to implement the resulting obligation is compared to the normal conduct of the legal entity if found in such circumstances.

A statement of contract error requires a distinction between two types of error, an intentional error and a deliberate error. If the debtor is intended to carry out a particular act, and it is understood that such an act would cause harm to the creditor, such as the delay by the electronic authentication authority in delivering the certificate on time. It is aware of the importance of handing over the certificate or issuing the certificate on which the conclusion of a contract or the performance of an obligation is considered to have been intentionally committed, and will assume its intentional legal responsibility in this case. (358/2) In any case, the debtor remains responsible for its fraud or serious error

It must be pointed out that the obligation in turn is divided into two parts, the first called achieving a result and the second carefully. Is the obligation of the notary to do care or to achieve the result that the answer requires us to do what is meant by each of them?

1: the obligation of care is intended

for the authentication authority to take the necessary care to issue the certificate of certification, such as the doctor who takes the necessary care to treat his patient. Here, the authentication authority is deemed to have fulfilled its obligation if it makes a certain effort to issue the certificate of certification or to preserve the confidentiality of the information and therefore does not, and does not, give rise to any contractual liability if it makes an effort to implement the obligation, even if it cannot implement the obligation to issue the certificate of certification.

2: Commitment to an outcome.

The obligation of the authentication authority in this type of obligation is the result to be achieved from the contract at the time of its conclusion and the failure of the debtor to perform the authentication authority is the failure to achieve the result required under the contract. The delay of the authentication authority in delivering the electronic authentication certificate is due to the intention that the result should not be achieved, as well as the disclosure by the authentication authority of the client's secrets, which has breached the obligation to refrain from a particular act of disclosure.

Based on the above, the authentication authority's obligation is to achieve an outcome. This is the fact that the authentication authority's obligation is to issue the authentication certificate after the applicant has submitted all the necessary requirements for the issuance of such a certificate.

After completing the first element of the error, we came up with a statement and mentioned the second pillar of the damage.

Second: Damage.

Article 62 of the Jordanian Civil Code stipulates that: Damage is an important pillar of civil liability (contract or default), since it is not sufficient for a contract liability to cause an electronic authentication breach to produce a result, but there must be damage to the customer or the applicant of the electronic authentication certificate, and such damage must be in the interest of an legislator (FL, owner).

Damage can be defined as injury to the person in his or her property, body, presentation or emotion (Impulse,2002).

Damage intended to affect and attack the customer's right with the notary or a legitimate interest (Jaber, 2008)

Anything that would reduce or affect the rights of the person (client) or the applicant of the certificate of certification in a manner that affects his or her financial integrity is considered to be damage on the basis of civil liability, and such damage must not be probable but must indeed be done (Mansour, 2007).

Damage to the contract between the client and the electronic authentication destination affects the customer if it is the result of the authentication fault or default.

This damage to the nodal liability of the certificate applicant or client is threefold as follows:

1. Physical damage. The damage caused by the error of the electronic authentication authority. The failure of the electronic authentication authority to issue the electronic authentication certificate or delay in delivering the electronic authentication certificate is a cause of material damage to that customer or the electronic authentication certificate student.

2. Bodily Harm

This type of damage is intended to cause harm to the person in his or her body (Algburi, 2009).

The researcher believes that this damage cannot be achieved in this kind of transaction.

3. Moral (moral) damage

This type is related to human dignity, reputation and emotion. Therefore, it is not about the human body or the human property. The damage is immaterial.

By reference to the text of article 267, which also deals with the right to secure moral harm, any person who is liable to be bound by the law, to be offered, to be offered, to have his or her honour, to have his or her reputation, to have his or her social status or to have his or her financial consideration shall be liable for annexation.

According to a decision of the distinguished Jordanian Court of Cassation ("The worker must take account of the requirements of decency and literature in his actions. The worker's departure from these requirements is considered to be a breach of his contractual obligations, and the harm caused to the employer must be guaranteed in accordance with the rules of nodal liability."

Based on the above, any damage to the reputation or honour of the client or even the threat of the client's affection by the electronic authentication authority through its employees is compensable in this case.

After we have outlined the second pillar of nodal responsibility, we must finally address the three pillars of nodal responsibility called causation.

