

Legal Mechanisms for Addressing a Contract Threatened with Invalidity “A Comparative Study”

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ABSTRACT

Objective: The objective of this study is to examine the legal situation of contracts threatened with invalidity, where the contract is formed correctly but contains a defect that exposes it to annulment. The study aims to explore the legal mechanisms available to restore the balance of such contracts or shield them from challenge. **Method:** The method involves a legal analysis of the corrective mechanisms that can be applied to contracts threatened with invalidity. This includes examining legal tools such as reduction, addition, substitution, ratification, and prescription, and their role in restoring contract balance or protecting it from annulment. **Results:** The study finds that contracts threatened with invalidity continue to produce legal effects until their invalidity is declared or the ground for challenging them ceases. Corrective mechanisms such as restructuring contract elements or ratifying the contract are crucial in preserving its validity under specific conditions. **Novelty:** The novelty lies in presenting a legal approach that strikes a balance between protecting consent and maintaining the stability of transactions. The study embodies a legislative philosophy favoring the preservation of contracts when their defects can be legally remedied.

INTRODUCTION

First: Definition of the Subject Matter

The contract constitutes the foremost legal instrument for regulating financial relations and the exchange of interests among individuals, as it is founded upon the concurrence of two wills within a framework of legality aimed at creating valid and binding obligations. However, the soundness of a contract is not confined merely to the fulfillment of its essential elements and conditions at the time of conclusion; it also extends to its being free from defects that may undermine its legal existence and render it susceptible to invalidity [1], [2], [3]. A contract threatened with invalidity is one that appears, prima facie, to satisfy the requirements of formation, yet contains a defect affecting one of its elements or conditions of validity, thereby opening the possibility for it to be challenged and nullified, either partially or wholly [4], [5], [6]. The seriousness of this type of contract lies in the fact that it remains in existence and produces its legal effects until a judgment of invalidity is rendered or the cause of the threat is removed [7], [8], [9], [10].

This legal situation raises both theoretical and practical issues, as a contract threatened with invalidity occupies an intermediate position between a fully valid contract that has definitively fulfilled all its requirements, and a void contract that lacks legal existence from the outset. It is a contract that enjoys a presumption of validity; however, this presumption is rebuttable once a ground for invalidity is established [11],

[12], [13]. Accordingly, the study of this category of contracts necessitates an examination of its legal nature and the determination of its position within the traditional classifications of legal acts [14], [15], [16], [17].

The causes that render a contract threatened with invalidity are varied. They may stem from defects in consent, such as lesion or mistake, or from deficiencies in the object or the cause, or may relate to issues such as the sale of another’s property or the limits of representation, among other situations that place the contract in a transitional zone between full validity and nullity [18], [19], [20]. In response to this situation, the legislator has not remained passive; rather, it has sought to devise legal mechanisms to address such threats, with the aim of ensuring the stability of transactions and safeguarding the will of the contracting parties wherever possible. At times, this is achieved by modifying one of the elements of the contract through reduction, addition, or substitution thereby correcting its course and removing the cause of invalidity [21], [22], [23]. At other times, it is accomplished without altering its elements, through mechanisms such as ratification or prescription, which confer legal protection upon the contract once the ground for challenge has ceased or the prescribed time limit has elapsed [24], [25], [26], [27].

Second: (Significance of the Study)

The significance of this study lies in its focus on analyzing and evaluating the legal mechanisms established for addressing a contract threatened with invalidity, as practical tools for remedying contractual defects rather than merely nullifying the legal act. The study goes beyond identifying the grounds of invalidity to examine the mechanisms of remediation themselves, clarifying their nature, conditions, limits, and legal effects. Its importance also stems from highlighting the constructive role of these mechanisms in restoring contractual balance, whether through modifying its elements by reduction, addition, or substitution, or through preserving its structure without modification by means such as ratification and prescription.

