

Substantive scope of contract fragmentation

Riyam Abbas Ali and Baydaa KadhimFaraj

Al-kafal University

Corresponding authors:

Introduction:

Persons with capacity take from the contract an effective legal means in their financial transactions that fall within the scope of civil law, and each of these contracts has its own unit, in terms of its origin and the effects that are supposed to be implemented to reach the end desired by each of the parties to the contract, relying on it in the planned transactions. Later, however, this unity is often destroyed by the demise of part of the contract without its implementation and the survival of the other part, and the contract is fragmented. It may be more useful for the contracting parties to extract what is left of the contract intact, which is most of the cases, and this may not be, so the entire contract must be terminated. The healthy part will be removed according to the defective part.

Fragmentation does not occur at every bidder facing the contract, but rather to achieve it, there must be certain conditions set by the legislator to ensure the stability of dealing, and the division of the contract has legal sources from which the fragmentation arises in line with the reason for which the legislator put fragmentation as a solution to some of what opposes the contract.

Division entails the demise of a part of the contract without execution, as it occurs whenever this happens due to the invalidity or invalidation of only part of the contract, as it occurs whenever only part of it is dissolved. Each of them has its own peculiarity, whose applications must be reviewed in order to clarify the idea that it sought to crystallize.

it is applied, what does that include

and define our term this necessitates that we distinguish it from other similar legal systems such as amending the contract, purifying the contract and stopping its implementation.(1)

The first requirement

Definition of contract hash

The term division of the contract is not new, as it was mentioned in some legal texts (2). As used by jurisprudence in relevant legal studies, and we do not try to anticipate matters, it is certain that if the contract arises, it must be

The first topic

Contract fragmentation concept

Starting with the definition of contract fragmentation, despite the reference to this term in legal texts and jurisprudence studies, we have not made a definition of it, which requires us to put this definition in the field of civil law and compare it with the term split transaction known in Islamic jurisprudence in its various schools. From the study of the field in which it is carried out its application and when

Ahmed Al-Sanhoury (If it is possible to divide the contract with the contract in one part of the correct one and invalid in the other part, because the invalidity of the whole contract is not more important than correcting it) (5) and part of the Egyptian jurisprudence refers to the text of Article (143) of the Egyptian Civil Code, whichIt deals with the case that the contract in one part of it is voidable and voidable, while it is valid in the other part and (there was a tendency that the contract is indivisible, it is either to invalidate all of it or to be valid as a whole. (6) Some of them believe that the idea of reversing legal actions is based on (that the indivisible contract has been fragmented if some of it is focused on a place in a part of it capable of arranging the end of the contract on it (7) and some othersNot so. The two contracting parties may agree to dismiss part of the contract only, which is what Article (182) of the Iraqi Civil Code stipulates (if some of the sale had received the validity of dismissal in the remainder to the extent of its validity from the price), then the contract is divided here into a part that means effective or lost by dismissal. In contracts that are not necessary (8) by their nature, it is (not to return in the event that the contract is not necessary for one of the contracting parties without the other, a reversible order. It is executed while the contract expires in relation to the future.

The return contract is divided if the borrower returns the loaned thing before the expiry of the contract (9) or

implemented according to what it included (3). That is, it must be fully implemented. Partial implementation of the contract does not achieve the legitimate purpose sought by the parties to the contract except in part. However, things do not always go in this way. Rather, it often appears that part of the contract was invalid or that new legislation appeared, causing invalidity. Part of the contract or that part of the contract was suspended (Iraqi) or voidable (Egyptian or French).

First branch

Definition of contract hash language

A contract is a language intended to mean a contract of a thing, i.e. it is a contract, then it is contracted and contracted, and it is determined, and originally it is for the tendency and what it develops from the tangibles, then the term for the types of contracts in sales and covenants, and it means what a person holds in his heart of opinions with determination and assertiveness (4).

second branch

Define contract hashing idiomatically

The contract, idiomatically, is a link between an offer and acceptance in a legitimate way that proves its effect in its place, so what is meant by offer and acceptance here is everything that indicates the will of the contracting parties and what satisfies them with a contract, whether it is a project that is intended to be what was contracted with what the Sharia authorizes and it is what the contracting parties own.

indivisible, the invalidity of part of it requires the invalidity of the contract) (13) and it is identical to Article (557-1) of the Egyptian Civil Code, even in this case, this text is one of the interpreted texts, i.e. speaking to a will The contracting parties (14) Therefore, the same article in its second paragraph permitted the division of the conciliation contract as it stipulated (15) that this provision does not apply if it is adopted from the terms of the contract (and thus the conciliation is divided according to the will of the contracting parties).

This exception to the non-partitioning of the reconciliation contract is evidence that the origin in other contracts is their division if they are void in part, which is what was actually stipulated in Article (139) of the Iraqi Civil Code, corresponding to Article (143) of the Egyptian Civil Code, where Article (139) stipulates) of the Iraqi Civil Code that (if the contract in part of it is void, then this part alone is void. As for the remainder of the contract, it remains valid as it is an independent contract, unless it becomes clear that the contract would not have been completed without the part that was signed void) then the original fragmentation of the contract if void in Part of it and the exception is non-fragmentation, and the scope of contract fragmentation expands to include valid contractsAlso, in addition to the dismissal of a part of the contract stipulated in Article (182) of the Iraqi Civil Code in its second paragraph, saying (even if it pertains to

the lender requests the termination of the return in certain circumstances (10), where the contract seeks what it has provided and it disappears in relation to the future. The contract is terminated without a retroactive effect (the termination of a part of the contract). The termination means the termination of the contract when this is by virtue of the law, as in the invalidity of part of the contract or the termination of part of it to compliment its implementation or by agreement due to the existence of a rescinding condition for a part of the contract and this condition is fulfilled and (part of the contract) is a contract Similar to the original contract, but smaller, as in the part that disappears from the contract of sale, it is a contract that accommodates smaller (or its removal) is the demise of a part of the contract, and the will intervenes.(11)

The second requirement

Contract fragmentation scope

This requirement is divided into two branches:

First branch

The scope of the hash nodes where they exist

Not concluding the contract except as a whole is not indivisible (12) and it has been mentioned above that this case is the establishment and that the original will is not to make the contract indivisible, even in cases where the legislator stipulates that one of the contracts may not be divided, as in the peace contract where it stipulated Article (720-1) of the Iraqi Civil Code stipulates that (conciliation is

what has been implemented of the contract, or another part that will disappear is the part related to the future and the same thing. (20).

