

The Legal Framework for the Rectification of Void Contracts: "A Comparative Study"

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ABSTRACT

Objective: The legal framework for the rectification of void contracts is manifested in mechanisms that go beyond merely imposing sanctions, extending to the correction of defects whenever they can be remedied without affecting the essence of the contractual relationship or violating mandatory rules. **Method:** Rectification takes multiple forms, such as replacing the defective element with a lawful one, removing it if separable, reducing the contract to eliminate what exceeds legal limits, or adding a necessary element to complete its legal structure. **Results:** These measures reflect an approach that balances the strictness of nullity with the requirements of transactional stability, making rectification a means to reintegrate the contract into the realm of legality rather than wholly discarding it. **Novelty:** The study recommends legislative intervention to establish a general provision regulating the mechanisms of rectifying void contracts, explicitly defining their conditions and controls.

INTRODUCTION

Definition of the Topic

In civil law, nullity refers to the situation in which a contract suffers a significant defect that prevents it from producing its intended legal effects. Nullity, in this sense, does not merely constitute a sanction for a procedural or formal violation; rather, it represents the absence of the legal bond that the contract was supposed to establish, due to a breach of the requirements for proper formation or the legal principles governing contractual legitimacy [1][2][3]. A contract derives its force not solely from the parties' will but from the convergence of that will with the provisions of the law. If this convergence is lacking, the foundation on which the contract stands is entirely removed [4][5][6][7].

Invoking nullity is decisive in determining the fate of a contract. If the parties rely on nullity or if the court rules nullity based on established material violations, the contract is considered void retrospectively, as if it never existed [8][9][10][11]. This voidness results in the disappearance of all legal effects arising from the contract and restores the parties to the position they were in prior to its conclusion. However, absolute adherence to the effect of nullity in annulling a contract may lead to outcomes inconsistent with the law's aim of achieving justice. Consequently, legislators have sought to mitigate such outcomes by reducing the instances of nullity and by preserving contracts whenever possible, addressing the effects of emergent nullity on the contract rather than discarding it entirely [12][13][14].

In order to avoid or mitigate the effects of nullity, the legislator has introduced mechanisms aimed at preserving a contract affected by a defect that renders it void or threatens it with nullity, and at maintaining the contract itself once the nullity is removed [15][16]. In such cases, the contract becomes valid after having been void, or its validity is definitively established after having been uncertain between validity and nullity. Thus, addressing the nullity of a contract revolves around a single idea: transforming the contract itself from a state of nullity to a state of "validity." [17][18][19][20]

Accordingly, the law does not stop at merely declaring nullity; in certain cases, it allows for its correction or the mitigation of its effects to achieve transactional stability. If the parties do not insist on nullity, or if the defect affecting the contract does not conflict with public order, the emergent nullity may be addressed through various legal means aimed at correcting the defect without undermining the essence of the obligation [21][22]. This can be achieved by amending the elements affected by the defect in accordance with the law, such as removing the part of the contract that violates public order, or by adding an element to the contract's components to ensure compliance with legal provisions. Nullity may also be corrected by replacing the defective part with a lawful one that preserves the contractual purpose, thereby achieving a balance between the parties' intentions and the requirements of the legal system [23][24][25].

Furthermore, the emergent nullity of a contract can be remedied by transforming it that is, converting the void contract into another valid contract that fulfills the same legal purpose within a lawful framework [26][27][28][29][30]. For example, a sale contract rendered void due to non-compliance with formal requirements could be transformed into a valid gift contract if it is established that the donor's intent was present.

Significance of the Study

The importance of this study lies in the fact that the absolute acceptance of the effect of nullity where a contract is deemed void and all its consequences between the parties, as well as towards third parties, are annulled leads to economic and social repercussions that are inconsistent with the law's objective of establishing justice and balance in human and financial interactions. Therefore, the legislator, through careful efforts, sought to avoid these consequences by minimizing cases of nullity, making the most of contracts, and preventing their complete waste. This approach is based on the principle of correcting contracts whenever possible; if correction is not feasible, the law allows for recognizing some of the effects produced by a void contract as exceptions either considering the void contract as a material fact that produces certain legal consequences, or subsequently treating it as a valid contract, while taking into account public interest at times and private interest at others.

Research Problem

The problem addressed in this study arises from the fact that the legal provisions regulating the mechanisms for addressing contract nullity are scattered across multiple legislations and, consequently, lack comprehensive coverage of all forms of nullity and their practical applications. This dispersion of provisions, coupled with gaps in their content, prevents the formation of an integrated legal framework that clearly and

coherently outlines the mechanisms for remedying nullity. It also limits the judge's ability to derive consistent rules to address such a fundamental defect in contract formation. Accordingly, the research problem is framed by the following question: **To what extent is the legal framework effective in addressing nullity arising in civil contracts?**

Research Objectives

The concept of legally confronting the factors leading to nullity in contracts has not received adequate attention in Arab legislations in general, and in Iraqi and comparative law in particular. This is primarily due to the absence of a general provision encompassing all applications of addressing contract nullity; rather, these applications are dispersed across multiple legislative texts. Therefore, the main objective of this thesis is to collect and analyze these scattered applications in order to extract the legal approach to confronting the factors of nullity. This approach represents a serious starting point for the research, and such a beginning naturally faces challenges as it seeks to clarify all aspects of the concept.

