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Anticipatory Breach of the Contract in the Jordanian Civil Law: A Comparative Study

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Abstract

This letter mainly aims at rooting the theory of Anticipatory breach of contract in Jordanian civil law, to reach the positions of harmony or not in this regard, in the spot of English civil law promulgated in 1853 AD. It is considered the creator of the roots of that theory, then Vienna Convention for the international sales contract agreement of the goods for the year 1980. The Unidroit principles of the international Commercial contracts amended for the year 2010 AD The researchers concluded that the Jordanian civil law does not have a special organization for the principle of premature breach of the contract as an unnatural means to terminate of the contractual gap between both parties concerning general rule of the rules that govern the contract. In addition, it is possible to apply some other legal resources to exclude the legislatorial application of the provisions of both contracted parties. However, this does not mean that Jordanian Citizens do not consider this theory implicitly in the texts of the Jordanian civil law In conclusion, the researchers recommended that the Jordanian legislator to adopt the theory of Anticipatory or prior breach of the contact, like some of the legislation that adopted by adding regulated texts and provisions in the Jordanian civil laws as founded and adopted the standard documents for international sale in some laws because of the importance of this theory therefore, it can't be ignored. In addition, there are several justifications imposed as one of the reasons for termination of the contractual bond before its time.

Keywords: *Anticipatory Breach, Jordanian Civil Law, English Civil Law, The Vienna Convention.*

The Introduction

It is considered the first resource of the commitment resources in terms of the arrangement according to the Jordanian civil law and it developed according to the development of the relations between the members of society. Since no one denies the importance of the contract in our daily life, as it is the basis and essential on which financial transactions in society are based and through this, various relationships between persons are regulated (Abdullah, et al., 2000).

The Jordanian legislator defined the contract in the provisions of the civil law. "The connection of the acceptance, which is issued by one of the two contracting parties to the acceptance of the other"[3]. The esteemed Jordanian Court of Cassation confirmed this in many of its rulings[4].

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[3] The text of Article (87) of the Jordanian Civil Law No. 43 of 1976 AD, which defined the contract.

[4] Decision of the Jordanian Court of Cassation, Cassation of Rights, No. 1454 of 2005, issued on 10/16/2005, Qistas Publications. http://qistas.com/ar/search, in which it says: "It is understood from the text of Article 87 of the Civil Code that the contract is the connection of the offer issued by one of the two contracting parties with the acceptance of the other and their agreement. The agreement a way that proves its effect on the contracted upon, and results in the commitment of each of them to what he owes to the other, and the contract may be valid or void, corrupt or suspended."

Consequently, each of them must committed to the other, which was confirmed by the respected Jordanian court of Cassation in many of its provisions.

The contraction parties must respect the contractual relationship that they decided to get into of their own free and will also respect the terms and conditions that they agreed about. The legislator granted the creditor several means Legal if the debtor fails to fulfill his commitment within a specific time that was agreed upon between the two parties, as a request of a real execution, termination of the contract, or execution for consideration because of this breach.

Therefore, any contract must naturally expire, but the contract may not even remain valid until it expires naturally by the agreed deadline in the contract, or both two parties agree to stop it or the fulfillment of the commitments that constitute it. It may end prematurely, an end that comes by stopping its implementation before the execution of the contract (Ali, 2003: 358).

The idea of premature breach of the contract (prior) came to overcome what the debtor was doing before a deadline for the implementation of his commitment obviously, due to his behavior that he will not implement what he has committed to in the contract time. Moreover, that such a breach has become inevitable or is about to occur soon, so it is unfair for the creditor to wait until the time limit for the implementation specified in the contract has arrived, and then act. The legal means granted to him by the legislator against the debtor who has failed to implement his contractual obligations.

In according to the Jordanian civil law, and most Arab civil laws, there is no regulation in it. Specifically, the theory of Anticipatory breach of contract, and therefore the idea of it can be attributed to the general rules in the contract theory, such as the principle of good faith.

The theory of reason in the contract, and others as the Aleandero Principles on Commercial and International Contracts (2010), considering that they are complementary and interpretive of the laws. Provided that it does not exclude the application of its provisions which are not excluded by the express agreement of the two contracting parties and these principles included several provisions that allow.

the contract to be amended or terminated. It dealt with the Anticipatory breach of the contract in Articles (7/3/3) and Articles (7/3/4) (Dawas, 2016: 233-236)[5]. On the other hand, the Jordanian legislator stopped dealing with the Anticipatory breach of the contract in the texts of the civil law.

Before starting to talk about the theory of Anticipatory breach of contract, we must point out that the divorce between the two parties to the contract by applying this principle has several justifications imposed by what is economic which is related to saving time and effort for the contracting parties, including what is legal. This was stated in the explicit text of the Article (246) of the Jordanian Civil Code, and among upon these justifications which took the international character. This is what came in the text of Articles (71 and 72) of the United Nations Convention on Contracts for the International Sale of Goods.

[5] The principles of Unidroit, for the year (2010 AD), dealt with The Anticipatory Breach of the Ordinary Contract mainly of the two legal texts in that, "Each party has the right to terminate the contract when it becomes clear before the maturity date. The other party will breach the contract in a material way. It should be noted that this has been translated this Principles from the French language into the Arabic language at the hands of a group of legal scholars from several Arab countries in a form of chapters. The first chapter contained in these two articles, General Provisions, Dawas, Amin (2016 AD), Explanation of the Principles of Nedr and International Trade Contracts (2010 AD), Al-Halabi Human Rights Publications, Beirut, page 233-236.

The Importance of Studying

Since the practical reality, especially in the field of international trade contracts, has revealed cases involving one of the contracting parties: declaring or disclosing his serious desire not to implement his obligation before the time set for its implementation, his inability to perform it or to perform it in a defective manner. All these reasons together represent the importance of the subject in this research.

In one hand, the importance of this study also lies in the means used to ensure its implementation, which is available only when the deadline for the implementation of the contract has been resolved and the other party has not Fulfill his obligations. On the other hand, the international community has been keen on developing unified legal rules governing international commercial activity.