In France, the legislator gives the judiciary the power to protect the consumer by throwing unfamiliar conditions, as (the unfamiliar conditions that appear to be imposed on those who are not concerned or consumers by abusing the economic power of the other party and give this group an excessive benefit) (21). Which calls for the protection of the weak party (and since its decision on May 14, 1991, the Court of Cassation in France has allowed the invalidation of unusual conditions even in the absence of a prohibition decree. Unfamiliar conditions (22) Thus, the transition from amending contracts by the legislator to amending them by the courts (23) and the authority to say that the contract is protected from fragmentation is due to the interest of the Sultan. (24).

second branch

Simple nodes and compound nodes

hash range

After it became clear to us that there is a fragmentation of the contract and that we can obtain various types of contracts when a part of the contract is removed, whether it is for nullity, annulment or dissolution of this part without implementation and the survival of the other part as an independent contract. If this fragmentation occurs (25): then what is removed from the contract until you say that it is fragmented, and we deal

the thing sold, it has received the validity of dismissal in the rest after licensing it from the price) and that the legislator, while making solutions to some cases that object The contract deliberately gave the option to the contracting party, from whose side the defect came, to divide the contract, if it was impossible to implement part of the contract (sale, for example).

Absolute impossibility. In such a case, the entire contract is not removed by the size of the law by its complete contraction. Rather, a part disappears by the extent of the impossibility. However, the contracting party is given the option between opening the whole contract and reducing the price when The locus of obligation was divisible. The dissolution is partial (16). The division is also achieved in the event of the partial destruction of the particular contracted person (17). If chosen by the contractor.

The division is also realized if the contract is partially due (18). Or defect some without the other (19). That is, if the buyer requests that the contract be divided, he takes the remainder of the sold item with his share of the price. In time contracts, which are contracts that focus on continuous or periodic performance, time is an essential element in what the contractor's performance is measured by the element of time. If the retroactive effect of this termination is not possible, then what has been implemented of the contract cannot be reverted. And the contract is divided into a part that remains valid, which is

pledged to another to transfer the ownership of the land and the contractor stipulated that it be 1000 dunums and set the price of one dunum and after Its measurement showed that its area is 800 dunums as long as the condition was not fulfilled and its failure led to the missing part of the contracts on it, meaning that the condition was related to the amount of the contract (as much).

The third requirement

Distinguishing the contract

fragmentation from other terms

We divide this requirement into two sections:

First branch

Distinguishing the fragmentation of the contract from modifying the contract

It is a change in one direction, which is the opposite direction of the tendency or imbalance in the contract. If the balance is imbalanced on the part of the debtor (29). So making the implementation of his commitment cumbersome, the amendment takes the opposite direction, so it works to reduce the fatigue to the acceptable limit by reducing the debtor's obligations, depending on the increase in the creditor's obligations, so the contract's fragmentation cannot be done contrary to the will of the contracting parties, and as We'll see (30). If the intention of the contracting parties expressly expressed in their contract, if it turns to making it an indivisible unit, then it is impossible for one of them to adhere to the fragmentation of the contract, i.e. to

with that on the simple contract and the compound contract. Talking about the indivisibility of the contract requires the existence of the contract first. The contracting party has the capacity necessary to conclude the contract (26).

The failure of these conditions leads to a difference in the cornerstone of the contract, and they do not imagine that the condition itself is void because it is required by law in itself. As for the part of the contract, it leads to invalidity, and then the contract is void in part or part of it, and this may result in the fragmentation of the contract, which is what we will discuss shortly.

Falling suspended from the prediction of commitment or demise (27). This is the condition in its precise sense that restores attachment (28).

Therefore, the general rules are the ones that apply after the forces of the conditional description of the contract, except for the debtor, which gives the creditor the right to request the termination of the contract (Article 177) of the Iraqi Civil Code) or to request execution by way of compensation for what has missed it in accordance with Article 168 of the Iraqi Civil Code, as the case may be. In all cases, it is clear from this that the condition related to the description in The contracts on him do not result in his invalidity or his forces dividing the contract other than the condition. It may not relate to a description in the contract, but rather it is part of it, but it was formulated in a beautiful conditional form, as if one person

it is not). In any case, we now distinguish the fragmentation of the contract over its derogation, and the derogation is consistent with the division of the contract in that some of us in the contract disappear and the rest of the contract is lost as an independent contract in both.

The contract is based in essence on changing the will of the contracting parties. The same is the case with the indivisibility of the contract, as it should not contradict the express or implied will of the contracting parties, except that there are important differences between the partnerships that we mention

As for the fragmentation of the contract, its scope is all cases in which part of the contract ceases to exist without implementation and the other part remains valid. Therefore, it includes the invalid contract in part and this invalid part is removed, while the valid part remains as an independent contract. Also, the scope of the contract fragmentation (33) includes the contract. The correct part of it dissolves and vanishes, whether this dissolution is by mutual consent, then this is the dismissal of a part of the contract or by unilateral will, such as the removal of the agent from some agency, or restriction of his agency, or by litigation, as in cases of partial judicial opening of the contract as a whole, as fragmentation occurs. When the term contract expires prematurely, i.e., before its term is exhausted, what has been executed remains and disappears with respect to the resigning

adhere to the remainder of the contract despite the demise of the most dangerous part and therefore disappears after a contract. (31).