RESEARCH METHOD

To address the research problem posed in this study, we adopted the analytical method for examining the legal texts relevant to the topic in light of jurisprudential theories and by referring to judicial rulings. In addition, we employed the comparative method to study the legal systems of Iraq and Lebanon, with the aim of highlighting the similarities and differences between them and illustrating how each system addresses the legal framework for correcting a void contract.

Research Structure

To address the research problem, we divided the study into two main sections, each containing two subsections. The first section examines the nature of nullity and its consequences on the contract, while the second section addresses the legal applications for correcting a void contract.

Chapter One

The Nature of Nullity and Its Consequences on the Contract

The principle of contractual stability is no longer absolute. In contemporary law, a contract is an act of will in both its formation and execution, yet the legislator often intervenes directly or through the judiciary to reorganize its effects. This occurs despite the fact that the contract binds the contracting parties. Nullity arises from a defect affecting one of the contract's essential elements or its validity conditions, and the type of nullity varies according to the nature of the defect affecting the contract[31]. The consequences of nullity on a contract are likewise varied. If the parties invoke nullity, or if the court rules in its favor, the contract is considered void *ab initio*, meaning it is treated as if it never existed [32][33][34]. All legal effects arising from it are extinguished, and the parties are restored to the state they were in prior to the formation of the contract[35].

If the parties do not invoke nullity, the law does not automatically annul the contract. Instead, it allows for addressing its effects in order to uphold the principle of contractual stability, which is one of the core objectives of civil legislation. In this case,

the contract can be repaired or the defect corrected by modifying its elements to bring it into conformity with legal rules. This clearly reflects the legislator's intention not to sacrifice the stability of transactions due to a remediable flaw, while simultaneously ensuring respect for the principle of legality that underpins the contractual system[16]. In recognition of the importance of the topic and to address it with precision, this section will be divided into two subsections: the first subsection will examine the concept of nullity in contracts, while the second subsection will clarify the consequences of nullity affecting the contract.

First Section

The Concept of Nullity in Contracts

Nullity, within the framework of the general theory of contracts, constitutes one of the fundamental tools employed by the legislator to ensure the integrity of contractual relations and their compliance with the principle of legality. Nullity is not merely a declaratory judgment regarding the invalidity of a contract; rather, it expresses the law's intent to exercise oversight over individuals' legal acts, aiming to protect the legal system from defects that may arise in its structure due to contracts that fail to meet the requirements of proper legal formulation.

For the sake of a comprehensive understanding, this section is divided into two subsections: the first subsection clarifies the meaning of contract nullity, while the second subsection examines the classification of nullity affecting contracts.

First Subsection

The Meaning of Contract Nullity

Definitions of nullity in jurisprudence vary, but they are largely similar. Most legal scholars define nullity as: *"the legal sanction imposed due to the contract's failure to satisfy all of its essential elements and conditions[15]*. Some scholars further added to the above definition that nullity results in the complete elimination of all effects of the contract, both between the contracting parties and in relation to third parties[11]. This definition has been criticized by scholars, who argue that the failure to produce legal effects concerns the act at the subsequent stage of its execution, namely the stage of effectuation. Nullity, however, pertains to the legal act itself, addressing its very existence, while the failure to produce effects is an entirely external consequence resulting from nullity [36][37][38][39]. Nullity has thus been defined as: *"the lack of validity or legal force that affects a legal act due to its violation of a command or prohibition established by law*. This definition has been criticized for equating nullity with both invalidity and lack of legal effect, thereby conflating the meanings of these terms with that of nullity itself. In fact, there is a distinction between invalidity and lack of legal effect: the former pertains directly to the legal act itself, whereas the latter concerns the consequences of the act [40][41][42].

The function of nullity is to supervise the will, ensuring that the intended legal effects conform to the commands of the law. It aims to achieve the purpose for which these legal rules were issued. In other words, nullity protects the law's objectives by aligning individual intentions with them; if a will contravenes the law's purpose, the individual intention is disregarded, and the law prevails by treating that will as incapable

of producing the intended legal effects[12]. Paragraph one of Article 137 of the Iraqi Civil Code defines a void contract as: "A void contract is one that is invalid in itself, or invalid in description, that is, with regard to its external characteristics[43]. According to this definition, the causes of nullity can be classified into two: either a defect in the essence of the contract and its components, that is, in one of its essential elements, or a defect in its external characteristics apart from its essence and components.