Third: Research Problem

The research problem arises from the tension between the principle of stability of transactions, which requires the respect and preservation of contracts, and the necessity of protecting genuine consent and preventing the persistence of defective legal acts. This tension raises questions regarding the effectiveness of the legal means adopted by the legislator to address contracts threatened with invalidity, as well as the limits of judicial intervention in reformulating or affirming contractual relationships. Accordingly, the core research question is: To what extent are the legal mechanisms for addressing a contract threatened with invalidity effective?

Fourth: Objectives of the Study

The study aims to address recurring practical issues observed in judicial practice, particularly in contracts affected by lesion or mistake, or in cases involving the sale of another’s property, where competing considerations arise between nullifying the contract to protect the aggrieved party and maintaining it after correcting its defects. Furthermore, the multiplicity of remedial mechanisms and the variation in their legal

effects necessitate an analytical study to determine the scope of each mechanism and the conditions governing its application.

Fifth: Research Methodology

In order to answer the research problem within the scope of this study, the analytical method has been adopted to examine the relevant legal texts in light of doctrinal theories and judicial decisions. In addition, the comparative method has been employed to study the legal systems of Iraq and Lebanon, with the aim of identifying similarities and differences between them and clarifying their respective approaches to addressing the legal mechanisms for treating contracts threatened with invalidity.

Sixth: Structure of the Study

In order to address the research problem, the study is divided into two main sections, each comprising two subsections. The first section examines the nature of addressing a contract threatened with invalidity, while the second section explores the applications of correcting such contracts.

Chapter One

The Nature of Addressing a Contract Threatened with Invalidity

A contract threatened with invalidity is a valid and enforceable contract that produces all its legal effects; however, it remains susceptible to annulment because the party for whose benefit invalidity is prescribed may seek to rescind the contract [28][29][30]. If invalidity is established, the contract is retroactively nullified as though it had never existed, making it equivalent to an absolutely void contract [31]. Conversely, if the threat of invalidity is remedied during the stage of voidability, the contract becomes valid from the moment of its conclusion, and its annulment can no longer be requested thereafter. Consequently, the contract’s validity becomes definitively established [32].

The threat of invalidity can be addressed by modifying the elements of the contract, either through reduction, addition, or substitution. It can also be remedied without altering the contract’s elements, primarily through two mechanisms: ratification and prescription. In order to address the topic comprehensively and precisely, this chapter is divided into two sections: the first section is dedicated to examining the concept of a contract threatened with invalidity, while the second section focuses on the means of addressing such a contract.

Section One

The Concept of a Contract Threatened with Invalidity

A contract threatened with invalidity is one tainted by a defect that places it in a state of uncertainty between validity and nullity. Therefore, a valid and enforceable contract that is not defective cannot be considered a contract subject to correction. In other words, a contract threatened with invalidity is a valid and effective contract, but it contains a defect that exposes it to the risk of annulment [8]. To ensure a comprehensive understanding of the topic, this section is divided into two subsections: the first subsection is dedicated to clarifying the meaning of a contract threatened with invalidity, while the second subsection examines the causes that render a contract susceptible to invalidity.

Subsection One

The Meaning of a Contract Threatened with Invalidity

The concept of a contract threatened with invalidity is defined according to two approaches. The first approach distinguishes between the requirements for formation and the conditions of validity. Under this view, a contract is considered threatened with invalidity if its essential elements and the conditions of the object and cause are fulfilled, but the element of consent is defective. The second approach defines the concept of such a contract based on the interest protected by the legal rule that the contract violates. If the rule aims to protect a private interest, then a contract that contravenes it is deemed threatened with invalidity.

On this basis, the susceptibility to annulment arises from the absence of valid and genuine consent. The defect in consent may result either from a deficiency in legal capacity, such as in the case of a minor with discernment or those legally incapacitated due to foolishness or negligence, or from a defect affecting consent, such as coercion, mistake, fraud, exploitation, or lesion. A third situation rendering a contract voidable occurs when the law explicitly grants one of the parties the right to annul the contract, as in the case of the sale of another’s property [21].