The division is a balanced action and the amendment is an unbalanced action to restore balance to the field of the contract. Therefore, the division is the demise of the part of the contract always. As for the modification, it may be in the form of an addition to the original obligations in the contract, bringing the two thousand to a reasonable limit in the division of the contract, the part that It is a miniature model of the contract. In the opposition contract (such as the sale) (32), this part includes opposite obligations, so part of the sale and part of the price disappears, meaning that what is removed is a contract. As for the judicial amendment, it is part of an obligation or obligation on one of the parties, it is not A contract, but a burden. Therefore, we said in our presentation of the case of exploitation that if the contracting party requested to deliver the part in which the exploitation took place in the contract, and the judge responded to his request, this part would be nullified and he shall spend the rest of the contract.

second branch

Distinguishing contract fragmentation from contract shortening

The contract's diminution is defined as (the fragmentation of the contract in the event that it is focused on a place, some of which is liable to arrange the effect of the contract on it and some of

Tweeting his offer to the fine in the contract, for the will is not sufficient for it to exist and that the offer and the acceptance coincide, but above that, the will must be sound and not concerned with any defect, and there should be a distinction in terms of Defect of will, and the cause of invalidity may be in only one of the things that were contracted, if it is not valid for dealing in it. Does it affect the entire contractual process, and there may be an illegal restriction or condition in the contract, so does this lead to the invalidity of the entire contract and what may be the effect of the part that occurred Invalidity is within its limits on the contract if this motive for contracting, as well as if it is not the motive for contracting, and invalidity is not limited to that which is governed by general rules, but other texts in civil law and sometimes in special laws dealt with the regulation of some legal situations that are within the jurisdiction of civil law (such as the lease contract, for example, but not exclusively) and these cases of invalidity are not all subject to the general rules, but rather dealt with the text that imposed them on special terms, conditions and effects (37).

First branch

Limiting the nullity to part of the contract

The text of Article (137) of the Iraqi Civil Code, which defined the void contract (38) in conjunction with the text of Article (133-1) of it, which defined the valid contract (39) recommends that the contract is only

person, the scope of its fragmentation is a wide contract (34).

The second topic

Contract Segmentation Applications

In this chapter we deal with some of the applications of contract fragmentation that are contained in civil laws and we present them in a way that is compared to Islamic law. We seek this presentation, discussion and comparison to clarify the principles addressed in the first chapter of this thesis. There are two contracts, one of which remains valid and effective, and the other is extinguished by one of the ways of termination of contracts without being executed. The termination of the contract or any part of it is the natural way for the contract to expire if it has been fully implemented.

The first requirement

Splitting the contract for nullity or annulment of part of it

If any of the pillars of the contract or one of the conditions required by law in these pillars is absent, then the contract does not present the nature of (35) as it is not possible to imagine the existence of the contractual relationship with the absence of one of its pillars, so the contract is invalidated and its effects fade away (36). This absence or illegality of that to the whole contract, so nullified it, and there may be inaction, but one of the conditions of its validity is violated. In this case, the contract is executed as if it was issued by an incompetent person or one whose will was subjected to coercion or fell into an illusion.

single position regarding the effect of the invalidity of this part on the rest of the contract.(40)

There are trends in the legislation, one of which makes the original invalidity of the whole contract when it is invalid or voided, and the exception is that invalidity is limited to the invalid part, and that is when it is proven that the contracting parties' will is devoted to retaining the remaining part of the contract (41) and the second trend makes the original limitation of invalidity to the part in which it occurred. The exception is the extension of invalidity to the whole contract when it becomes clear that the contracting parties' will was not concluding the contract without the part that was signed as invalid. Moreover, in jurisprudence there is a discrepancy about the extent to which invalidity can be limited to only a part of the two contracts. In part of the contract, or what is called partial invalidity, and in Islamic jurisprudence, there are statements that agree with all these trends.

It is noted that the laws taken in this direction (42). (Iraqi Civil Code, French Civil Code and other civil laws of a similar direction) (43). It takes a more practical and realistic approach, as the contracting party cannot, to invalidate the contract and get rid of it, hold to a defect that affects only one of its conditions or non-essential parts, and does not prevent the contract from remaining valid, and the solution adopted by these laws is in line with the adage (what is not fully realized is

completely void or completely valid. Some of its descriptions and the second stipulated the legality of a subject and description for the contract to be valid, had it not been for the fact that Article (139) of the Iraqi Civil Code had approved the possibility of invalidity in a part of the contract, then it was separated a little, so it showed that this invalidity in part of the contract can be limited to this part as it can. If he crosses it, then it applies to the rest of the contract, and it is nullified. If the contract is not complete without the part that was signed as void, Article (139) came in it. If the contract in part of it is void, then this part alone is void. The remainder of the contract remains valid as an independent contract, unless it turns out that the contract would not have been completed without the part that was signed void and the Iraqi legislator in this article has taken what is called (the theory of contract derogation) to the effect that the contract if it is tainted by several things and it was valid in view of some of them and invalid in view of some of the other, the contract does not invalidate in all, but invalidates what is not valid in view of it, and remains an independent contract valid in view of what was valid in it, as if it came from the beginning an independent contract, but if it turns out that the part that was signed is invalid, the contract is not to be completed without it, rather it is a visible element. However, if the contract is void in part of it without the rest, the techniques did not stand a

and in the impact of the inability of these methods to prove his claim.

As for the French Civil Code, it did not include a general theory of derogation, but that does not mean that French law is ignorant of this system. Rather, the French law includes many separate texts that take the idea of detracting from these texts, Article (900) of the French Civil Code regarding the invalidity of the conditions contained in Donations and Article (1172) of the same law regarding the invalidity of the conditions stipulated in non-free disposals, i.e., (47) transactions in return. According to Article (900) of the French Civil Code.

second branch

The invalid contract is divided in part according to the general rules on invalidity

This division is subject to the provisions of Article (139) of the Iraqi Civil Code (48). For the realization of division, its formulas are required that the contract be void in part of it and valid in the other part, and that the contract is divisible from the objective point of view, as well as from the subjective point of view that the will of its distortions is not directed to making it not be completed without the part that was signed void (49). As we have separated, in its place from this letter (50).