The first type includes, for example, when the offer or acceptance is made by someone not legally capable of contracting, or when the acceptance does not correspond to the offer, or when the subject matter is prohibited for dealing, or when there is no valid cause, or when the cause is unlawful, or when the subject matter and the cause violate public order and morals. All these defects affect the very essence and components of the contract. An example of this is a marriage contracted by someone lacking legal capacity, or a non-Muslim man marrying a Muslim woman due to her lack of legal eligibility; such a contract produces no legal effect of marriage, as its existence is treated as non-existent, and consummation is therefore impermissible[33].

The second type includes cases where the subject matter of the contract is unknown to an extreme degree, or when the contract does not fulfill the form required by law, such as the written form in a company contract, a lifelong employment contract, or registration with a notary in the sale or mortgage of machinery, as well as delivery in real rights contracts and registration of the sale of immovable property in the real estate registry[20].

Based on the above, some scholars view nullity as a sanction for the deficiency of an essential element of the contract, whether it is the absence of one of its pillars or a condition affecting its validity[5]. Others have argued that nullity is a characteristic that attaches to the legal act itself as a result of a defect, rather than a sanction that directly voids its effects. The defect is linked to the act if it violates a legal rule governing the execution of the act, ultimately leading to the non-enforceability of the act. Accordingly, some scholars contend that the purpose of nullity is to prevent the existence of legal acts that the law has prohibited.

From our perspective, nullity begins by labeling the act as null once the defect is established and the violation of legal provisions is confirmed. It then extends to the application of its effect, which manifests in weakening the contractual efficacy or depriving the contract of its binding force. Accordingly, we define contract nullity as: *a defect affecting the contract, which gives rise to various legal consequences.*

Branch Two

Classification of Nullity Affecting the Contract

Although comparative legislations have generally adopted a dual classification of nullity, they have not explicitly used the term "absolute nullity"; rather, they described its instances under the general term "nullity." Comparative laws have allocated a specific section for the theory of nullity, gathering the principal provisions that establish the general rules on contract nullity. In Iraqi legislation, these rules appear in Articles 137–141 of the Civil Code, while in Lebanese legislation, they are found in Articles 233–237 of the Code of Obligations and Contracts.

Two criteria are used to distinguish between absolute and relative nullity. The first relies on differentiating between the conditions of contract formation and the conditions of validity, whereas the second depends on the purpose or objective of the legal rule that has been violated. According to the first criterion, a contract is considered absolutely null if a fundamental element of the contract or a condition essential to the subject matter or cause is missing.

However, this criterion has been criticized for not providing a clear and decisive standard to differentiate between absolute and relative nullity. In some cases, it fails to allow a precise distinction. For example, Article 135 of the Iraqi Civil Code makes the sale of another person's property subject to annulment in favor of the buyer, despite the full legal capacity and the absence of defects in consent. According to the criterion based on the distinction between formation conditions and validity conditions, this contract cannot be classified as relatively null.

Consequently, a more recent approach suggests relying on the interest protected by the legal rule that the contract violates. If the rule aims to protect a public interest, its violation leads to absolute nullity. Conversely, if it protects a private interest, the resulting nullity is relative. This approach therefore links the concept of absolute nullity to public interest: if the existence of the contract is fundamentally related to a public interest concerning society as a whole, violating the rule results in absolute nullity[43].

On the other hand, a school of thought in jurisprudence which we endorse holds that nullity has no gradations; there is no absolute nullity or relative nullity. Rather, nullity exists at a single level. Accordingly, it is sufficient to describe the contract simply as null without specifying the type of nullity[28]. Thus, the division of nullity into absolute and relative is unjustified. This classification is based merely on the timing of nullity's realization: absolute nullity occurs from the outset, whereas in relative nullity, the legal existence of the contract delays the occurrence of nullity until the party entitled to invoke it asserts their right. Once invoked, nullity is realized retroactively, just as in absolute nullity, extending back to the time of the contract's formation.

This unity is further reflected in the applicability of corrective measures: whether the nullity is deemed absolute or relative, the contract may be corrected. Correction is no longer limited to cases of relative nullity; a contract deemed absolutely null can also be rectified by lifting the nullity, thereby restoring the contract retroactively[8]. Moreover, both jurisprudence and judicial practice have not settled on a fully clear criterion to distinguish cases of absolute nullity from those of relative nullity. As a result of this lack of clarity, some scholars have focused on identifying specific cases of each type without establishing a comprehensive standard for classifying nullity into its respective categories[13].

In turn, we support the contemporary legal approach that divides nullity into void contracts and voidable contracts, a classification based on the factual degree of defect affecting the contract. A void contract is one that lacks an essential element or involves a clear violation of a mandatory provision, public order, or public morals. In contrast, a voidable contract is valid in terms of its essential elements but is affected by a defect in

one of its components without undermining the very essence of the contractual relationship.

RESULTS AND DISCUSSION

Section Two

Consequences of Nullity Affecting the Contract

The ruling of contract nullity results in the contract's effects being nullified, returning the parties to the state they were in prior to its conclusion. In this context, civil liability and compensation for damages arising from the nullity may ensue. However, the legislator, in certain cases, mitigates the effects of nullity and allows for its remediation, either by modifying the contract's elements or converting it into a valid contract, thereby preserving the contractual purpose and ensuring the stability of civil transactions[1]. To comprehensively address the topic, this section is divided into two subsections: the first subsection is devoted to explaining the retention of the contract by mitigating the effects of nullity affecting it, while the second subsection focuses on examining the legal nullity of the contract's effects.