Accordingly, it can be stated that a contract is considered threatened with invalidity in two primary cases. The first occurs when consent is given by a person with limited legal capacity, as determined by the rules of capacity, which vary from one country and legal system to another. This applies to acts that the law prohibits for those with limited capacity for example, when a minor with discernment sells their property without the permission of a guardian or custodian. Legal capacity here refers to the ability of a person to enter into and execute legal acts, specifically the capacity to perform, which is grounded in understanding. Capacity exists or ceases to exist depending on the presence of understanding: if understanding is absent, capacity does not exist; if it is partial, capacity is limited; and if it is complete, full capacity exists.

The second case arises when consent is affected by a legal defect, such as mistake, coercion, fraud, exploitation, or lesion. In such instances, the contract is concluded but remains voidable, similarly to the first case. In addition to these two main cases, there are other situations explicitly recognized by legal provisions in which a contract may be voidable. These occur even if the contract would not generally be considered threatened with invalidity under general rules, but the law intervenes to create a special or exceptional voidability, sometimes contrary to the general principles of law [33][34].

It becomes clear that a contract threatened with invalidity partially corresponds to the situations encountered by a suspended contract. A contract concluded by a person with limited capacity or affected by a defect in consent is considered a suspended contract under Iraqi Civil Law, which drew the concept of the suspended contract from Islamic jurisprudence, whereas it is regarded as voidable under the Lebanese Code of Obligations and Contracts.

It is also important to note that laws adopting the concept of a contract threatened with invalidity such as the Lebanese legislation have sometimes supplemented it with

another concept [35], [36], [37]. For example, in the case of the sale of another’s property, the contract, in addition to being threatened with invalidity, is not enforceable against the true owner. The non-enforceability applies only to this third party, who is not a participant in the contract; thus, a contract cannot bind someone who did not consent to it [38][39]. The sale of another’s property is valid and produces effects between the contracting parties before being ratified by the true owner, but it has no effect against the latter until approved [40].

In contrast, in legal systems that adopt the suspended contract concept, such as Iraqi law, the sale of another’s property is treated as a suspended contract vis-à-vis all parties the seller, the buyer, and the true owner making the additional notion of non-enforceability unnecessary [23].

A contract threatened with invalidity is voidable only for the benefit of one of the contracting parties. Only that party, and not the other, has the right to invoke annulment. For example, if the ground for voidability is limited capacity, only the party with limited capacity may assert the contract’s invalidity. Accordingly, annulment does not occur automatically; it arises only when invoked by the specific person for whose benefit the law established the right of annulment. The court cannot declare the contract void on its own initiative [18].

Subsection Two

Causes of a Contract Being Threatened with Invalidity

A contract may be threatened with invalidity due to a defect in the element of consent, the object, or the form, any of which can result in the contract’s annulment. These causes can be clarified as follows:

First: Contract Invalidity Due to a Defect in Consent

Consent is defined as the agreement of two wills to produce a legal effect. The mere existence of the two wills is sufficient to constitute a contract, but it is not enough to ensure its validity. For a contract to be valid, the consent of each party must be genuine and free from any defect [41]. This agreement is achieved through the correspondence of acceptance with the offer by the contracting parties in a manner that establishes its effect on the object of the contract, as stipulated in Article 73 of the Iraqi Civil Code [42].

The same principle applies to a contracting party who possesses only limited legal capacity to carry out transactions involving all of their property, such as a minor with granted permission (authorized minor) [37]. The law, as an exception and for the purpose of testing, permits such a minor to carry out certain legal transactions within a portion of their property, in order to assess their ability to manage and deal with it properly. In this case, the minor is considered fully capable regarding transactions within the limits of the granted authorization, while remaining of limited capacity for transactions exceeding those limits.

Consequently, their acts are valid within the scope of the authorization, but beyond that scope, they are either void or suspended, depending on the circumstances. For example, if an authorized minor sells part of their property or leases it for more than

one year without authorization, the transaction is valid only to the extent permitted, while it is void or suspended for the portion exceeding the granted limits.

A defect in the element of consent may also arise in the case of a multi-party transaction [42]. In transactions involving multiple obligors, if one of the parties lacks legal capacity or their will is affected by a defect in consent, the element of consent is defective only for that individual, while remaining valid for the others. This, by its nature, prevents the annulment of the entire transaction.