In view of the compatibility of the provisions of the general rules regarding invalidity in the Iraqi civil and Egyptian civil laws, we will discuss the position of the laws together to avoid repetition and the

not leaves bug)(44). Also, this trend is more in line with the principles of good faith and works to achieve security and stability of transactions. Therefore, Swiss jurisprudence justifies the principle of reduction by social and practical considerations, not legal (45).

Although the Iraqi project was taken in Article (139) of the Civil Code in the first direction, as we mentioned, and the same was done by the Egyptian legislator in Article 143 of its Civil Code, any Iraqi legislator took the second direction, which makes the original nullity of the entire contract unless the contrary is proven as an exception, and that is in Article (720).) of the Iraqi Civil Code, corresponding to Article 557 of the Egyptian Civil Code relating to science, which takes place as follows (Article 720: 1- Compromise is indivisible, and the invalidity of part of it makes the contract invalid. 2- This provision does not apply if it is clear from the terms of the contract or from the circumstances The retirees have agreed that the parts of the contract are independent of each other The principle is that this contract is not indivisible if part of it is void unless it appears from the terms of the contract or from the circumstances of the contract that the contracting parties intentionally can make their contract indivisible. This provision is consistent with the nature of the conciliation. It is noted that the basic difference between the two mentioned trends does not appear except in determining the methods that bear the burden of proof

the age of majority (53). As for what his money is not included in the permission and he is not entitled to it and it is void (54). Unless the condition related to the divine are the motives for contracting, could the contract be removed to the extent that it was invalidated, which is the amount related to it, and the companies of persons are an example of this. The lack of personal consideration in these companies as we presented (55).

The second requirement Splitting the contract by dissolving part of it

The purpose of establishing contracts is to obtain their implementation, and the contract, when it is established, is valid and enforceable, it must be executed according to what it contains and, of course, for the good faith of dealing (56). This is the principle, but often the implementation of the contract is obstructed or lost, making this complete implementation capable, either because it is impossible or because it is not possible to force it. Instead, it is possible to implement part of the contract without the other part, and the legislator has addressed these assumptions in the general theory of obligations at times. And in the provisions of contracts that he sometimes dealt with (57). Removing part of the contract occurs by using the contract at his option in some cases stipulated by the law, such as in the deficit in the amount of the thing sold as a whole, with determining the house or crescent of a part of the sale, or the

invalidity of part of the contract here. It leads to the invalidity of the contract in part, and it can also be in the form of invalidity of the reason for a part of the contract, and the corner of the form can be left behind in relation to part of the contract, so this part is invalidated. These complex contracts, despite the fact that a lot of conditions, though clauses in the contract are part. Either the contract remains as it is despite the demise of the condition, or it disappears all at once. If the condition is a motive for the contract, the contract is divided by the invalidity of laxity in part of it, and the invalidity of indolence in part of it is when there is no indolence in part of it due to lack of eligibility, not when it is afflicted with the defect of coercion, error, or reprimanding with two thousand or independence, and this smallness leads to the invalidity of inaction (51). Although it exists with the necessary legal capacity, the contract is not void, but it is suspended in the Iraqi civil law and is voidable in the Egyptian civil law, in detail regarding the defect of independence, and when there is no capacity for part of the disposition, the part is void and with the fulfillment of other conditions for the division of the contract, This segmentation becomes possible (52).

A sale to one of the circumstances included in the permission and a gift to one of his money that is not included in the permission, so the sale here is valid because the young person who is authorized to conduct the transactions under the permission is like an adult of

the contract partially, he is discharged from the rescinded part, and if he does not implement it, he is no longer bound by it. Fines in it if he goes bankrupt or the debtor becomes insolvent, if by rescission the creditor returns to his owner with retroactive effect and because conquest, not to mention partial rescission, is one of the exceptional solutions in the life of the contract (63).

second branch

Opinion of critics and supporters of partial annulment

The criticisms leveled by the proponents on the idea of partial termination of the contract, i.e. its fragmentation, can be summed up as follows. The first criticism is that the applications contained in the law regarding partial termination of the sale in case of partial destruction of the sold item or the decrease of its value in order to take it before the proper or the destruction of the property.

However, despite these criticisms, the idea of partial annulment (or termination) of the contract and its presence in the legislative texts is clarified by one of the solutions when the debtor's implementation of his obligationThe two contracts are partially mistaken by him or for a foreign reason in which he must, as it has its termination in Iraqi, Egyptian and French civil jurisprudence and it has its judicial applications (64). In the

entitlement of a part of it, or the appearance of a defect.

First branch

Partial termination of the contract

The non-performance of the contractual obligations on the part of the debtor may not be entirely, but the non-performance may be only partial, or this performance may be defective (58). In this case, if it is not possible to obtain full performance in kind from the debt, then there are three assumptions (solutions) only the first that the contract be terminated by cases based on the request of the creditor, unless there is a condition in the contract that it is rescinded on its own without the need for excuses or to Adjudication(59). The second is that a part of the contract is implemented in kind, while compensation is resorted to, i.e., execution in return for the part that has not been implemented from the contract, so the contract has been kept in force.(60)

The creditor in the event of partial rescission of the contract (i.e. his division of a contract) is exempted from a part of the consideration equivalent to the part that was missed due to the lack of partial implementation or defective implementation of the contract by the debtor and the tie is taken into account at the time of contracting that the law is patient (by reducing the price) in the sale contract (61) . Or (reduce the rent) in the rental contract (62). If the creditor has paid this extra amount of consideration to the debtor, that part must be recovered because he makes

It is clear from the text of this article that what is entrusted with giving the choice between rescission or taking the share of the price is the selection of the overflow damage or not, whatever the method of determining the price (wholesale or at the unit price) (66). With the selection of flood damage, the buyer can take the thing sold with his share of the price and the criterion is objective (67). And taking the share of the price, as we have shown more than once, is a partial annulment of the sale contract, meaning dividing the contract into the part of the existing sold part with its share of the price, and the part replaced by the missing amount with its share of the price. A total of 5000 dinars or at the unit price on the basis that the ton sought fifty dinars and then found upon delivery the amount of wheat ninety tons.