Third corner: Causation between contract error and damage

This element is intended to be damage arising out of a contractual error so that the nodal liability is established. Otherwise, the perpetrator or the cause of the damage to the client is not obliged. Consequently, there must be a link between damage and error, called causation. (266) "In all cases, the security shall be assessed to the extent that the injured person has suffered damage and gain provided that it is a natural consequence of the harmful act." ." If the damage is a natural consequence of the contract error, then the liability of the electronic authentication authority is if it is his or her contract fault that has damaged the customer or the certificate applicant.

Although a causal link is required, this link is presumed to exist between the client or the applicant of the electronic authentication certificate. The client is not charged with proving the relationship or the link, but is required to establish the fault and damage. Therefore, a causal link is assumed between these two pillars. In this case, the electronic authentication authority is only required to deny the link by proving the foreign cause (Farage, 1933).

If the damage occurs as a result of a foreign cause that the notary is not bound by the security. If there is more than one cause for the injury, then the reason for the damage is not the incidental cause, but the productive cause, because it is usually the person who caused the damage and consents to the natural course of things. If the reasons for the damage are numerous, then this principle is more likely to bring justice between the principle of causality between injury and act (Mosus, 2001).

After the researcher has indicated the elements of the nodal responsibility of the electronic authentication authority, the search of this researcher will indicate the effects of the nodal liability of the electronic authentication entity.

Second: Effects of the contract liability of the electronic authentication service provider

If the elements of contract liability are present, the liability of the electronic authentication service provider based on the contract is realized and compensable on the basis of this liability. Compensation is therefore considered to be the most significant effect of the performance of the contract liability of the electronic authentication service provider when it fails to perform or fails to perform or fails to perform its obligations resulting in liability.

1. Compensation as an effect of electronic authentication liability

The electronic authentication authority shall be obliged to compensate if there are conditions for the contractual liability of the electronic authentication authority for any damage caused by such breach.

The meaning of compensation has been defined as "the liability of the civil liability official against the injured person is the penalty of liability and compensation is either financial or in kind. Compensation is when the electronic authentication authority is found to be in breach of the obligations established by the contract, namely, to issue the electronic authentication certificate and observe the terms of the contract and the same for the client for the other party" (Shafiq, 1984).

He also defined "as the penalty for breach of obligations arising out of contracts in contract liability and for unlawful act contrary to the law in tort liability (Aarfa, 2005).

It is the law that imposes compensation as a result of a breach by the electronic notary of its nodal obligations or for the commission of a harmful act that has caused harm to the client or third parties, forcing damage by payment of a sum of money to be the penalty for payment of the injury to the injured person as a result of the damage suffered (Homelands, 2015)

Based on the foregoing, the claim for compensation is required to:

It was the electronic authentication error that caused delay or failure to execute

2. Electronic authentication excuses to perform its obligation, but if implementation of the obligation becomes ineffective or not possible, there is no need for excuses in this case.

3. So the damage was proven.

After the researcher has reviewed the conditions to be met for compensation, the types and forms of compensation must be explained through Mayti:

Two types of compensation have emerged:

1. Monetary compensation: This type of compensation is the fact that the perpetrator or agent of the damage gives the injured a specified amount of law, which he or she is obliged to perform as a result of his or her harmful act, which may have been the result of a breach of a contractual obligation (Algburi, 2010).

On the basis of the foregoing, if the contract liability of the electronic authentication authority is to be established, the claimant must be compensated for damage to a specified amount of money, commensurate with the injury suffered by the injured person. Thus, article (363) provides: "

If the security is not recognized in the law or in the contract, the court shall estimate it to be equal to the damage actually done at the time of its occurrence. "

2.. Compensation in kind:

This type has taken on particular importance and does not fall within the scope of nodal obligations (Bracelet, 1976).

Article (269/2) of the Jordanian Civil Code stipulates that: "The guarantee of cash shall be assessed as being that the court may, in accordance with the circumstances and at the request of the injured person, order the restoration of the situation or order the performance of a particular order relating to the harmful act by way of inclusion."

On the basis of this article, the Jordanian legislator has authorized the court to pay compensation in kind, which may be restored to the status quo ante. Compensation in kind is therefore intended to mean that the official who committed the fault or the harmful act that caused the damage restores the situation (Al-Jubouri, 2010).

On the basis of the foregoing, the breach by the electronic authentication authority of its contractual obligations requires the establishment of nodal liability, which requires compensation, which can be in kind through the provision of the service agreed between the parties, and compensation in kind in this type of liability, but in the event that performance in kind becomes impossible or of little benefit, monetary compensation is awarded in this case.