For example, in a negotiable instrument bearing the signatures of multiple parties who are jointly obligated to pay its value to the beneficiary, if one of them lacks capacity or has a defective will, their signature is either void or suspended solely with respect to them, without affecting the obligations of the other parties in principle. However, if the multiplicity of obligors is intended as an essential condition of the contract, the defect would render the entire contract void [22].

Second: Contract Invalidity Due to a Defect in the Object

Article 128 of the Iraqi Civil Code provides that:

The object of the obligation must be determined in a manner that eliminates any gross ambiguity.

It is sufficient for the object to be known to the contracting parties; there is no need to describe or define it in any other way [37].

Paragraph two of Article 137 of the same law provides that:

A contract is void if there is a defect in one of its elements, such as when the offer and acceptance are made by persons lacking legal capacity, or the object is unsuitable for the effect of the contract, or the cause is unlawful.

From these provisions, it is evident that comparative legislation places great emphasis on specifying the object of the contract in a manner that eliminates ambiguity. The legislator stipulates that the conditions for the object are that it must exist or be capable of existing, be determined or determinable, and be lawful, whether it is the object of the contract or the object of the obligation. The object of the contract refers to the goal the parties aim to achieve, whereas the object of the obligation is what the debtor undertakes, whether performing an act or refraining from one.

A defect in the object element occurs when it does not meet the conditions of validity in part of the contract, without affecting the remainder of the contract despite the defect. This situation arises when the contract involves multiple objects that are divisible by their nature and without any legal impediment. For example, a contract may concern several items, some of which are determined individually by their identity, type, or quantity. In all these cases, the contract may be threatened with invalidity; however, this does not negate its legal existence. Instead, the contract remains suspended, subject to ratification by the party holding the vested interest.

Section Two

Means of Addressing a Contract Threatened with Invalidity

The threat of invalidity can be remedied in two ways: either by modifying the elements of the contract or without altering them. Modification of the contract's elements

involves adjusting or replacing one of its components in a manner that removes the cause of invalidity and ensures the contract remains valid. This includes reduction, addition, and substitution, all aimed at preserving the contractual relationship from collapse.

On the other hand, removing the threat of invalidity without altering any elements of the contract is achieved through mechanisms such as ratification or prescription [19]. To ensure a comprehensive understanding of the topic, this section is divided into two subsections: the first subsection is dedicated to explaining the removal of the threat of invalidity through modification of an element of the contract, while the second subsection examines the removal of the threat of invalidity without altering any element of the contract.

Subsection One

Removal of the Threat of Invalidity by Modifying an Element of the Contract

To shed light on the removal of the threat of invalidity through modification of a contract element in detail, the topic will be addressed from multiple perspectives. We will begin with modification of the contract's elements through reduction and addition, followed by modification through substitution, as outlined below.

First: Modification of Contract Elements by Reduction and Addition

To explain modification of the contract's elements through reduction and addition in detail, the discussion will proceed in stages: first, the modification of contract elements by reduction, and then the modification of contract elements by addition, as follows.

1. Modification by Reduction:

In this type of modification, the law provides for altering an element of the contract by reducing it, which results in the removal of the threat of invalidity and the establishment of the contract as fully valid [15]. This form of modification is reflected in Article 125 of the Iraqi Civil Code, which states:

If one of the contracting parties has been exploited due to their need, folly, caprice, lack of experience, or weakness of understanding, resulting in gross lesion, they may, within one year from the date of the contract, request that the lesion be reduced to a reasonable extent. If the act was performed gratuitously, they may annul it within this period."

This provision allows the contract to remain valid while correcting the imbalance caused by excessive disadvantage to one party, thereby eliminating the threat of annulment.

Meanwhile, Article 214 of the Lebanese Code of Obligations and Contracts provides:

A contract becomes voidable in the following cases:

If the disadvantaged party is a minor.