Results:

First: The contract, whether simple or complex, is established as a single legal entity, but its unity accepts division and the original in contracts and their effects, it accepts division and division unless it prevents that.

Second: The principle in contracts is that they accept division and division, but the principle also exists that their implementation is in accordance with what it includes, because partial or incomplete implementation may not achieve for the contracting party what he wanted from his contract.

Third: If the disappearance of the invalid or invalid part or the part that has been dissolved from the contract is an understandable and self-evident

jurisprudence of civil law, we find many supporters of the idea of partial termination of the contract who defended it and justified it, if Professor Dr. Hassan Ali Al-Zhanun says while discussing the case of the contract being divided because of the deficit in the amount of the contract, if he sends a group of chains or a group of weights, crops or numbers with an indication of their amount and then appears By it upon delivery, there is no shortage of any deficiency in the amount. The ruling in the Iraqi Civil Code came in accordance with the Journal of Judicial Judgments, which in turn is taken from Hanafi jurisprudence, and it differs according to what it was. The price has been determined at the unit price. It has not been determined as a whole, and according to what the sale is, it will be harmful or not affected by the exchange. Therefore, the ruling was different in some of the assumptions from what other Islamic schools take, and from the ruling of the Egyptian Civil Law, which is reviewed in turn. Article (543) of The Iraqi Civil Code states that (if a group of chains or a group of weights or crops that are not in harm's sale are sold, or of close numbers with an indication of their value, and their price is named as a whole or at the unit price, then the thing sold upon delivery is found to be defective, the buyer is tested, if he wants, the two contracts are voided, he wants to take the amount Existing share of the price).(65)

civil laws that take into account the suspended contract. as civil law.

Third: We suggest deleting the second paragraph of Article (177) of our Civil Code because it is just unnecessary examples, and that a paragraph should be added in its place showing the provision of partial execution by the debtor. This is because the current text does not clarify its ruling, which caused the dispute that we presented about the partial annulment.

Article (177) The creditor, if the debtor's implementation is partial, may request the execution of the remaining part of the contract by way of compensation, or he may request the termination of the contract to the extent that the debtor did not perform it with compensation if it is required.

Fourth: We suggested adding a second paragraph to Article (168) clarifying the rule of partial impossibility in executing the contract, as follows:

Article: (168) the current article itself If the impossibility arising from a foreign cause is partial or temporary, what is said to be the impossible part is rescinded and the creditor is told between keeping the remainder of the contract and rescinding it.

Margins:

(1) See Article (720-1) of the Iraqi Civil Code, where it states (conciliation is indivisible, and the invalidity of part of it requires the invalidity of the contract).

(2) The text of Article (150-1) of the Iraqi Civil Code (The contract must be executed in accordance with what it

matter, then the fate of the other part of the contract, i.e. the valid part or the part that has not been dissolved, is not. Inevitably, he may follow the part that has been removed from the contract, and it will disappear with him, and he may not follow that part, but his entity remains as an independent contract.

Fourth: We distinguished the fragmentation of the contract from its amendment, where the fragmentation agrees with the will of the contracting parties and the amendment takes place in spite of that will. A contract in which this tie was disrupted, and perhaps one of the important results in distinguishing the fragmentation of the contract from others.

suggestions

First: We recommend that the Iraqi legislator takes the most correct view in Islamic jurisprudence from our civil law and promises to give the option to the contracting party against whom the deal was separated due to the invalidity or annulment of part of the contract, between signing or rescinding the rest of the contract, especially if this contracting party was ignorant of the reason for the invalidity.

Second: We suggest that the Iraqi civil law includes a text regulating the provision of the suspended contract in part, similar to the text on the invalid contract in part, in line with the nature of the suspended contract, bearing in mind that the Egyptian Civil Code organized the provision of voidable contract in part of it, and also included

(12) See Dr. Issam Anwar Selim, previous source, p. 659.

(13) As stipulated in Article 221 of the Iraqi Trade Law, No. 1984.

(14) Dr. AqilFadel Hamad Al-Dahan, previous source, p. 78.

(15) Dr. Abd al-Razzaq Ahmad al-Suhouri, the mediator in explaining the Civil Law, Part V, Contracts on Ownership, Arab Heritage Revival House, without a year of publication.

(16) Dr. Salah Al-Din Al-Nahi, Iraqi Civil Law, Gain without reason, 1984, d. Virtue as a source of commitment p. 82.

(17) See Article 54 of the Iraqi Civil Code, corresponding to Articles 437 and 438.

(18) See Article 555 of the Iraqi Civil Code.

(19) See Article 651 of the Iraqi Civil Code.

(20) Dr. Abdel Hai Hegazy, The General Theory of Commitment, Part Two, Sources of Commitment, Fouad I University, 1950 AD.

(21) See in this sense d. Hassan Ali Al-Thnoon, The Role of Article in Continuing Contracts, Baghdad 1988, p. 8.

(22) See Article (172-1) of the Iraqi Civil Code and Article (227-1) of the Civil Code.

(23) As Article 4 of the amended Iraq Real Estate Lease Law No. 87 of 1979.

(24) As in Article (98) of the Iraqi Civil Code and Article 750 of the Civil Code.

(25) Dr. Abd al-Razzaq Ahmad al-Sanhouri, the mediator, part one, a previous source, pg. 339.

contains and in a manner consistent with what is required by good faith).

(3) Article 73 of the Iraqi Civil Code No. (40) for the year 1951 The draft Iraqi civil law was defined in Article (306) as the union of two wills.

(4) Dr. Hassan Ali Al-Thunun, The Origins of the Commitment, Al-Ani Press, Baghdad 1970, p. 122.