Regardless of the nature of the legal system prevailing in each country, due to the differences in national legislation and the inability of national laws in most cases to keep pace with the development that occurred in international trade.

The Objective of the Study

Because of raising the issues of Anticipatory Breach of ingratitude the contract in practical reality. In addition to that, we aim in this study to find out what is it and its implications, with the aim of rooting the theory of Anticipatory Breach of the contract in the Jordanian civil and commercial law in the light of the unified rules for international sales. In addition to the general rules in contract theory, it is possible to refer to other legal sources that authorize the application of the content of this theory, if the contracting parties do not agree to exclude its provisions.

The Problem of this Study

The problem of this study is that the theory of premature ingratitude of the contract is a departure from the ordinary traditional rules, which is the termination of the contract with the expiry of its term. Since this theory is the result of the Anglo-Saxon system, according to which the creditor has the right to breach the contract before the deadline of its implementation. Moreover, he has the right to compensation for the damage that was caused because of the debtor expressly announcing his unwillingness or inability to fulfil his obligation before the expiry of his term. As a result, this may create many problems that should not be left without finding appropriate solutions; it is unreasonable for the other party (the creditor) to wait until the date of contract execution to say that the breach has occurred, and therefore the other party resorts to the judiciary to demand termination of the contract and compensation.

The problem of this research is also evident in the fact that the Jordanian legislator did not codify the provisions of this theory in the texts of the civil or commercial law, as is the case with other Arab legislation.

The Study Questions

This survey addressed many questions, including:

1. What is the anticipatory breach of contract?
2. How is the anticipatory breach of the contract?
3. When did the idea of anticipatory breach of the contract arise?
4. What is the attitude of the Jordanian legislation towards the theory of anticipator breach of the contract, especially the Jordanian legislator?
5. What are the most important resulting effects of the premature breach of the contract?

The Study Approach

In this research, we have preferred to use the comparative approach through a comparison between the position of English law and the Vienna Convention of 1988 AD, and the principles of Unidroit regarding the principle of prior breach of the contract, not to mention the position of the Jordanian civil law on it. In addition to using the analytical approach, by analyzing the texts and examining their meaning, especially in the Jordanian civil law, and extrapolating them to indicate whether there is a use of the theory of premature breach of contract in this law.

Theoretical Literature

To enrich the material of this research, the two researchers reviewed several previous studies that dealt with some aspects of this topic, including:

A Research titled: "Expectation of Violation and Prior Violation in the Contract / A Comparative Study" In it, the researcher concluded that the Kuwaiti civil law did not take into account the prior breach of the contract; rather, some methods were adopted to confront cases in which doubts arise about the debtor's ability to implement, such as the right of retention, as well as the plea for non-execution.

A study entitled: "Implementing the Principle of Premature Violation in UAE Law, a Comparative Study with English Law", In it, the researcher concluded that although the UAE law does not recognize the principle of premature breach of contract, as is the case in English law, However, the Dubai Court of Cassation ruled the implementation of the principle of premature breach in one of the appeals submitted to it in 2013. In a real estate, case since UAE law takes the principle of actual breach of contract, and therefore this researcher believes that these ruling records a judicial precedent in the United Arab Emirates.

To talk about this important controversial topic, we divided our study into two sections. In the first section, we dealt with: what is the principle of premature breach of contract and the position of some legal systems on it, such as English law, In the second topic: the principle of premature breach of the contract in the Jordanian civil law, and under each topic there are three demands, as follows:

The First Topic

The Essence and the Principle of Premature Breach of the Contract and the Position of Some Legal Legislation on It

The first requirement: definition of the principle of premature breach of the contract and its origin.

The second requirement: premature breach of contract in English law.

The third requirement: the premature breach of the contract in the Vienna Convention for International Sales and in the Principles of Alienidroa.

The Principle of Premature Breach of the Contract in the Jordanian Civil Law

The first requirement: the extent to which the principle of premature breach is applied in the event of a deadline.
The second requirement: cases of termination of the contract, in general, a premature end.
The third requirement: the consequences of achieving a prior breach of contract.

Conclusion

The Essence and the Principle of Premature Breach of Contract and the Position of Some Legal Legislation on It

The idea of premature breach of the contract has its provisions decided in order to face what might appear from an expected breach by one of the contracting parties to a contractual obligation that has not yet been due for fulfillment as agreed upon in the contract. Therefore, in this section, we will discuss the definition of the principle of premature breach of contract and its origin as a first requirement, and then we will discuss premature breach of contract in English law as a second requirement. Finally, we will discuss the premature breach of the contract in the Vienna Sales Agreement and in the international principles of Lindro as a third requirement, as follows:

The Definition of the Principle of Premature Breach of the Contract and Its Origin

Breach of contract is generally defined as: "Failure to perform a contractual obligation without a legally valid excuse" (Mckendrick, 2012: 755). The word "breach" is mentioned in the comprehensive dictionary of meanings with several meanings, including non-compliance, failure to fulfill something, failure to abide by covenants, and negligence. As for the word "intermediate", it was also mentioned in the language dictionaries with different meanings, as it came in the dictionary of the comprehensive meanings with the meaning of "non-completion".

So, we say a premature birth, **i.e.** the exit of the child before the completion of the pregnancy period, and we also say, "premature labor" which means "immature labor", and "Besr" comes with the meaning of "urgency"[6] (Al-Afriqi, 2007).

Any contract must specify a date for its implementation by its parties, but it may happen that one of the parties to the contract before the date set for its implementation. Evades the implementation of what he has committed to, or carrying out an action that would prevent the implementation of the contract so that it makes the implementation of the obligation impossible, and this in turn leads to the collapse of the contract. This is called a "premature breach of contract.". If one of the parties to the contract, before the date specified for its implementation, renders himself unable to implement the contract without requiring the presence of the willful intent of not being able to perform on the part of the defaulting party (the debtor)[7] (Obeidat, 2009: 399). Failure to implement the contract takes many forms, including: the debtor refuses to implement his obligation, delays its implementation, or performs it partially and defectively (Abu Steit, 1954).