Subsection One

Retention of the Contract by Mitigating the Effects of Nullity Affecting It

If none of the contracting parties insist on the nullity of the contract, or if the law does not impose it automatically, the contract is not considered void. In such cases, it may be corrected whenever the cause of nullity can be removed, or the deficiencies in its essential conditions can be remedied, or the contract can be transformed into another valid contract. The parties' silence regarding the assertion of nullity serves as evidence of their desire for the contract to continue, which justifies preserving the principle of legitimate contractual intent[3]. In order to examine the subject in greater detail, we will address it from multiple perspectives sequentially, as follows:

First: Rectification of a Void Contract

A void contract can be rectified through several methods: by reducing the void part of the contract, adding an element to its components, or replacing the void element with another valid one. Each of these methods will be explained sequentially as follows:

Reduction of the Void Contract:

Articles 139 of the Iraqi Civil Code and 143 of the Egyptian Civil Code refer to the concept of reduction [38]. It is evident that reduction constitutes a legal consequence arising when part of a contract is void, aiming to limit the scope of nullity to the defective portion without extending it to the entire contract. This approach stems from the interest in protecting the benefits associated with contracts from being lost or wasted due to a ruling of total nullity. Therefore, the application of the concept of contract reduction presupposes that the nullity is partial rather than total, so that its effect is confined to a specific part of the contract without affecting its essential elements or violating the conditions of validity in a manner that would make the continuation of the remaining contract impossible[7].

The essence of reduction aims to enable the valid portion of the contract to produce some of the effects intended by the contracting parties at the time of its formation, by preserving what can be retained from the contract's content despite the nullity of a part of it. Jurisprudence has addressed the concept of reduction when examining the consequences of a void contract. One school of thought considers it an incidental effect that the parties did not initially intend to produce when concluding the contract; rather, it arises subsequently as a result of excluding the defective part while retaining the valid portion, particularly in cases where the subject matter of the contract is divisible and the nullity affects only one of its elements[34].

2-Correction of the contract by substitution of an element: This principle refers to replacing the void element in the contract with another lawful and valid element that achieves the same legal or economic purpose intended by the parties, thereby transforming the contract from a void form into a valid and enforceable one[1]. This substitution is considered a form of correcting a void contract that respects the contractual will of the parties and prioritizes the principle of contract continuity over the principle of its annulment[39].

3- Correcting a void contract by adding an element: Correcting a contract by adding elements addresses the deficiency that leads to its nullity by completing the missing element required by law to form a valid contract, whether achieved through the parties' own will or by operation of law when the parties' intention to establish a valid contractual relationship is clear. This addition does not constitute the creation of a new contract but rather completes the existing contract to align it with the formal or substantive validity requirements imposed by legislation[17].

Second: Transformation of a Void Contract

According to the logic of nullity, a void contract is not necessarily entirely without effect, as it may produce exceptional effects in certain cases. This occurs when the legislator seeks to mitigate the severity of the nullity penalty or limit its consequences, in order to achieve contractual stability, protect confidence and clarity within the contractual framework, and respect the parties' intentions as much as possible. It may happen that a contract is void, yet it contains independent elements or components that can form the basis for another valid contract, which produces legal effects, even if these effects differ from those originally intended by the parties. This effect is known in legal doctrine as the "transformation of a void contract[39].

The significance of transformation lies in the fact that a void contract may give rise to a specific legal effect in the form of a new contract, whose substantive and objective elements are derived from those of the original void contract. Thus, the concept of transformation does not conflict with the rule of nullity, since nullity does not result in the physical nonexistence of the contract but merely affects its legal validity. Accordingly, the essence of transformation involves replacing the void contract with a new contract, the formation of which the judge may determine when the conditions stipulated by law are met. The legislator established these conditions to limit the judge's authority in this

domain, given that the effects of transformation could impact the parties' original intentions or differ from what they intended when the contract was concluded[30].

Subsection Two

The Absence of the Legal Effect of the Contract

Nullity is a characteristic that attaches to a contract that violates the law. If the parties invoke nullity, or the court rules for it based on established fundamental violations, the contract is deemed void retroactively, as if it had never existed from the outset. It has only an apparent existence, which means it is stripped of its ability to produce the original effects that would have arisen had it been a valid contract.

Upon examining the legal provisions contained in comparative legislation, Article 138 of the Iraqi Civil Code provides:

- (1) A void contract is not concluded and produces no legal effect whatsoever.
- (2) If the contract is void, the contracting parties shall be restored to the position they were in prior to the contract; if this is impossible, compensation equivalent to the damage may be awarded.
- (3) Nevertheless, a person of diminished capacity is not required, if the contract is void due to lack of capacity, to return anything other than the benefit that accrued to them as a result of the execution of the contract.