(5) Dr. Abd al-Razzaq Ahmad al-Sanhouri, Sources of Truth in Islamic Jurisprudence, Part IV, Dar Al-Fikr for Printing, Publishing and Distribution, Beirut, Lebanon, without a year printed, p. 140.

(6) Dr. Samir Tanago, The Theory of Commitment, The Foundation of Knowledge, Alexandria, without a year of publication, p. 91.

(7) See, for example, d. Adel Hassan Ali Al-Sayed Provisions for Reducing the Invalid Contract, Zahraa Al-Sharq Library for Printing and Publishing 1988. Pg. 223, Dr. Ibrahim Al-Desouki Abu Al-Layl, Partial invalidity of legal contracts and actions, previous source, p. 186

(8) Nada Abdel-Kazim Hussein, The Theory of Contract Reduction, Master's Thesis submitted to the Faculty of Law, Al-Nahrain University 2000, pg. 46.

(9) See Article (861-2) an Iraqi civilian and Article (643-3) an Egyptian civilian.

(10) See Article (862) Iraqi civilians and Article 644 Egyptian civilians.

(11) See Article (969-1) of an Iraqi civilian and Article 722 of an Egyptian civilian.

study of jurisprudence and judiciary, 1st floor, University Library.

(36) Dr. Hassan Ali Al-Thnoon: The Origins of Obligation, a previous source, p. 122.

(37) Dr. Iyad Abdul-Jabbar Molouki, The Contract Transformation was published in the Journal of Legal Sciences, which we issue the law at the University of Baghdad VII, issue one and two, 1988, p. 191.

(38) Dr. Ibrahim Al-Desouki Abu Al-Layl Partial invalidity of legal contracts and actions, previous source, p. 91, as well as commitment theory source, p. 353.

(39) Dr. AqilFadel Al-Dahan, a previous source, p. 145.

(40) Dr. Abd al-Razzaq al-Sanhouri and al-Wajeez, a previous source, p. 189.

(41) See the statement of the ways to terminate the contract, d. Abd al-Razzaq Ahmad al-Sanhouri, The Mediator, Part I, a previous source, pp. 689-693.

(42) The termination of the contract upon the implementation of the obligations established by the opinion of Dr. Abdul Razzaq Ahmed Al-Sanhouri, see the mediator, part one, a previous source, p. 689 of this opinion as well.

(43) Dr. Abd al-Razzaq Ahmad al-Sanhouri, The Mediator, Part One, a previous source, pg. 492.

(44) Some jurisprudence makes nullity inherent in the fading of the effects of the contract, after it (a description attached to the legal act, making it unable to produce a legal effect). Dr..

(26) See Article (85) of the Iraqi Civil Code and Article (89) of the Egyptian Civil Code.

(27) Dr. Abd al-Razzaq Ahmad al-Shahuri, the mediator, the first part, previous, p. 217.

(28) Eman Tariq Al Shukri, The Impact of the Condition in the Ruling of the Contract, A Comparative Study, a Master's Thesis submitted to the Faculty of Law, University of Babylon 1998, p. 5.

(29) Dr. Abdul-Majid Al-Hakim, Professor Abdul-Baqi Al-Bakri, Assistant Professor Muhammad Taha Bashir Al-Wajeez in Theory of Commitment in the Iraqi Civil Law, Volume 2, p. 158.

(30) Dr. Samir Tanago, Sale Contract, a previous source, p. 269, d. Tawfiq Hassan Farah, the effect of good faith on the buyer's return with the guarantee, Alexandria University Press, 1971, for the Egyptian Civil Law, p. 256

(31) Dr. Kamal Tharwat Al-Watdawi, Explanation of the provisions of the sales contract, a comparative study, 1st floor, Dar Al-Salaam Press, Baghdad, 1973, p. 232

(32) See the first requirement of the first topic of the second chapter of the first chapter on p. 82 and beyond.

(33) Dr. Ruqaya Abdul-Jabbar Ali, previous source, p. 38, previous source, p. 23.

(34) This is in accordance with Article 143 of an Egyptian civilian.

(35) Ibrahim Al-Sayed Ahmed, the penal clause in the Egyptian legal civil contracts, and Al-Qursi, a comparative

claiming the invalidity is not executed, the evidence.

(54) Dr. Ibrahim Al-Desouki Abu Al-Layl Legal Concept, previous source, p. 74.

(55) Dr. Abdel Aziz Al-MursiHammoud, a previous source, p. 296.

(56) Quoted by Dr. Abdul Aziz Al-MursiHammoud, a previous source, p. 303.

(57) Sheikh Zain Al-Din Al-Amili, Al-Rawdah Al-Bahiya, Part Two, Source 23.

(58) The Iraqi Civil Code regulated the provisions of contract invalidity in articles (137-141) of it, and the general rules in other articles dealt with provisions related to invalidity, such as Article (127-1) which dealt with invalidity of the contract due to the impossibility of its place.

(59) See the first requirement of the first topic of the second chapter of the first chapter of this thesis, p. 82 and beyond.

(60) Dr. Abdul Majeed Al-Hakim and others, Part One, previous source, p. 63.

(61) Dr. Saleh Nasser Al-Otaibi, previous source, p. 119.

(62) Article (98) is an Iraqi civilian and Article (112) is an Egyptian civilian.

(63) Article (99) is an Iraqi civilian, while Article (112) is an Egyptian civilian, permission is limited.

(64) Article (97-1) an Iraqi civilian and Article (111-1) an Egyptian civilian d. Essam Anwar Selim, d.

Jamil Al-Sharqawi, The Theory of the Invalidity of Legal Disposition, previous source, p. 373, although this is the original.

(45) From the decision of the Court of Cassation in Egypt No. 7448 of the judicial year 63, session of April 14, 1994.

(46) Article (137) of the Iraqi Civil Code stipulates that (1) a void contract is that which is not at all valid considering itself or a description in terms of some of its descriptions.