There are many definitions of the concept of "premature breach of contract", and each of them is viewed from a different angle than the other. There is no specific definition of the premature breach of the contract[8] (Ali, 2014: 767), as there are those who defined it based on the characteristic of inference as a breach of a future obligation of execution whose occurrence is inferred in advance through the actions or words issued by the debtor. Others looked at him

[6] For more details, kindly refer to: Gawadreh, Muhammad, Zaidan, Basil, Al-Akhras, Azmi Hussein, and others, Al-Ma'ani Al-Jami' Dictionary, the letter Al-Ba', as well as the letter Al-Kha', Ain Al-Jamea Library. Also, kindly refer to: Ibn Manzoor, Jamal Al-Din Bin Makram Al-Afriqi Al-Masry (2007 AD), Lexicon of Lisan Al-Arab, Letter Al-Baa', Dar Al-Ma'arif.

[7] The principle of prior (premature) breach of the contract prepared for implementation, a comparative study between English law and the Jordanian civil law, research published on the Dar Al-Mandumah website at the link: http://search.mandumah.com.

[8] premature breach of the contract for the international sale of goods, a study in the 1980 Vienna Convention and comparative legislation, Journal of Legal and Economic Research, Mansoura University.

from a second angle considering it is the breach represented by the debtor's refusal of his contractual obligation before the date specified for its implementation. Therefore, the concept of prior breach of the contract was a matter of controversy and disagreement. One of them defined it as: "A breach by one of the contracting parties that occurs prior to the time of implementation, in such a way that this party refuses its commitment in advance. This is if it is clear from his statement or action before the time of execution that he will breach his obligation when it is due (Mohsen, 2012: 73).

Moreover, there is an opinion, and it is the majority that says: "The prior breach of the contract is achieved when the creditor explicitly declares that he accepts this breach as termination of the contract or files a direct suit to claim compensation." And that acceptance must be clear in the words or behavior of the other party. But in principle, the failure of the debtor to implement his contractual obligations when their due date is considered a breach issued by him, regardless of whether the creditor accepts this matter or rejects it (Al-Sanhouri, 2004: 536).

Accordingly, the researchers believe that the requirement that the declaration be expressly accepting the prior breach of the contract is misplaced, as it should not require the availability of a certain formality. Also, deriving that out should be left to the discretion of the trial judge who must extract acceptance from the circumstances surrounding each case separately. Therefore, silence is considered an implicit acceptance of the prior breach with respect to the other party, enabling him to take whatever he deems appropriate according to his personal interest.

For it to be said that there is a premature breach of the contract, the contract must be one of the contracts binding on both sides, it is not conceivable to breach contracts binding on one side, such as a deposit, for example. Thus, we must be in the process of signing a binding contract for two sides that arranges opposite obligations between its two parties.

And based on the, the researchers suggest the following definition of the concept of premature breach of contract which is: "One of the parties to the contract is certain - that is, his knowledge and verification - that the other party (the debtor) will not be able to fulfill his future contractual obligations when the deadline for its performance is due. So that this leads to a breach of an obligation not yet due for performance, this is inferred from the act or statement issued by him before the execution deadline or it becomes clear to him conclusively that the performance of this obligation in the future will be impossible or burdensome for him.

Premature Breach of Contract in English Law

The English judiciary is the innovator of the roots of the theory of premature breach of contract or premature ingratitude of the contract, and to it the historical origin of it goes back. Whereas, since 1853 AD, English law granted the creditor the right to terminate the contract and the possibility of seeking compensation for the contractual breach before the expiration date. In the well-known case known as De La Tour V (Hochster, 1853: 687), the facts of the case are summarized as follows:

Edgar De La Tour agreed to hire Albert Hochster as his courier for three months, starting from the date of 1/6/1852 AD, except that twenty days before the execution date. On 11/5/1852 AD, De La Tour wrote to Hochster telling him that he had changed his mind and would not hire him as he had previously agreed. This prompted the latter to file a lawsuit, arguing that the defendant (De La Tour) had disavowed his obligations and that this constituted a breach of the contract, demanding compensation from him. As a result, the court issued its

famous decision headed by (Lord Campbell), which is considered the first judicial precedent for the theory of premature breach of contract, in which the right of the plaintiff (Hochster) to sue for compensation was affirmed. And that he is not obligated to wait until the specified time to fulfill the obligation, which was scheduled on 1/6/1852 AD, In order for him to file a lawsuit, and then the English courts in particular and other courts that apply Common Law began to apply this theory (Shanab, 1961: 400).

Accordingly, the principle according to English law is that rescission takes place at the will of the creditor alone, as he is the one who estimates that a breach occurred on the part of the debtor. He is the one who initiates the termination of the contract on his own, without the need to resort to the courts. This matter is like what was also stated explicitly in the text of Article (246) of the Jordanian Civil Code, which we will explain later in our discussion of cases of premature termination of the contract. Thus, according to English law, two trends have emerged regarding the theory of premature breach of contract:

The First Direction: consider that any act or statement issued by the debtor prior to the time of executing the contract and deducing from it that he will not fulfil his obligations on the specified date. It is not considered a prior breach unless the creditor takes a position in which his implementation shows what he deduced from this act or saying. - In other words - that is, unless the creditor accepts what is issued by the debtor as a prior breach of the contract. Therefore, the unacceptable prior breach does not have any legal effects. Therefore, the unacceptable prior breach does not have any legal effects.

The Second Direction: considers that what is issued by the debtor before the time of execution and contradicts this execution is considered a breach. However, the creditor cannot file a lawsuit to claim compensation for the damage he suffered because of this breach, unless he accepts it. Accordingly, acceptance is a condition for establishing a lawsuit, and therefore acceptance, according to both directions, is the essence of the issue.

The Third Requirement: the premature breach of the contract in the Vienna Convention for International Sales and in the Principles of Alienidroa.