Where possible, the court forces the debtor by its judgement after excuses to perform what it is obliged to do in kind, but in such a performance in kind, the court may at the debtor's request limit the creditor's right to a monetary compensation requirement if it does not cause serious harm to the creditor.

The particular nature of this type of contract, which is linked to the nature of the work performed by it, in particular with respect to the function, work or issuance of the electronic authentication certificate, makes the scope of compensation more generally related to monetary compensation rather than to in-kind performance. For example, if the electronic authentication service provider is late in performing the work agreed upon by the parties and is based on the issuance of the authentication certificate, which has produced damage as a result of the delay, and at the same time the implementation of the obligation in this case becomes useless,.

2. Avoidance of contract with electronic authentication

The Jordanian legislator states in article 1/246: "In contracts binding on both sides, if one contract fails to fulfil its obligations under the contract, the other contract may, after excusing the debtor, claim performance of the contract or the contract. "

The same article (264/2) also provides that: "The court may require the debtor to perform the case or to hear it for a fixed period of time and may order avoidance and compensation in any event if it has a condition."

This avoidance is determined by article 246/1 that the applicant must have excused the debtor and the judge has discretion with respect to the award of avoidance. "

The avoidance may also be agreed by virtue of article 245: "It may be agreed that the contract shall be deemed to have been destroyed on its own initiative without the need for a judicial judgement if the obligations arising from it have not been fulfilled. This agreement shall not be excused, unless the contractors expressly agree to be exempt from it."

Based on the foregoing, avoidance is the effect of failure to implement the obligation, breach of performance of the

obligation or delay in carrying out the obligation. Therefore, in this section, what is meant by avoidance and the conditions that must exist in the avoidance and the types of avoidance will be defined.

First: Definition of Avoidance

What is meant by avoidance is that avoidance is the positive means of the creditor's right when the debtor is in breach of its obligation. This reflects the non-performance payment. It is the passive way of the creditor to respond to the debtor's breach of performance.

The doctrine of avoidance has been defined as the dissolution of the contract link as a sanction for the breach of one of its obligations arising out of the contract by one of the parties to the contract binding on both sides.

It is defined as "termination of the relationship between contractors at the request of one of them, if one of them is in breach of the performance of its contractual obligations and avoidance is only judicial."

It was also defined as "a sanction for the contractor who breached his obligations, and the original fact that the avoidance was by a judgement of the court, which he called judicial avoidance."

Avoidance is a dissolution of the nodal bond, a sanction for the breach of one of its obligations arising out of the contract by one of the parties to the contract binding on both sides.

Deconstruction: Contract Link Solution ◊ The higher contract provision of the original is also known as if it was not used. The word avoidance sometimes means lifting the contract out of it.

Having outlined the definition of avoidance, we can now set out the conditions for avoidance of the contract, which are as follows:

First condition: Breach of the performance of its obligations by the electronic authentication authority

Second condition: That the client requesting the electronic authentication services has fulfilled its obligations or expressed its willingness to fulfil it.

Third condition: is that it be a mutual contract.

Fourth condition: The need to limit the warning necessary to verify the case of breach of implementation of obligations

Based on the foregoing, the use of the right of avoidance in an electronic authentication certificate contract or any transaction by the electronic authentication authority is based on one of the following reasons:

1. Failure to issue an electronic authentication certificate

One of the most important duties of the electronic authentication authority is to produce the electronic authentication certificate, which is the basis for the work for which it was found. Through this certificate, the customer with the certificate is able to gain the trust of others who are encouraged to seek to enter into electronic contracts with the holder of the certificate, through which the electronic signature is attributed to its owner (Obadat, 2021). If an electronic authentication service provider fails to perform its main obligations in such a way as to cause harm to the customer, then here it can claim avoidance of the contract

2. Lack of confidentiality the duty not to disclose the data received from the client is a legal obligation, which results in the violation of article 25. From the Electronic Transactions Act where authentication is punished... If the secrets of an agent are disclosed by a fine specified by law.

3. Non-compliance with technical specifications and standards issued by the Board If the electronic authentication service operates without such approved international standards, which have led to the hacking of the information and data in its system, it is subject to the legal issue and the penalties for such breaches, which include the right of avoidance, in which case the client is able to recover and compensate for the damage suffered in the case.