(47) Article (133-1) of the Iraqi Civil Code stipulates that (1) a valid contract is a legitimate contract in itself and in description, that it is issued by its people, added to a place that is subject to a court, has a legitimate reason and its descriptions are correct.

(48) Dr. Abd al-Razzaq Ahmad al-Sanhouri, The Mediator, Part I, a previous source, pg. 500.

(49) Dr. Ibrahim Al-Desouki Abu Al-Layl, The Legal Concept of Decreased Dispositions, previous source.

(50) Of that German civil code is Article (139) and the Jordanian Civil Code.

(51) Dr. Ibrahim Al-Desouki Abu Al-Layl, The Legal Concept, previous source, p. 69.

(52) Dr. Ibrahim Al-Desouki Abu Al-Layl, The Legal Concept, previous source, pg. 70.

(53) Dr. Abdel Aziz Al-MursiHammoud, a previous source, p. 301, and the Court of Cassation in Egypt has ruled that (the meaning of the text of Article 143 is that if the one

partial annulment in the research of this chapter, as it is referred to the third topic in the first chapter of Chapter One, p. 47 and beyond, which leads us to the source of the fragmentation of the contract.

(74) Dr. Ghani Hassoun Taha, previous source, 243 Kamal Tharwat Al-Wandawi, explaining the provisions of the sales contract, previous source, p. 140-141, d. The owner of Obaid Al-Fatlawi insure the defect.

(75) Dr. Abbas Al-Sarraf, Explanation of the Two Contracts of Sale and Lease, previous source, 171.

(76) Dr. Saadoun Al-Amiri, Al-Wajeez in the So-called Contracts, Part One in Sale and Rent, previous source, p. 120, d. Abbas Al-Sarraf, explaining the two contracts of sale and rent.

Sources

First: The Holy Qur'an

Second: books

1) Ibrahim Al-Sayed Ahmed, the penal clause in the Egyptian legal civil contracts, and Al-Qursi, a comparative study of jurisprudence and judiciary, 1st floor, University Library.

2) Dr. Ibrahim El-Desouky Abu Al-Layl, partial invalidity of legal contracts and actions, a previous source.

3) Dr. Ibrahim Al-Desouki Abu Al-Layl, The Legal Concept of Reducing Dispositions, previous source.

4) Dr. Iyad Abdul-Jabbar Molouki, the contract has been transformed into a research published in the Journal of Legal Sciences, issued by law at the University of Baghdad VII, issues one and two, 1988.

Muhammad Hassan Qasim Principles of Law, previous source, 184-185.

(65) Dr. Saleh Nasser Al-Otaibi, a previous source, p. 119, d. Ibrahim Al-Desouki Abu Al-Layl, Partial Invalidity of Legal Contracts and Theories, previous source, p. 111.

(66) See Article (150) of the Iraqi Civil Code and Article (148) of the Egyptian Civil Law, which were previously referred to.

(67) As in Article (177) of an Iraqi civil, regarding the judgment of rescission in binding contracts for the two cases, and Article (157) of the Egyptian Civil Code corresponds to them.

(68) Dr. Abd al-Razzaq Ahmad al-Sanhouri al-Wasit, Part One, a previous source, pg. 701.

(69) Article (178) of the Iraqi Civil Code stipulates the following: (It may be agreed that the contract is rescinded on its own without the need for a court ruling when other than fulfilling the obligations arising from it, and this agreement does not exempt from excuses.

(70) See about the comparison in the partial opening of the contract and the implementation of part of it in exchange for the fourth requirement of the third research of the first chapter of the first chapter.

(71) See Dr. Abd al-Razzaq Ahmad al-Sanhouri, the mediator, part one, a previous source, pg. 712.

(72) See also the two articles of the Iraqi Trade Law.

(73) We review a number of legislative applications that dealt with

1984, d. Virtue as a source of commitment.

15) Dr. Adel Hassan Ali Al-Sayed, Provisions for Reducing the Invalid Contract, Zahraa Al-Sharq Library for Printing and Publishing 1988. Dr. Ibrahim El-Desouky Abu El-Leil, Partial Annulment of Legal Contracts and Dispositions, previous source.

16) Dr. Abbas Al-Sarraf, Explanation of the Sale and Lease Contracts, previous source.

17) Dr. Abdel Hai Hegazy, The General Theory of Commitment, Part Two, Sources of Commitment, Fouad I University, 1950 AD.

18) Dr. Abd al-Razzaq Ahmad al-Sanhouri, the mediator in explaining the Civil Law, Part V Contracts on Ownership, Arab Heritage Revival House, without a year of printing.

19) Dr. Abdel Aziz Al-MursiHammoud, a previous source, and the Court of Cassation in Egypt has ruled that (the meaning of the text of Article 143 is that if the one claiming invalidity does not have evidence.

20) Dr. Abdul-Majid Al-Hakim, Professor Abdul-Baqi Al-Bakri, Assistant Professor Muhammad Taha Bashir Al-Wajeez in Theory of Commitment in the Iraqi Civil Law, Volume 2.

21) Dr. Abdul Majeed Al-Hakim and others, Part One, a previous source.

22) Dr. Abd al-Razzaq Ahmad al-Sanhouri, Sources of Truth in Islamic Jurisprudence, Part IV, Dar Al-Fikr for Printing, Publishing and Distribution,

5) Iman Tariq Al-Shukry, the effect of the condition on the rule of the contract, a comparative study, a master's thesis submitted to the Faculty of Law, University of Babylon 1998.

6) Dr. Hassan Ali Al-Zhanun: The Origins of Obligation, a previous source.

7) Dr. Hassan Ali Al-Thnoon, The Origins of Commitment, Al-Ani Press, Baghdad, 1970.

8) Dr. Ruqayya Abdul-Jabbar Ali, a previous source.

9) Dr. Saadoun Al-Amiri, Al-Wajeez in Contracts Named, Part One in Sale and Rent, previous source, Dr. Abbas Al-Sarraf, explaining the two contracts of sale and rent.