The Vienna Convention on International Sales stipulated in Article (72) that:

- If it becomes clear, before the date of execution of the contract, that one of the parties will commit a fundamental breach of the contract, the other party may rescind the contract.
- If time permits, the party wishing to rescind must serve the other party a notice on reasonable terms that allow it to provide sufficient guarantees confirming its intention to implement its obligations.
- The provisions of the preceding paragraph shall not apply if the other party declares that it will not fulfill its obligation.

As Article (7/3/3) of the Principles of Alenidroa for the year 2010 AD, which is taken from the text of Article (72/1) of the Vienna Convention, stipulates that:

"When it appears clearly before the date of execution of the contract that one of the parties will commit a fundamental breach of the contract, the other party may rescind the contract."

Accordingly, through the text of Article (72/1) of the Vienna Convention, and Article (7/3/3) of the Principles of Alienidroa, we can summarize the conditions that must be met for the aggrieved party, who is not in breach of its obligations, to terminate the contract prematurely. Without waiting for the expiration date of the implementation, as follows:

First: The expectation of a violation by the party obligated to implement.

This assumes that the debtor has a high degree of expectation that the obligated party has circumstances, facts and evidence that suggest the seriousness of committing future violations, explicitly or implicitly (Al-Issawi, 2007:118). Thus, the contractor who is not in breach of his obligations shall have the right to terminate the contract without the need to wait for the expiration date for execution.

Accordingly, when it appears to one of the contracting parties that the other contracting party will commit a fundamental violation of the contract when the execution date comes, either by himself or through his agent. whether by a positive or negative act, through which he shows his lack of intention to persevere or continue to implement what he has committed to. This party has the right to terminate the contract before the date of implementation agreed upon between the two parties.

Among the criteria for the expectation that a fundamental breach of contract will be committed are any actions or words of the obligor which confirms his intention not to fulfill his obligations within the date agreed upon between the two parties, or its failure to provide adequate guarantees of enforcement. Either the existence of obvious circumstances that would make it impossible for the debtor to fulfill his obligation in the future or the occurrence of a deficit in the debtor's financial capacity, and other similar circumstances. The degree of expectation is measured according to an objective criterion, which is the criterion of an ordinary person with normal perception in the same circumstances and level of the injured contractor (Dodin, 2015).

Second: The Violation must be Substantial.

Article (25) of the Vienna Convention stipulates that: A breach of the contract by one of the parties is a fundamental breach if it causes harm to the other party unless the offending party could not have foreseen such an outcome and no other but perceptive person of the same relevance could have foreseen such an outcome in the same circumstances."

Article (7/3/1) of the Principles of Allindroit stipulates that:

- Either party may terminate the contract in the event of substantial non-performance by the other party.
- Consideration should be taken when determining whether non-performance of an obligation amounts to substantial non-performance if:
- Non-implementation essentially deprives the creditor of what he was entitled to expect from the contract, unless the other party did not expect it, or it was unreasonable to expect it.
- The exact fulfillment of the obligation that has not been performed is the essence of the contract.
- That the non-implementation is intentional or as a result of indifference.
- Non-execution is a reason for the creditor's belief that he cannot rely on the debtor's future execution.
- That the debtor incurs a huge loss because of the preparation or implementation, upon termination of the contract.

Accordingly, Article (25) of the Vienna Convention, and Article (7/3/1) of the Principles of Alienidro what the material breach in order is to enforce the rules on premature breach. Therefore, what counts is the fundamental breach, not the simple one, and this fundamental violation can take several forms, including: Absolute non-implementation of the contract, or

defective execution, or delay in execution, regardless of whether the contracting debtor made a mistake (Dawas, 2013: 530).

Third: Notification.

It was stated in the text of Article (26) of the Vienna Convention that: "Announcement of the termination of the contract does not occur unless it is made by notification addressed to the other party". Article (7/3/2/1) of the Principles of Alienidroa stipulates that: "The termination of the contract shall be initiated by notification to the debtor".

Therefore, the party bound by the contract, to exercise its right to rescind it, must send a notice to the breaching party in which he is offered sufficient guarantees confirming his intention to implement his obligations. And remove the violation he committed, according to what was stated in the text of Article (72/2) of the Vienna Convention. If this party does not respond or declares its unwillingness to implement, then it is necessary to send a notice of rescission to the defaulting party, according to what is stated in the text of Article (26) of the agreement and Article (7/3/2/1) of the Principles of Alienidroa.

Accordingly, before the obligated party can exercise its right, two notifications must be given to the defaulting party: The first relates to his providing serious and sufficient guarantees confirming that he is determined to implement his obligations. The second relates to termination of the contract in the event of his unwillingness to provide guarantees or his insistence on not implementing his obligations.

Thus, although the Vienna Convention stipulated that the creditor wishes to terminate the contract based on the debtor's prior breach of it. To notify this debtor of his desire to terminate the contract, but it did not specify the penalty that would result from the creditor's failure to make this notification. - This is on the one hand - and on the other hand, the Convention excluded in Article (72) in the second paragraph thereof two cases where it stipulated that prior notification or warning is not obligatory to be given in them, namely:

1. Notification is not obligatory unless the time allows for it to be given, or if the time is not so that this matter harms the creditor, it is exempted from directing it as if the period specified for the implementation of the contract is short or about to expire.
2. If the debtor expressly declares that he does not intend to fulfill his obligation on time.

The Second Topic

The Principle of Premature Breach of Contract in the Jordanian Civil Law

We have experienced that the contract may expire naturally by the time agreed upon by the two parties, or the fulfillment of the obligations, which constitute its object, It may end prematurely, that is, an end that comes before the execution of the contract, so it stops its implementation.

In this section, we will see the extent to which this principle can be applied under the Jordanian Civil Law. This is done through researching some of the provisions of this law, which can be extracted from, albeit indirectly that there is an application of the principle of premature breach of it, through three demands, as follows: The first requirement: the extent to which the principle of premature breach is applied in the event of a deadline.

The principle is to respect the principle of the binding force of the contract with its terms and conditions as a direct effect of the contractual obligations. This principle is one of the principles resulting from the principle of the authority of the will. The contract is the law of the contracting parties, and this was stipulated in Article (87) of the Jordanian Civil Code [9]. If the contract is established correctly with its pillars and conditions, then it entails effects and obligations that are enforceable and acquires its binding force.