If the disadvantaged party is of full capacity and the lesion has two characteristics: first, that it is gross and unusual compared to customary practice; second, that the beneficiary intended to exploit the narrowness, folly, or inexperience of the disadvantaged party. To a certain extent, contracts of uncertainty may also be annulled due to lesion."*

According to the above provisions, a contracting party who has been disadvantaged due to exploitation may request a reduction of their obligations to the extent that removes the gross lesion. If the elements and conditions of exploitation are met, the judge is required to grant the request and reduce the disadvantaged party's obligations to the level that eliminates the gross lesion. This reduction constitutes a modification of an element of the contract: the contract's elements are no longer unchanged, as the obligations of the disadvantaged party are adjusted to correct the imbalance [35].

Second: Modification by Addition

Correction of the contract in this case is achieved only if there is a legal provision stipulating the removal of the threat of invalidity through an addition to one of its elements. The contract's elements are thus no longer unchanged. Here, we are dealing with a legislative mechanism that involves modification by addition, resulting in the removal of the threat of invalidity by preventing the party entitled to invoke annulment from doing so after the change has been implemented [20]. This is reflected in the first paragraph of Article 1077 of the Iraqi Civil Code, which allows the defendant to suspend a lawsuit seeking annulment of a partition on the grounds of gross lesion and to prevent a new partition from being conducted if they compensate the claimant partner who suffered the gross lesion for the deficiency in their share.

The text of the first paragraph of Article 1077 of the Iraqi Civil Code states:

It is permissible to request the annulment of a partition agreed upon if one of the co-owners proves that they suffered a gross lesion from it. The claim may not be heard after six months from the completion of the partition. The defendant may suspend the proceedings and prevent a new partition if they compensate, in cash or in kind, for the deficiency in the claimant's share."

Similarly, Article 947 of the Lebanese Code of Obligations and Contracts provides:

A partition, whether contractual, statutory, or judicial, may not be annulled except for mistake, coercion, fraud, or lesion."

Accordingly, under comparative legislation, a co-owner disadvantaged in a partition contract may invoke annulment of the partition. However, the law does not render the contract indefinitely threatened with invalidity; rather, it limits the right to claim annulment and file a lawsuit to a specific period. In the Iraqi Code, this period is six months from the date of completion of the partition, while in Lebanese legislation, it is one year following the partition. This period constitutes a statute of limitation, and it is not subject to suspension or interruption. Once the period expires, the right to challenge lapses, and the partition contract becomes definitively valid, with the threat of invalidity removed [28].

Second: Modification of a Contract Element by Substitution

The threat of invalidity in a contract is removed when the defective element causing the threat is excluded and replaced with another valid element that achieves the same legal function without affecting the essence of consent or the agreed-upon purpose. This correction is based on the principle of stability of transactions, as the law permits

addressing such a defect provided that it is capable of being remedied and that the substitution is made with the consent of the parties in a manner consistent with the substantive and formal requirements of validity [26].

This is illustrated by Article 117 of the Iraqi Civil Code, which provides:

1. If a mistake occurs regarding the object of the contract and it has both a name and a reference, then if the type differs, the contract pertains to the named object and is void for nonexistence; if the type is the same but the description differs, and the description is desirable, the contract pertains to the referenced object and is concluded upon its existence, but it remains suspended pending the contracting party's ratification.

2. If this gem was sold as a ruby but turned out to be glass, the sale is void. If the gem was sold as a red ruby but was smaller, or a cow was sold as milking but turned out not to be, the sale is suspended pending the buyer's ratification."

Similarly, Article 204 of the Lebanese Code of Obligations and Contracts provides:

A contract is considered voidable:

If the mistake concerns the essential characteristics of the object.

If the mistake concerns the identity or essential attributes of a person in contracts concluded with that person.

If the mistake concerns the validity of the cause of the obligation, such as creating a promise for a prior obligation believed to be civil when it was only natural."*

From the above, it is clear that removing the mistake by substituting an old element with a new element that did not exist at the time of contract formation eliminates the threat of invalidity and corrects the contract, which had previously been oscillating between validity and nullity.