10) Dr. Samir Tanago, Contract of Sale, previous source, p. 269, d. Tawfiq Hassan Farah, the effect of good faith on the buyer's return to the guarantee, Alexandria University Press, 1971, for the Egyptian Civil Law.

11) Dr. Samir Tanago, Theory of Commitment, Mansha'at al-Maaref, Alexandria, without a year of publication.

12) Sheikh Zain Al-Din Al-Amili, Al-Rawdah Al-Bahiya, Part Two, Source 23.

13) Dr. Saleh Nasser Al-Otaibi, previous source, p. 119, d. Ibrahim Al-Desouki Abu Al-Layl, Partial invalidity of contracts and legal theories, previous source.

14) Dr. Salah Al-Din Al-Nahi, The Iraqi Civil Code: Gain without reason,

33) See Article (862) Iraqi civilians and Article 644 Egyptian civilians.

34) See Article (969-1) of an Iraqi civilian and Article 722 of an Egyptian civilian.

35) As stipulated in Article 221 of the Iraqi Trade Law, No. of 1984.

36) See Article 54 of the Iraqi Civil Code, corresponding to Articles 437 and 438.

37) See Article (555) of the Iraqi Civil Code.

38) See Article 651 of the Iraqi Civil Code.

39) See in this sense d. Hassan Ali Al-Thnoon, The Role of Article in Continuing Contracts, Baghdad, 1988.

40) See Article (172-1) of the Iraqi Civil Code and Article (227-1) of the Civil Code.

41) as Article 4 of the amended Iraq Real Estate Lease Law No. 87 of 1979.

42) As in Article (98) of the Iraqi Civil Code and Article 750 of the Civil Code.

43) See Article (85) of the Iraqi Civil Code and Article (89) of the Egyptian Civil Code.

44) See the first requirement of the first topic of the second chapter of the first chapter.

45) This is in accordance with Article 143 of an Egyptian civilian.

46) The termination of the contract upon the implementation of the obligations established by the opinion of Dr. Abdul Razzaq Ahmed Al-Sanhoury, see the mediator, part one, a previous source.

47) Some jurisprudence makes nullity an inseparability of the effects of the

Beirut, Lebanon, without a Sunnah edition.

23) Dr. Essam Anwar Selim, a previous source.

24) Dr. AqilFadel Al-Dahan, a previous source.

25) Dr. AqilFadel Hamad Al-Dahan, a previous source.

26) Dr. Ghani Hassoun Taha, previous source, 243 Kamal Tharwat Al-Wondawi, explaining the provisions of the sales contract, previous source, Dr. The owner of Obaid Al-Fatlawi insure the defect.

27) Dr. Kamal Tharwat Al-Watdawi, Explanation of the Provisions of the Sale Contract, A Comparative Study, 1st Edition, Dar Al-Salaam Press, Baghdad, 1973.

28) Nada Abdel-Kazim Hussein, The Theory of Contract Reduction, MA thesis submitted to the Faculty of Law, Al-Nahrain University, 2000.

Legal material

29) See Article (720-1) of the Iraqi Civil Code, where it states (conciliation is indivisible, and the invalidity of part of it requires the invalidity of the contract).

30) The text of Article (150-1) of the Iraqi Civil Code (The contract must be executed in accordance with what it contains and in a manner consistent with what is required by good faith)

31) Article 73 of the Iraqi Civil Code No. (40) for the year 1951 The draft Iraqi civil law was defined in Article (306) as a union of two wills.

32) See Article (861-2) of an Iraqi civilian and Article (643-3) of an Egyptian civilian.

56) Article (97-1) an Iraqi civilian and Article (111-1) an Egyptian civilian d. Essam Anwar Selim, d. Muhammad Hassan Qasim Principles of Law, former source.

57) See Article (150) of the Iraqi Civil Code and Article (148) of the Egyptian Civil Law, which were previously referred to.

58) As in Article (177) of an Iraqi civil, regarding the judgment of rescission in binding contracts for the two cases, and Article (157) of the Egyptian Civil Code corresponds to them.

59) Article (178) of the Iraqi Civil Code stipulates the following: (It may be agreed that the contract is rescinded on its own without the need for a judicial ruling when other than fulfilling the obligations arising from it, and this agreement does not exempt from excuses.

60) See about the comparison in the partial opening of the contract and the implementation of part of it in exchange for the fourth requirement of the third research of the first chapter of the first chapter.

(61) See also the two articles of the Iraqi Trade Law.

62) We review a number of legislative applications that dealt with partial annulment in the research of this chapter, as it is referred to the third topic in Chapter One of Chapter One, p. 47 and beyond, in which it leads us to the source of the fragmentation of the contract.

contract, and after it (a description attached to the legal act, making it unable to produce a legal effect). Dr.. Jamil Al-Sharqawi, The Theory of the Invalidity of Legal Disposition, an earlier source, although this is the original.

48) From the decision of the Court of Cassation in Egypt No. 7448 for the year 63 of the Judicial session, April 14, 1994.

49) Article (137) of the Iraqi Civil Code stipulates that (1) a void contract is that which is not at all valid considering itself or a description considering some of its descriptions.

50) Article (133-1) of the Iraqi Civil Code stipulates that (1) a valid contract is a legitimate contract in and of itself, that it is issued by its people, added to a place that is subject to a court, has a legitimate reason and its descriptions are correct.

51) of that German civil code is Article (139) and the Jordanian civil law.

52) The Iraqi Civil Code regulated the provisions of contract invalidity in Articles (137-141) of it, and the general rules in other articles dealt with provisions related to invalidity, such as Article (127-1) which dealt with invalidity of the contract due to the impossibility of its place.

53) See the first requirement of the first topic of the second chapter of the first chapter of this thesis.

54) Article (98) is an Iraqi civilian and Article (112) is an Egyptian civilian.

55) Article (99) is an Iraqi civilian. As for Article (112) an Egyptian civilian, permission is limited.