Meanwhile, Article 233 of the Lebanese Code of Obligations and Contracts stipulates:

(The annulment of a contract shall always be due to an original defect affecting it at the time of its formation, such as mistake, fraud, duress, lesion, and lack of capacity. No one other than the court may rule on annulment, and it shall then have retroactive effect; however, the contract shall remain valid and continue to produce its ordinary effects as long as annulment has not been judicially declared.)

Accordingly, the absence of the legal effect of a void contract occurs when the contract does not comply with the legal provisions concerning its essential elements and conditions of validity, or when the defect affecting it cannot be remedied or its consequences cannot be cured. The purpose of establishing this sanction is primarily to protect the public interest. Nevertheless, nullity may, in certain cases, be established to protect a private interest belonging to one of the contracting parties. In such a case, the contract remains subject to ratification by the party for whose benefit nullity is established, who retains the right to confirm it or to request its annulment. This type of contract is sometimes described as a contract threatened with nullity[4].

In this case, the void contract is treated as a material fact rather than a legal act. It may give rise to factual effects, such as possession or delivery, but these are not based on a lawful cause and do not establish acquired rights. This nullity constitutes an application of the principle of legality in private relations, and it does not cease after its occurrence by the will of the parties or by the passage of time, because nullity eliminates the legal existence of the contract.

A ruling declaring the absence of the legal effect of the contract results in the removal of all its legal effects retroactively, restoring the contracting parties to the

position they were in prior to its conclusion, as though the contract had never existed. Nullity erases the contract from its foundation and removes the obligations, transfers of ownership, or benefits that resulted from it, in application of the principle that what is built on a void act is itself void[23]. If the nullity of the contract is established and its legal existence ceases, this entails the erasure of all the effects it had produced, with such extinction operating retroactively to the date of the contract's conclusion. Accordingly, all acts arising from it are deemed never to have existed, even if they occurred during the period between its formation and the judgment declaring its nullity. Consequently, the parties are obliged to restore the situation to what it was prior to contracting, so that each party is returned to their former position, in order to achieve justice and to prevent the unjust enrichment of one party at the expense of the other without a lawful cause[32]. This is achieved by obliging each party to return to the other what was received under the contract. If one of them has received money or a tangible object, it must be returned in kind if it still exists, or its value must be returned if this is impossible. All fruits or benefits generated from the object must also be returned, as they result from an unlawful act. If one party has performed an obligation that cannot be returned in kind, such as the performance of work or a service, the other party must compensate them to the extent of the enrichment obtained from that performance, on the basis of the rule of unjust enrichment.

Chapter Two

Legal Applications for the Rectification of a Void Contract

A void contract may only be rectified by the disappearance of the attribute of nullity in accordance with the will of the legislator, through a change in one of the elements of the contract, resulting in the removal of the cause of nullity. This change may occur by operation of law without regard to the will of the contracting parties; in such a case, the application is absolute. The change in one of the elements of the contract may be achieved through reduction, addition, or substitution once the contract violates a legal rule, even if the will of the contracting parties was directed toward the total nullity of the contract[25]. In other cases, however, nullity is not related to the protection of the public interest. Therefore, the total nullity of the contract does not conflict with the objectives that the legislator sought to achieve. Accordingly, a change in one of the elements of the contract is not realized unless the will of the contracting parties is directed toward it, and this constitutes a limitation on the application of contract rectification in such cases[10]. Recognizing the importance of the subject and in an effort to address it accurately, this chapter will be divided into two sections: the first section will be devoted to examining the absolute application of the rectification of a void contract, while the second section will be devoted to explaining the restricted application of the rectification of a void contract.

Section One

The Absolute Application of the Rectification of a Void Contract

These applications consist of any change that occurs in one of the elements of a void contract which results in the removal of its nullity. Such change takes place by the will of

the legislator without being restricted by recourse to the will of the contracting parties, as their will is disregarded. This change occurs either by replacing the void part with another part that takes its place, or by excluding the void part without substitution[6]. In order to comprehensively address the various aspects of the subject, this section will be divided into two subsections: the first subsection will be devoted to explaining the rectification of the contract through substitution in one of its elements, while the second subsection will examine the rectification of the contract by excluding the void part by operation of law.

Subsection One

Rectification of the Contract by Substitution in One of Its Elements

The principle of rectifying a void contract by replacing the void part with a valid one is among the applications adopted by the Iraqi Civil Code in the regulation of contracts. The law does not regard nullity as an absolute end to the contract; rather, it allows for its correction whenever possible, provided that public order or the original intent of the contracting parties is not violated. The Iraqi legislator explicitly articulated this approach in Article 139 of the Civil Code, which provides: "If a contract is partially void, only that part shall be void, and the contract shall remain valid in other respects, unless the void part was the motivation for the entire contract[40].