Therefore, if the obligation is due to be performed, and there is no agreement between the creditor and the debtor to postpone it, if this obligation is also conditional or added to a deadline, it must be fulfilled.

immediately. This is confirmed by Article (334) of the Jordanian Civil Code, which stipulates that: "1- Payment must be made immediately as soon as the obligation is finally due from the debtor, unless there is an agreement or a text stipulating otherwise. However, the court may, in exceptional cases, if no text in the law prevents it, give the debtor a reasonable time or deadlines in which to fulfill his obligation if his condition so requires and the creditor does not suffer serious harm from this postponement."

Article (402) of the Jordanian Civil Code stipulates that disposal may be added to a term, it says in it: "It is permissible to add disposal to a term that, upon its occurrence, will follow the provisions of its enforcement or expiry." The explanatory memorandum of the Jordanian Civil Law No. (43) of 1976 AD clarified what is meant by the term: "It is a specific date set for the fulfillment or expiration of an obligation; it is a matter of the future that will happen." Therefore, the term: "a matter of the future that is certain to occur depends on its occurrence, the enforcement of the obligation or its expiry".

Accordingly, it can be said that the Jordanian legislator obligated the fulfillment of the obligation immediately as soon as it becomes due for performance, and if the obligation is added to a term - and we mean here the standing term - If it is final, it will only be from the time of the deadline. The same applies if the obligation is suspended on a suspensive condition, so that the final obligation does not result from the debtor except from the time this suspensive condition is fulfilled (Obeidat, :404). However, the legislator excluded from the obligation to fulfill the obligation immediately what is called the judicial deadline (the view of the facilitator). This is confirmed by Article (2/334) of the Jordanian Civil Code.

Therefore, and since the application of the principle of premature breach is only in the case of corresponding obligations that will be implemented in the future, and according to the text of Article (402) of the Civil Code. If the obligation is in addition to a suspensive term, and it appears to the creditor that the debtor does not intend to fulfill his obligation. The creditor must wait until the execution date to claim his right, because before this date, the obligation is not due for performance. If a lawsuit or a judicial claim is filed in this regard, it will be rejected because it is premature.

Where the creditor's right does not become due for performance or fulfillment except by the maturity date or the fulfillment of the condition in accordance with the Jordanian Civil Law. It can be said that the principle of premature breach of the contract cannot be applied due to the absence of a legal text that expressly indicates the right of the contractor to terminate the contract in advance. It appears to him from the debtor's statement or action that he will not

[9] Article (87) of the Jordanian Civil Code stipulates that: "A contract is the connection of the offer issued by one of the two contracting parties with the acceptance of the other and their agreement in a way that proves its effect on the object of the contract and entails the commitment of each of them to what he owes to the other".

perform what he has committed to do in the future. Not to mention not allowing the creditor to claim compensation immediately for the damage he suffered because of the debtor's failure to implement his obligations until the time of implementation comes. The same applies if it is decided to grant the debtor a soft look by the judge; the creditor must also wait until the debt is due, i.e. it becomes due. However, despite what has been mentioned, we will see later that it can be concluded implicitly that there is an application of this principle in the texts of Jordanian law.

Cases of Termination of the Contract Prematurely

Based on the, the termination of the contract can generally be attributed prematurely to the following cases:

1. Termination of contract.

It means the disappearance of the contract with all its effects in the past and the future with compensation if it is required, and rescission is the penalty resulting from the failure of one of the parties to the contract to implement its obligation in contracts binding on both sides. Annulment is not envisaged in contracts binding on one side, such as a deposit, for example, if it is without pay (Daoud, 2009: 1,3), where payment is not contemplated by non-implementation. In contracts binding on two sides, there is the idea of linking and corresponding between the obligations, as each of the parties to the contract is considered a creditor and a debtor at the same time. Consequently, one of the contracting parties may refrain from implementing his obligation in contracts binding on both sides. And Article (246) of the Jordanian Civil Code stipulates the annulment, Article (241) of the Jordanian Civil Code specified the cases in which the contract may be terminated exclusively, which are:

Consensual termination (consensual annulment), or by a judicial ruling (judicial annulment), or by the text of the law (annulment).

1. In contracts that are binding on both sides, if one of the two contracting parties fails to fulfill his obligations in the contract, the other contracting party may, after notifying the debtor, demand the execution or rescission of the contract.
2. The court may oblige the debtor to implement it immediately or wait for it for a specified period, and it may order rescission and compensation in each case if it is required.

Rather, he must refer to the competent judiciary to do so, and the supplier may commit this mistake, so the administration initiates the annulment initiative by its unilateral will (Al-Tamawy, 1984: 520).

Thus, the breach of one of the parties to the contract with his contractual obligations gives the other party the right to demand the termination of the contract, and the two parties often include in their agreement conditions that require automatic termination, as soon as one of the parties announces the desire for it. When the other party breaches its obligations and fails to fulfill or implement them, or delays their implementation, or defectively implements them, and without the need to issue an excuse or a warning or resort to the courts, as Article (362) of the Civil Code provides for several cases in which it is not necessary to warn the debtor[10]. Also, the two parties may include in their agreement a penalty clause related to it, if one of the parties'

[10] Article (362) of the Civil Code states that it is not necessary to warn the debtor in the following cases: 1- If the performance of the obligation becomes impossible or useless due to the debtor's action. 2- If the subject matter of the obligation is compensation resulting from an illegal act. 3- If the object of the obligation is to return something that the debtor knows was stolen, or something he received without due right and he is aware of that. - If the debtor declares in writing that he does not want to fulfill his obligation.

breaches all or one of its obligations, this avoids the other party the dangers of the judge's authority to estimate the compensation due upon breach. If the termination of the contract is achieved, whether it was judicial or consensual, its effect ceases as of the date of termination, and the two parties return to the state they were in before the contract, i.e. as if they had not contracted.