4. Issuance of the certificate of documentation on time and agreed upon Where the authentication authority's obligation to issue documentation to the client on time and agreed upon is an important obligation of the issuer of the authentication certificate, if the electronic authentication authority is delayed by giving a certificate, the witness's applicant has the right to seek avoidance of the contract and claim compensation unless the court decides to give additional time for the issuance of the electronic authentication certificate.

Once the conditions for the use of the right of avoidance have been set out and some images of the application of this right are displayed, the types of avoidance will be described in the electronic authentication contract:

- Judicial avoidance: This is where the provisions of the law apply.

- The agreement between the parties applies (client and electronic authentication).

After the completion of the statement of what the avoidance is, the conditions to be met and the types of avoidance, there must be implications for the contract of such avoidance:

Legal text:

Article 248 of the Jordanian Civil Code states: "If the contract is broken or avoided, the contractors shall be returned to the pre-contract situation and, if it is impossible to do so, compensation shall be awarded."

On the basis of this provision, the contract between the client and the electronic authentication destination, if the avoidance is determined, whether legal or contractual, would result in the dissolution of the contract from the time of the contract or from the time of the avoidance, which means that the contract was not for the contractors,

Conclusion

Finally, despite the importance of regulating the civil liability of the electronic interest service provider, the Jordanian legislator did not introduce civil liability provisions in electronic transactions, but kept them subject to the general rules requiring the application of the general civil liability rules to the electronic certification service provider or the electronic notary

Nodal liability remains with the certification service provider if the latter is free of the obligations imposed by the Jordanian legislator in the Electronic Transactions Act, which result in damage. This liability takes two forms, contractual liability and default liability, both of which relate to compensation for damage caused by the fault, regardless of its origin or cause, by the restitution of the right to the injured owner, either for or against one of the contractors or others.

The Jordanian legislator did not introduce nodal liability provisions in the electronic transaction system, but kept them subject to the general rules. This makes it necessary to apply the general rules of nodal liability to the electronic authentication service provider. "Since, in the course of performing its work, an electronic authentication service provider enters into two relationships, a contractual relationship between itself and the signatory, governed by contractual liability, and a relationship between itself and the person relying on the electronic signature and governed by tort liability. And our research only guarantees nodal liability.

Results

By looking at the various sources and references of this research that have been used to draw conclusions from them and after analysing and extrapolating their topics, I have come to:

1. The electronic authentication service provider is a professional in the field of electronic authentication, so the standard of the average man is applied to it, but with a degree of rigour.
2. The liability of the electronic authentication service provider is based on the fact that the client or supplier has inherited the beneficiary creditor by proving that the electronic authentication service has breached its obligation.
3. The failure of the electronic authentication authority to provide the agreed and prescribed services requires compensation in this case
4. The electronic authentication contract is of a nature that requires special regulation in terms of determining the nodal responsibility of the electronic authentication entity.
5. This study found that the Jordanian legislator did not single out specific provisions to regulate the contract liability of the electronic authentication service provider.

Recommendations

- The researcher proposes to the Jordanian legislator to intervene to codify the legal nature of the electronic authentication obligation by establishing legal texts to determine the legal nature of the electronic authentication obligation, so that the contracting party with its rights can obtain compensation for the damage suffered.
- The researcher proposes that the Jordanian legislator should include in the Electronic Transactions Act a text consistent with the nature of the nodal liability of the electronic authentication authority, so that it is bound to achieve an outcome rather than to exercise care.

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References

- Al-Sassama, Abdul Aziz (2002). The theory of obligations in the light of comparative civil law, default civil liability (harmful act), i1, 23ص
- Sultan Anwar, (2019) Sources of Commitment in Civil Law Study Compared to Islamic Jurisprudence, Culture Publishing and Distribution House, p. 232
- Al-Futlawi, Sahib Obeid (2014) Sources of Commitment, Easy to Explain Law Part II, Without Publishing House, p. 276
- Al-Sarhan Adnan, Explaining Jordan's Civil Law, p. 313
- Al-Jubouri, Yassin (2011) Jordan's Civil Law Explains Part 1 Sources of Personal Rights Sources of Obligations Parallel Study, p. 403
- Sultan Anwar, (2019) The same reference, 232
- Jordanian Civil Code No. (34) of 1976
- 1976 Al-Fathlawi, Sahib (2014), former reference p. 277