It is evident from the above text that nullity within the scope of a contract does not extend to the entire contract if it can be isolated in a specific part that can be separated from the remaining provisions and replaced with one that complies with the law. The legislator intended to allow the possibility of partially rectifying a void contract by excluding the part that violates the law and substituting it with a lawful one, with the aim of preserving the contract and maintaining its legal life without affecting its lawful essence.

In this context, substitution means readjusting the void part and transforming it into a lawful obligation that achieves the same purpose intended by the contracting parties, but in a manner consistent with the provisions of the law. The purpose of substitution is not to create a new contract, but to remove the cause of nullity and preserve the legal act within its proper limits. This principle is based on a well-established rule: that what is partially invalid does not render the whole invalid if it can be corrected in part. In other words, the nullity of a part of the contract does not necessarily entail the nullity of the entire contract, provided that the non-compliant part can be separated and replaced with a valid one without collapsing the contractual structure[19]. Rectification of the contract in this manner presupposes the fulfillment of several conditions. The most important of these is that the void part must be separable from the remaining obligations, so that it can be isolated without disturbing the contractual balance. Additionally, this part must not constitute the primary motivation for entering into the contract, since a will founded on an unlawful cause renders substitution legally impossible. It is also required that a lawful obligation or legal condition can be substituted for the void part, achieving the intended purpose without altering the nature of the contract. This rectification may occur by agreement of the parties if they recognize the cause of nullity, or by a judicial decision if

the court determines that rectification of the contract is possible[2]. For example, in lease contracts, the lessor and lessee may agree on a clause stipulating that the lessee has no right to claim compensation for damages resulting from the lessor's breach of obligations. Such a clause violates public order provisions, which require compensation upon the occurrence of damage, in accordance with Article 169 of the Iraqi Civil Code and Article 560 of the Lebanese Code of Obligations and Contracts. In this case, the judiciary does not annul the entire lease contract; rather, it excludes the void clause and substitutes it with the mandatory legal rule that imposes fair compensation in the event of a breach. Consequently, the contract remains valid and continues to produce its effects. This achieves the legal substitution of the void clause with a rule of mandatory application derived from public order, without affecting the remainder of the contract, thereby upholding the principle of transactional stability[26].

Subsection Two

Rectification of the Contract by Excluding the Void Part by Operation of Law

A void contract may be rectified by excluding the defective part by operation of law, regardless of whether the contracting parties intended this or not. This exclusion aims to achieve the purpose intended by the legislator in the legal rule that was violated. In this case, the removal of the void clause constitutes a modification of one of the elements of the contract, as it forms part of it. If the clause is of a restrictive nature, its exclusion allows the remainder of the contract to remain valid and produce its effects, thereby rescuing it from nullity. However, if the clause is conditional, the effect of its nullity varies according to its importance: it may result in the nullity of the entire contract if it is essential, or its effect may be limited to reducing and rectifying the contract, allowing it to continue within its legally permissible scope[24].

An example of this type of rectification is the case of agreeing on interest rates that exceed the legally prescribed limit in the Civil Code. Parties are not permitted to agree on an interest rate exceeding 7%. If they agree on a higher rate, it must be reduced to this legal maximum. In this instance, the contract is rectified by excluding the portion exceeding 7% without regard to the will of the contracting parties, since such an agreement contravenes public order. Reducing the interest to the legal limit aligns the contract with the provisions of the law and public order, thereby achieving the purpose intended by the legislator in setting this maximum rate.

Accordingly, Article 172 of the Iraqi Civil Code provides:

- (1) The contracting parties may agree on another interest rate, provided that it does not exceed seven percent. If they agree on an interest rate higher than this, it must be reduced to seven percent, and any excess already paid must be reimbursed.
- (2) Any commission or benefit, of whatever type, stipulated by the creditor, if it causes the total of the agreed interest and the benefit to exceed the aforementioned maximum, shall be considered concealed interest and may be reduced if it is proven that the commission or benefit does not correspond to an actual service provided by the creditor or a lawful benefit[40].

Accordingly, we propose replacing the phrase "may be reduced" in these two paragraphs with "must be reduced," because the former wording could imply the possibility of leaving the contract in effect without reducing the interest rate to the legally prescribed maximum, which is inconsistent with the legislator's intent in setting this limit.

The same rule applies in cases where the parties agree to grant the creditor a commission or benefit that, together with the agreed interest, exceeds the legal maximum. Such excess must be reduced if it is proven that the commission or benefit stipulated by the creditor does not correspond to an actual service provided by the creditor or a lawful benefit. This rectification is achieved by excluding the portion of the contract exceeding 7% while preserving the remainder of the contract. Therefore, we disagree with those who view this exclusion as falling within the judge's discretion to amend the contract[2]. Another application of excluding the void part by operation of law is found in legislative provisions that impose a mandatory price for certain goods. When the legislator intervenes to set a price, the aim is to achieve a social or economic objective, which can only be realized by reducing the transaction that violates these provisions. If the matter were left to the parties' intent, it could result in declaring the entire transaction void, which would conflict with the legislator's goal of protecting members of society[24]. The legislator may also intervene to provide special protection for certain groups, such as workers or tenants, by setting a minimum wage for workers or a maximum rent for housing and agricultural land, which cannot be contractually violated. If the parties' intent were applied as the standard in these cases, the likely outcome would be the complete nullity of the contract, which is not what the legislator intends. Therefore, this standard must be set aside in favor of applying the public order criterion, which imposes a mandatory reduction to achieve the legislative policy that the legislator seeks to implement[2].