Subsection Two

Removal of the Threat of Invalidity without Modifying Any Element of the Contract

To examine the removal of the threat of invalidity without altering any element of the contract in detail, the discussion will proceed in stages: first, the ratification of a contract threatened with invalidity, and then the prescription of such a contract, as follows.

First: Ratification of a Contract Threatened with Invalidity

Ratification is one of the means of addressing a contract threatened with invalidity. Through ratification, the contract becomes definitively valid and is freed from the risk of annulment that previously threatened it. Once the contract is ratified, the contracting party can no longer annul it.

Furthermore, ratification of a contract threatened with invalidity constitutes a correction of the contract. Since the contract exists and produces its effects until annulment is sought, it is conceivable that the party entitled to request annulment may waive this right. Once this waiver occurs, the contract becomes definitively valid, and annulment can no longer be requested [11].

Article 136 of the Iraqi Civil Code addresses ratification by stating:

Ratification of a suspended contract may be express or implied and relates back to the time the contract was concluded. Its validity requires the presence of the person entitled to it at the time the contract was made, and it does not require the participation of the contracting parties, the original owner, or the obligee at the time of ratification."

Similarly, Article 237 of the Lebanese Code of Obligations and Contracts provides:

Endorsement, whether in any form express, implied, or assumed removes the defect that existed in the contract. No one may use this defect as grounds for objection by any means, whether by defense or claim. Endorsement implies the renunciation of all means by which the contract could have been challenged, except for the rights acquired by a third party in good faith."

From these provisions, it is evident that ratification takes two main forms: express ratification and implied ratification. Express ratification occurs when the entitled party clearly manifests their will, using unmistakable language, such as directly declaring their agreement to the act subject to ratification or employing terms that indicate acknowledgment and acceptance of the contract. Express ratification may also be inferred from positive conduct indicating a waiver of the right to annul, such as receiving the consideration or accepting the payment, reflecting their consent to the contract.

Implied ratification, on the other hand, is derived from actions or behavior that do not involve direct verbal expression but clearly indicate the entitled party's acceptance of the contract, such as acting in relation to the contract's object or performing acts that demonstrate acknowledgment of it. Implied ratification may also arise from the lapse of the legally prescribed period to exercise the right of annulment without doing so, serving as evidence of consent and acceptance of the contract [2].

Finally, ratification corrects both a suspended contract and a voidable contract by removing the threat of invalidity retroactively. The threat of invalidity disappears with retroactive effect, leaving the contract firmly valid, despite the deficiency that previously affected its validity. Thus, the purpose of ratification is to eliminate the risk that threatened the contract. However, ratification does not eliminate the defect itself retroactively; rather, it removes the effects produced by that defect, namely the threat of invalidity. This is because ratification does not involve any modification of the elements of the contract.

Second: Prescription of a Contract Threatened with Invalidity

Once a suspended contract is ratified, it becomes valid and effective from the time of its formation, and the right of the party entitled to ratification to seek annulment is extinguished. Before ratification, however, the contract produces no effect and remains suspended until it is either ratified or annulled.

The continuation of this suspended state may prolong the uncertainty of the contract and disrupt the stability of transactions. For this reason, the Iraqi legislator deemed that a suspended contract should not remain in limbo for an extended period without ratification or annulment. Accordingly, the exercise of the option to ratify or annul must occur within three months. If no action indicating the intent to annul the

contract is taken within this period, the contract is considered valid, the right to invoke its annulment is extinguished, and the contract becomes definitively valid, no longer threatened by invalidity [10].

Paragraph two of Article 136 of the Iraqi Civil Code provides:

The option to ratify or annul must be exercised within three months. If no action indicating the intent to annul the contract is taken within this period, the contract shall be considered valid."

Similarly, Article 235 of the Lebanese Code of Obligations and Contracts states:

The right to file such a claim is barred by the passage of time after ten years, unless the law has established a different period for a specific case. The period begins not from the date the defective contract was created, but from the day the defect was removed."

Accordingly, the threat of invalidity exists only for a legally specified period. If this period expires without the contracting party exercising their right to annul the contract, that right lapses, the threat of invalidity disappears, and the contract's validity is reinforced. Prescription removes the risk of annulment arising from the defect; it is the effects of the defect, not the defect itself, that are extinguished upon the expiration of the period.