That results in the cessation of the obligation to contract, and the refusal to implement any contracts that were concluded before and were not implemented (Al-Jammal, 2002: 306).
Consequently, the ruling on rescission entails the cessation of the contractual bond with retroactive effect, meaning the return of the contracting parties to the state they were in before the contract, so whoever takes something must return it. However, if that is not possible, compensation shall be awarded to the aggrieved party. It is permissible to refer back to the obligated debtor to ask him for compensation, because the impossibility of implementation is due to his mistake, unlike revocation, in which the creditor cannot claim compensation from the debtor. Also, rescission does not require a warning, because the obligation has become impossible and impossible to implement for a reason beyond the control of the debtor, and therefore whoever does not perform his obligation from the parties to the contract is not obliged to implement it.

1. Termination of the contract by force of law. This is what is called (annulment), as if the subject matter of the contract perishes, or in the event of the supplier's bankruptcy or insolvency, or because of the supplier's fraud or manipulation with the administration (Modish, 2014 :90; Al-Atiwi, 2023: 199 to 206)

This and the contract end with rescission if it Became impossible for the debtor to fulfill his obligation, and this is confirmed by Article (247) of the Jordanian Civil Code [31].
Accordingly, this rescission takes place by virtue of the law, so it is neither judicial nor consensual, if it is impossible to implement the obligations arising from the agreement concluded between the two parties. The contract ends automatically without the need to seek a judicial ruling, and the impossibility of implementation includes force majeure, foreign cause and sudden accident, this is what the Jordanian legislator stipulated in the context of contractual liability within the provisions of the civil law in Articles (247), (261) and (448). As if a force majeure occurred that prevented the possibility of implementing what was agreed upon in the contract during the remaining period, and it is considered as force majeure, for example, stopping the production of the commodity subject of the agreement due to the occurrence of a natural disaster that led to the destruction of the factory producing that commodity. This prevented one or both of the parties to the contract from fulfilling their obligations, then the agreement between the two parties is rescinded due to this impossibility. The contract becomes non-existent so that it does not have any effect and without the need for the contracting parties to wait until a judgment is issued by the court to decide this termination. The mutual obligations of the parties to this contract lapse by force of law, and if a lawsuit is brought before the judiciary, the role of the judge is limited only to making sure that the implementation of the obligation was impossible due to a reason outside the control of the debtor to be bound in this contract.

Dissolution of the Contract by Agreement of the Two Parties

This is what is known as contracting, where the two parties to the contract agree before its end to cancel it with their consent. In contracts binding on both sides, if a force majeure arises that makes the implementation of the obligation impossible, the corresponding obligation expires

with it and the contract is rescinded on its own. Provided that the debtor is aware. The dissolution of the contract with the consent of the two parties (dismissal) was stipulated in Article (242) of the Jordanian Civil Code (), and the effect of dissolution was indicated in Article (243) of the same law (As stated in the text of Article (243) of the Jordanian Civil Code:Dismissal in the case of the two contracting parties is annulment and in the case of third parties a new contract).

Accordingly, if the annulment is the termination of the contractual bond due to the impossibility of execution or abstention from it, and it takes place by agreement, by court order, or by law. For dismissal is a contract in which the two contracting parties agree to cancel the contract and to dismiss each other from the contract, so that they return to the state they were in before the contract. In the sense that dismissal is an agreement rescission, and it is a contract like all other contracts, in which the elements of the contract must be present in terms of consent, place and reason. It is also an annulment between the contracting parties. Therefore, the general conditions for annulment must also be met, and accordingly, if the parties to the contract agree to repeal and strip it of its binding power of their own free will and restore the situation to what it was before its conclusion, they may do so.

The termination of the contract, regardless of any error. This is when the administration exercises its unilateral authority at the end of the contract for reasons of public interest, as if the contract included a provision that gives the administration the right to unilaterally terminate it as a penalty condition in the event of the contractor's default (Okasha, 1998: 250).

The Nullity. Where the contract expires by invalidating it, and that is if a reason arises that necessitates invalidity, and the general rules of invalidity apply in this regard, and in the event of invalidity of the contract, it does not have any effect, and this is confirmed by Article (168/1) of the Jordanian Civil Code (Article (168/1) of the Jordanian Civil Law No. (43) of 1976 AD stipulates that:An invalid contract is what is not legitimate in its origin and description if its pillar, place, purpose, or form imposed by the law for its contract has been disturbed, and it does not have any effect and the permit does not respond to it).

Therefore, if a defect is found in the contract itself, i.e. in its substantive pillars, which are the consent, the object, and the reason, such as the absence of the consent, the object, or the reason, or the illegality of either of them, the contract is void. outside its substantive pillars, as if the agreement concluded between the two parties requires the fulfillment of formality and it has not been fulfilled at that time, the contract is invalidated, and if the contract is invalidated, it does not entail any legal effect in the sense that it is legally non-existent. The two contracting parties return to the state they were in before the contract. Whoever receives something from the parties to the contract must return it, and if the return is not possible, compensation will be made, just as this invalidity does not disappear with the permit, i.e. the permit cannot make the void contract valid.

The Consequences of Achieving a Prior Breach of Contract

The creditor may ignore the debtor's prior breach of the contract and reject it, and here the consequence of this matter is that the contract remains valid and binding. On both parties if the creditor decides not to incur the breach and ignores it and cannot claim compensation for the damage incurred by him because of the prior breach of the contract. The creditor usually resorts to this matter if he considers that he has a legitimate interest in confirming the contract. Accordingly, it is permissible for the debtor to revoke his prior breach of the contract if the creditor did not choose to implement this breach, so he may withdraw his breach and amend

his position (Williston, 1992: 1335). The contract remains valid and enforceable unless the implementation of the obligation becomes impossible due to the debtor's fault, at which time he cannot revoke.