Section Two

Restricted Application of the Rectification of a Void Contract

This is primarily manifested in the reduction of a void contract, whereby the removal of the void part from the contract leads to the elimination of its nullity and, consequently, its rectification[27]. However, these applications are not limited to reducing a void contract by excluding its void part; the change may also occur through the addition to the elements of the void contract, resulting in the elimination of its nullity and the establishment of its legal effects. To comprehensively address the subject, this section is divided into two subsections: the first subsection is devoted to explaining the rectification of a void contract by reduction, while the second subsection examines the rectification of a void contract by adding an element to it.

Subsection One

Rectification of a Void Contract by Reduction

The theory of reducing a contract is based on the idea that the original contract is not entirely void, but only in part. The void part is removed, while the remainder of the contract remains valid and continues to produce its effects. The Iraqi Civil Code adopts

this theory, as Article 139 provides: "If a contract is partially void, only that part shall be void, while the remainder of the contract remains valid as an independent contract, unless it is shown that the contract would not have been concluded without the part that was void."

In contrast, the Lebanese legislator in the Code of Obligations and Contracts does not explicitly provide for the principle of contract reduction. The legislator limits itself to regulating the effects of nullity in general, leaving it to the judiciary to determine the extent to which the contract may continue after part of it is void, based on the separability of the void part from the rest of the contract and the absence of conflict with the parties' intent or public order.

Rectification of a contract by reduction, through excision of the void part, is subject to a limitation: the void part must not constitute the primary motivation for entering into the contract. The contract cannot be rectified if the claimant proves that the void part was the inducement for entering into the contract[36]. In all cases, the remaining part of the contract that is, the valid, non-void portions must include all the elements necessary for the existence of the contract. Moreover, the excision of a part of the contract must not alter its legal characterization; it must not change its type or nature. If, after removing the void part, the contract assumes a different type than it originally belonged to, then this does not constitute rectification of the void contract by reduction, but rather a transformation of the void contract into an entirely new contract[21].

An example of Iraqi judicial practice in this regard is a decision by the Iraqi Court of Cassation, which stated: "The entire contract shall be void if it could not have been concluded without the part that was void (Article 139, Iraqi Civil Code)[22]. It is thus evident that the judge cannot reduce the contract by removing a void clause if it is determined that this clause was the motivating factor for entering into the contract. This is precisely the intent of Article 139 of the Iraqi Civil Code, which states: "unless it is shown that the contract would not have been concluded without the part that was void."

If one of the contracting parties explicitly indicates that their acceptance of the contract was conditional upon the inclusion of a specific clause, and that they would not have concluded the contract without it, the judge is obliged to respect this intent. In such a case, the judge refrains from reducing the contract and rules the clause void, resulting in the nullity of the entire contract[37]. This is illustrated by practical examples. For instance, if a gift contract is coupled with an unlawful condition that is not the motivating factor for the donation, the condition alone may be excluded while the gift remains valid. However, if it is established that this condition was the primary reason that prompted the donor to enter into the contract meaning the gift would not have been made without it then the nullity of the condition extends to the entire contract, which is consequently declared void in full.

From the foregoing, it is clear that rectifying a void contract through reduction is not a rectification imposed by operation of law, but is instead based on choice. Before reduction, the contract exists in an unstable state, as it may be entirely void if the defective part constitutes the main inducement for contracting. In such a case, the principle of

rectification cannot be applied. Conversely, if the void part is not essential or not the cause of entering into the contract, the contract can be rescued from nullity by excluding it, provided the conditions for reduction are met, most importantly that the defective part is not integral to the essence of the contract. Therefore, this type of rectification remains conditional upon the will of the contracting parties and only occurs if their intent or the intent of either party was not directed toward voiding the entire contract, making it a discretionary rather than a mandatory form of rectification.

Subsection Two

Rectification of a Void Contract by Adding an Element to Its Components

The Iraqi legislator has regulated real estate registration provisions within both the Civil Code and the Real Estate Registration Law, emphasizing that registration constitutes an essential element in the formation of the contract. Accordingly, transactions involving real estate are not considered valid nor acquire legal existence until they are registered with the Real Estate Registration Department, as their legal existence is fundamentally linked to this procedure[19].

Paragraph 1 of Article 90 of the Iraqi Civil Code provides: "If the law requires a specific form for the contract, it shall not be concluded except by fulfilling this form, unless there is a provision to the contrary."

Article 247 states: "The obligation to transfer ownership or any other real right automatically transfers this right if the subject of the obligation is a specific item possessed by the obligor, without prejudice to the rules related to registration."