RESEARCH METHOD

The approach taken in this research is based on a doctrinal legal research approach to analyze the effectiveness of the legal means used to overcome contracts threatened with nullity from a systematic and comparative perspective. The research is based on analytical method through a study of legislation provisions, especially the Iraqi Civil Code and the Lebanese Code of Obligations and Contracts studies them by interpreting their legal content, identifying their legal basis, and evaluating their practical implications in resolving defects firms. By applying this methodologically substantial basis of legal jurisprudence and doctrinal writings, it enables a proper articulation of the theory behind the contracts that are impeded by problems in the area of consent, object or capacity. It also uses a comparative approach to investigate the similarities and differences between the Iraqi and the Lebanese legal systems, making it easier to understand how each of these systems corrects contracts through its mechanisms like reduction, addition, substitution, ratification and prescription. The comparative dimension enriches the overall analysis because it highlights the strengths and weaknesses of each legislative framework and their balancing act between the respect of the contractual consent and the need for stability of the transactions. The study also includes an analysis of some case law to show how courts use these mechanisms in real-life, such as in cases of mistake, exploitation and the sale of someone else's property. This approach, additionally supplemented with comparative and doctrinal analysis as well as concrete legal examples in application, has also ensured that the methodology relies on a holistic and blended approach allowing the Study to cohesively respond to the key research question of effectiveness and limit of the statutory counter-sales remedies under threat of invalidity without losing the thematic objectiveness and legal scope of the study as a whole.

RESULTS AND DISCUSSION

Chapter Two

Applications of Correcting a Contract Threatened with Invalidity

The applications of correcting a contract threatened with invalidity encompass all cases in which such a threat arises. Each of these cases may be addressed through either ratification or prescription, resulting in the same legal effect: the correction of the contract and the definitive stabilization of its validity [12]. Accordingly, examining all cases in detail would be unnecessary. Therefore, the focus will be limited to the causes whose correction is not confined to ratification or prescription, but for which the legislator allows other means of correction, involving a modification of one of the contract's elements.

In recognition of the importance of the subject and to ensure a precise analysis, this chapter will be divided into two sections: the first section will address the correction of defective contracts due to lesion or mistake, while the second section will examine the correction of contracts involving the sale of another's property and contracts coupled with abusive conditions.

Section One

Correction of a Contract Defective Due to Lesion or Mistake

The correction of a contract threatened with invalidity due to lesion or mistake is based on the principle of preserving the contractual bond whenever possible without undermining contractual fairness. The legislator allows the disadvantaged party to request an adjustment of the contract to remove the gross imbalance in benefits resulting from the exploitation of their vulnerable position, need, or carelessness, instead of declaring the contract wholly void. In the case of a mistake, the contract is corrected by clarifying the true intention of the contracting party and rectifying the object of the obligation or its characteristics to reflect that intention [7]. In order to thoroughly address the topic, this section is divided into two subsections: the first subsection will examine the correction of a contract defective due to lesion, while the second subsection will focus on the correction of a contract defective due to mistake.

Subsection One

Correction of a Contract Defective Due to Lesion

Lesion arises from a mere imbalance between the reciprocal obligations, which contradicts the principle of equality that contracts are meant to ensure in the exchange of rights and duties. It occurs when there is a significant disparity in the value of the obligations assumed by the parties to the contract. The disadvantaged party may bring a claim to annul the contract if the other party has exploited a specific weakness in their will. However, the judge will not annul a contract affected by lesion unless the intention of the disadvantaged party is so impaired that it warrants the contract's annulment [17].

The Iraqi legislator addressed the possibility of remedying lesion in Articles 121, 122, 123, 124, and 125, with Article 125 providing:

"If one of the contracting parties has exploited the other's need, recklessness, caprice, inexperience, or weakness of understanding, resulting in a gross lesion, the

disadvantaged party may, within one year from the date of the contract, request that the lesion be remedied to a reasonable extent. If the act was gratuitous, the disadvantaged party may annul it within this period."