But if the creditor decides to implement the principle of prior breach of the contract, he has the choice between two things: Termination of the contract so that the two contracting parties return to the state they were in before the contract, and a claim for compensation, as the aggrieved party has the right to claim compensation before the date specified for implementation. We will review these two matters in this requirement by stating the effects of the prior breach of the contract achieved in the English law as a first branch, and then clarifying these effects in the Vienna International Sales Agreement of 1980 AD as a second branch. Finally, we address these effects in the Jordanian civil law as a third branch, as follows:

The Effects of Prior Breach of Contract in English Law

This entails when the creditor decides to apply the principle of premature breach of contract in this law, demanding the dissolution of the contract, and here the creditor is released from all his obligations that were established under the contract. He also has the right to claim compensation before the date set for implementation, so he has the right to file a lawsuit against the debtor, asking him to compensate him for the damage he suffered because of his loss. For example, of the deal for which he contracted with the debtor, and he hoped to make a profit because of this contract (Douglas, 1994).

This is compensation in English law assuming the full implementation of the contra), Also, the dissolution of the contract in this law does not have a retroactive effect, as the dissolution of the contract is about the future alone, and the creditor benefits by claiming compensation, or from the existence of the arbitration clause. Therefore, the termination or dissolution of the contract takes place immediately upon the achievement of acceptance, without being dependent on any other procedure.

It should be noted that in English law as well as the creditor has the option to accept the premature breach of contract issued by the debtor, He also has the option to reject and ignore this breach, as we mentioned earlier. In other words, he has the right to choose the exact date for implementation and keep the contract standing (confirmation of the contract).

For his own benefit and the interest of the other party, and he does not resort to the penalties established by law, such as the dissolution of the contract and the claim for compensation before the time of implementation (Allan, 2004: 592).

The Effects of Prior Breach of the Contract in the Vienna International Sales Agreement of 1980

The Vienna Convention has expressed the dissolution of the contract using the phrase: "declaration of contract invalidation." According to Article (72) of the agreement, the declaration of invalidation of the contract does not lead to the dissolution of the contract retroactively, but rather this leads to the dissolution of the two parties from their future obligations. The agreement also adopted the amount of compensation to which the injured party (the creditor) is entitled as if the entire contract had been executed, as it approved compensation for the subsequent loss and lost profits, but on the condition that the damage was expected or could be expected at the time of the contract.

However, the article of the Vienna Convention obliges the party who wants to nullify the contract because of the breach issued by the debtor, to notify the latter of the intention to nullify the contract to allow him to provide sufficient security for implementation to avoid nullifying the contract. If the debtor provides this security, the creditor refrains from nullifying Contract.

The Effects of Prior Breach of the Contract in the Jordanian Civil Law

We have been told that the implementation of the prior breach of contract in English law entails the dissolution of the contract before the date set for its implementation, due to the fault of one of its parties (the debtor), which is non-execution. Whereas, what is issued by the debtor before the due date for execution is considered a prior breach, and accordingly it can be said that the Jordanian legislator has highlighted this feature in some provisions of the Jordanian Civil Law No. (43) of 1976 AD, as well as in the text of Article (28) of the Jordanian Labor Law No. (8) of 1996 AD and its amendments. It clarified the cases in which the employer may dismiss the worker without notice, and among the texts of the civil law that the legislator highlighted this characteristic, what was stated in the text of Article (826) of the Jordanian Civil Law that:

"If the work period is specified in the contract and the employer cancels the contract before the expiry of its period without excuse or defect in the work of the worker, he must pay the wage for the full period."

Likewise, the text of Article (829), which states:

- The contract may be rescinded if there is an excuse that prevents the implementation of its obligation.
- It is permissible for one of the contracting parties, when there is an urgent excuse related to him, to request the termination of the contract.
- In the two aforementioned cases, the applicant for termination shall be liable for any damage arising from the termination of the contract with the other contracting party.

Accordingly, and according to what was stated in the above articles, it can be said that: According to the text of Article (28) of the Labor Law and its amendments. The text of Article (826) of the Civil Code: "The termination of the contract by the employer if it is based on a legitimate justification and excuse is legally permissible".

Likewise, the text of Article (829), which states:

1- The contract may be rescinded if there is an excuse that prevents the implementation of its obligation.
2- It is permissible for one of the contracting parties, when there is an urgent excuse related to him, to request the termination of the contract.
3- In the two cases, the applicant for termination shall be liable for any damage arising from the termination of the contract to the other contracting party".

Accordingly, and according to what was stated in the above articles, it can be said that: According to the text of Article (28) of the Labor Law and its amendments, and the text of Article (826) of the Civil Code. The termination of the contract by the employer if it is based on a legitimate justification and excuse is legally permissible. For example, if he concludes with conclusive evidence that it is impossible to implement in the future, then he may terminate the contract without the need to wait for the deadline specified in the contract.

Also, Article (829) explicitly permitted the rescission of the contract if there was a legitimate excuse that prevented its implementation at the time of its term or before it's due. Accordingly, one of the parties concluded from the behavior or statement of the other party that he would not be able to implement what he was committed to at the time specified in the contract because of an emergency that befell him.

Article (785) of the Jordanian Civil Code also highlighted this effect, as the legislator mentioned specific cases in which he permitted the termination of the contracting contract before the date of its implementation[11] (41). Since the dissolution of the contract according to those cases occurs by law because of a mistake resulting from an act committed by the debtor and without a condition that generates a conclusion from the creditor that the debtor will not be able to fulfill his obligation within the time specified in the contract. The only condition mentioned by the legislator is that the creditor resort to the judiciary to demand the termination of the contract, and from our side we see that if there is a prior agreement between the two parties on the "conventional termination" if either of them breaches his contractual obligations. Then, there is no need to resort to the courts to decide this termination.

Also, as we mentioned above, this effect can also be deduced from the text of Article (28) of the Jordanian Labor Law, as that article specified several cases that I mentioned exclusively in which it permitted the employer to terminate the individual work contract and dismiss the worker without notice. His dismissal is considered justified if any of them are fulfilled, and he is not entitled to claim compensation for the notice or for the unfair dismissal allowance. Among these cases is what was stated in Paragraph (b) of Article (28), in which it was stated:

"If the worker does not fulfill his obligations under the work contract". Since the work contract is one of the binding contracts for both sides and creates mutual obligations on each of its parties, and accordingly, if the worker breaches any of his obligations, the employer has the right to take the appropriate penalty, such as dismissing him without notice.