Similarly, paragraph 2 of Article 1126 of the same code provides: "A contract transferring ownership of real estate is not concluded unless the legally prescribed procedure is observed."

The Real Estate Registration Law stipulates in paragraph 2 of Article 3: "A real estate transaction is not valid except by registration with the Real Estate Registration Department."

Under Lebanese law, Article 204 of the Lebanese Real Property Law of 1930 provides: "Real rights are acquired and transferred by entry in the real estate registry; otherwise, ownership and disposal rights are also acquired by attachment according to the provisions of Chapter Two of this title. Anyone who acquires real estate by inheritance, expropriation, or judgment becomes the owner prior to registration, but the acquisition has no legal effect until registration."

From the foregoing provisions, it is evident that registration under Iraqi law constitutes an essential element in a real estate sale contract. Such a contract is classified as a formal contract, the validity of which depends on fulfilling the legally prescribed form, specifically registration with the Real Estate Registration Department. If this procedure is not completed, the contract is considered void and legally ineffective, as if it had never existed.

However, the Iraqi legislator has sought to mitigate the severity of these effects. Article 1127 of the Civil Code provides a special remedy for some consequences of non-registration, stating: "The obligation to transfer ownership of real estate is limited to the

duty to compensate if either party breaches their commitment, whether compensation was stipulated in the obligation or not." Accordingly, the transferor is liable for damages incurred by the other party as a result of their failure to register.

It should be noted that this legislative approach does not stop at providing compensation for the difference between the property's value at the time of the obligation and its value at the time of default, but goes further by establishing a stronger legal position for the obligee. These provisions were reinforced by two decisions of the Revolutionary Command Council (now dissolved): Decision No. 1198 of 1977 and its amended version, Decision No. 1426 of 1983.

The rectification of a contract through the removal of nullity by modifying one of its elements may also be reflected in judicial rulings, as demonstrated in the applications cited in these two decisions. For example, a real estate sale contract concluded outside the Real Estate Registration Department is considered void for failing to meet the legally required form, since the law requires registration of a real estate sale in the competent department for the contract to be valid and effective. If one of the parties refuses to complete the registration, the contract remains legally void[14]. However, the Iraqi legislator went further by adopting the concept of contract modification in paragraph (b) of these two decisions, aiming to reduce instances of nullity in external real estate sale contracts. It was recognized that such a contract could have its void status removed, thereby becoming valid and producing legal effects both between the parties and against third parties. This modification is achieved by introducing a change to one of the contract's elements, specifically an addition to the subject matter (the property), which did not exist at the time the contract was concluded. This addition is linked to the will of the contracting parties and may appear either in the obligee taking residence in the property or in constructing buildings, facilities, or planting crops on it, provided there is no written objection from the obligor[9].

Once this change is realized through the addition made to the elements of the contract, the contract remains valid and continues to produce its effects, with retroactive effect dating back to its execution. Consequently, the obligee is considered the owner of the property at the value specified in the external sale contract from that date. This demonstrates that the modification not only removes the nullity but also establishes that the contract has been valid since its inception, rather than from the date of the court's ownership ruling.

CONCLUSION

Fundamental Finding : Nullity in a civil contract does not merely constitute a penalty for a procedural or formal violation; rather, it reflects the absence of the legal bond that the contract was supposed to establish, resulting from a failure to meet the requirements for proper formation or the legal principles governing contractual legitimacy. A contract derives its validity not solely from the will of the parties, but from the convergence of that will with the provisions of the law. If this convergence is absent, the very foundation of the contract is removed. A ruling declaring a contract null and

void results in the elimination of its legal effects, rendering it as if it had never existed from the outset, and leading to the retroactive annulment of all consequences that arose from it. The law nevertheless permits, in certain cases, the remedy of a void contract through rectification or transformation, including replacement, exclusion, reduction, or addition of contractual elements, depending on legal requirements. **Implication** : We recommend that the Iraqi legislator adopt a clear legislative classification of the degrees of nullity within the Civil Code, distinguishing between void contracts and contracts threatened with nullity. This would strengthen contractual regulation and allow the judiciary to handle defects more flexibly while maintaining the continuity of contractual relationships. It is also recommended to establish stable judicial precedents with objective criteria for continuing contracts despite causes of nullity, in order to preserve contractual will and ensure the stability of commercial transactions. **Limitation** : It was noted that Article 139 of the Iraqi Civil Code does not regulate contract reduction with sufficient precision, as it treats the remaining valid part of a reduced contract as a separate contract. This creates ambiguity, as reduction in reality only excludes the void part while the original contract continues in its valid portions without generating a new contract. **Future Research** : Further legislative development is proposed, including amending Article 139 to clarify that only the void part is null while the remainder of the contract remains valid if divisible, and amending Article 140 to recognize transformation of void contracts into valid ones when their elements exist, provided this aligns with party intent and does not violate legal provisions or social purposes of the contract, while granting judges discretionary authority in applying transformation.

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