We would like to point out here that the forfeiture of the term leads to an acceleration of the maturity of the implementation of contractual obligations, and thus the deferred obligation becomes fulfilled, and accordingly the creditor can demand termination of the contract, real execution, or implementation for a consideration.

The general rule, according to what was stated in most civil laws, is that the right to annulment arises after non-implementation has been achieved, since in this case the creditor may exercise this right or waive it (Al-Hakim, 2008: 427). The creditor has the choice either to request a ruling that the term is forfeited, and at that point, the debtor's obligation becomes the state of performance, as the creditor has the choice between requesting execution or rescission, or the creditor ignores what was issued by the debtor and waives his right to rescind and amends it. Bearing in mind that the creditor's abdication of his right to annul the contract is expressly or through a behavior he takes that necessitates abdication with certainty, because the waiver of the right by requesting annulment is not presumptive, and it is left to the judge of the matter to deduce and deduce it.

[11] Article (785) of the Jordanian Civil Law No. (43) of 1976 AD stipulates that: "The contractor must complete the work in accordance with the terms of the contract, and if it is found that he is doing what he promised in a defective or inconsistent manner. Then, the employer may request termination of the contract immediately if the repair of the work is not possible, and if the repair is possible, the employer may request the contractor must abide by the terms of the contract and correct the work within a reasonable period. If the deadline expires without correction, the employer may request the court to rescind the contract or authorize him to assign another contractor to complete the work at the expense of the first contractor.

As for the other option other than annulment of the contract granted by the legislator to the creditor if the debtor fails to implement his obligation when its due date comes, which is the claim for compensation, and here we mean the claim for compensation before the time of execution. The principle is to request real execution if it is possible, but if it is impossible to implement in kind, the creditor may request execution in consideration, i.e. compensation for the damage he suffered.

However, the basis for this compensation differs from one case to another. In the case of a request for execution, the basis for compensation is contractual liability, and in the event of termination of the contract, its basis is tort liability (Al-Sanhouri, 585).

Elite say:Through what has been reviewed, we can say that the Jordanian legislator has taken a middle position between the laws that have adopted the principle of premature breach of the contract, and the laws that have refused to take it into account. We didn't close the door aganist non-adherence to it. Jordanian law, although it does not allow immediate resort to terminating the contract and claiming compensation in the event of a prior breach by the debtor prior to the date of implementation, as is the case in English law. However, it allowed the creditor, who was subjected to the debtor's prior refusal to implement his obligation. That's to resort to the judiciary in order to demand the termination of the contract, unless there was an agreement between the two parties in the contract to terminate the agreement in the event that one of the parties failed to implement what he was obligated to do.

To clarify this position for the Jordanian legislator, for example, Article (5/c/1) of the Landlords and Tenants Law No. 11 of 1994 AD and its amendments permitted the eviction of the rented property if the tenant failed to pay the rent allowance or any part thereof that is legally due. The judiciary accepts that the lessor files a lawsuit claiming the termination of the contract and the late rent, since the tenant's refusal to pay the current rent leads to the possibility of his failure to pay the future rent. Thus, the tenant's breach of his obligation to pay the rent allows the lessor to terminate the contract, and this condition is achieved by the tenant's refusal to pay the full rent, as it is achieved if the lessee paid the rent incompletely.

Accordingly, we see in this regard that the tenant's failure to pay the late rent due from him is considered a fundamental violation that would harm the lessor as it essentially deprives him of what he was entitled to expect to obtain under the contract. Therefore, he may terminate the contract because of this matter, as well as his expectation that the debtor (tenant) cannot be relied upon to fulfill his obligation in the future. This embodies the concept of premature breach of the contract, and thus the creditor (lessor) has the right to prematurely terminate the contract.

Conclusion

We mentioned that it may happen during the period between the conclusion of the contract and its expiry date, that the debtor issues a statement or an act in which he discloses his intention not to implement his contractual obligations when the date of their implementation comes. Conversely, he may do an act that makes the implementation of this obligation cumbersome or impossible, as if he destroyed the thing sold before the deadline for its delivery, this appearance is what is expressed as a premature breach of contract.

We also showed that the Jordanian legislator did not address the issue of the premature breach of the contract in an explicit text in the civil law, but that idea can be extracted implicitly through the general rules and some texts of the articles in the Jordanian Civil Law No. (43) of

1976 AD, The Owners and Tenants Law No. (11) of 1994 AD and its amendments, and the Jordanian Labor Law No. (8) of 1996 AD and its amendments.

Results

A premature breach of the contract is achieved when one of its parties (the debtor) declares that he will not perform his obligation upon its expiration date, or when he takes a course indicating that, as it occurs before the time specified for implementation. Also, the effects of the prior breach of contract vary according to the position of the creditor. If he decides to implement this breach, he has the right to rescind the contract before its implementation is completed or before its implementation begins, and to claim compensation. Otherwise, that is, if he decides to ignore the breach, he confirms the contract and keeps it valid.

The Jordanian legislator did not expressly stipulate the introduction of the principle of prior breach of contract in the Jordanian civil law, leaving the matter to the general rules in this regard, although they are not sufficient to address all the provisions of that theory. However, there are some texts mentioned in the civil law and others, such as the labor law and the landlords and tenant's law. It can be concluded Among them is the implication that there is an application of this principle in Jordanian law indirectly and in a manner different from what was stated in English law and the Vienna Convention on the International Sale Contract for the year 1980 AD, and the Unidroit Principles for International Commercial Contracts amended for the year 2010 AD.

Recommendations

The researchers recommend that the Jordanian legislator adopt the theory of premature or prior breach of the contract with explicit provisions in the Jordanian Civil Code, similar to some of the legislations that have been adopted, due to its importance, and the existence of several justifications that impose it.

We wish our honorable legislator to add provisions that regulate this theory as established in some of the laws that have been adopted and in the unified documents for international sale. In a manner that is appropriate and allows the application of these principles and rules, whether in the Jordanian civil law, in the Jordanian trade law, or in special laws.

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