Similarly, Article 214 of the Lebanese Code of Obligations and Contracts provides:

A contract becomes voidable in the following cases: 1- If the disadvantaged party is a minor. 2- If the disadvantaged party is of full capacity and the lesion has two characteristics: first, it is gross and unusual compared to customary practice; second, the beneficiary intended to exploit the narrowness, recklessness, or inexperience of the disadvantaged party. To a certain extent, contracts of uncertainty may also be annulled due to lesion."

Accordingly, the disadvantaged party may avoid annulment of the contract if the party who caused the lesion fulfills their obligation in an appropriate manner, thereby restoring balance between the performances. Consequently, the latter cannot invoke the lesion in a way that contradicts the principle of good faith [27]. It can be stated that the Iraqi legislator acted wisely by obligating the disadvantaged party not to exercise the option of annulment or to accept an increase to complete the price when the other party offers to restore balance between the performances. This approach protects the stability of transactions in society and reinforces the principle of *pacta sunt servanda*, thereby upholding the respect for the principle of the freedom of contract [13].

It is noteworthy that the Iraqi legislator's approach demonstrates a higher degree of precision compared to other legal systems, as it distinguishes between contracts of exchange and contracts of donation in addressing lesion. In contracts of exchange, the disadvantaged party is granted the right to modify the obligation and reduce the lesion to a reasonable extent, thereby restoring contractual balance. In contracts of donation, however, the law grants the disadvantaged party the right to annul the contract, as provided in Article 125 of the Iraqi Civil Code.

In contrast, under Lebanese law, the adjustment by reducing obligations applies equally to both contracts of exchange and contracts of donation. Accordingly, a contract defective due to exploitation under the Lebanese Code of Obligations and Contracts is considered voidable. The reduction of the burdensome obligation of the disadvantaged party restores the contract, transforming it from a contract fluctuating between validity and nullity into a fully valid contract.

However, this is not the case under Iraqi legislation. The Iraqi Civil Code does not consider a contract of exchange defective due to exploitation as threatened with nullity; rather, it is valid and enforceable. It may be modified by reducing the obligations of the disadvantaged party or increasing the obligations of the benefiting party. The contract is not suspended pending the ratification of the disadvantaged party, so the purpose of reducing or increasing obligations is not to rescue a threatened contract, since it was never threatened with nullity. Therefore, the adjustment by reduction or increase constitutes a modification of the contract rather than its correction [30].

Chapter Two, Section Two

Correction of a Contract Defective by Error

A contract that can be corrected by removing the threat of nullity is one affected by an error as a defect of consent specifically, a material error that motivates the contracting party and is known to the other party. Individual errors do not render a contract correctable, because in such cases the contract is not considered defective. For correction to be applicable, the other contracting party must either have committed the same error, been aware of it, or it must have been reasonably apparent to them; this condition is not satisfied in the case of a unilateral error.

Accordingly, Article 118 of the Iraqi Civil Code provides:

Mistaken belief does not enforce the contract if:

There is an error regarding an essential quality of the subject matter in the view of the contracting parties or as should be considered given the circumstances of the contract and the principles of good faith in dealings.

There is an error concerning the contracting party himself or one of his essential qualities, and this error is the sole or main cause of the contract.

There is an error in matters necessary to preserve the fairness of the transaction, allowing the contracting party invoking the error to consider them essential elements for the contract.

Article 119 of the Iraqi Civil Code provides:

A contracting party who has committed an error may only invoke it if the other party has committed the same error, was aware of it, or it was easily ascertainable by them."

In Lebanese legislation, Article 204 of the Code of Obligations and Contracts states:

A contract is considered voidable:

If the error concerns the essential qualities of the subject matter.

If the error concerns the identity of the person or their essential qualities in contracts specifically intended for that contracting party.

If the error concerns the effectiveness of the cause of the obligation, such as creating a commitment for a previous cause that was believed to be civil when it was only natural.

Correction of a contract in which one party's consent is defective due to error is achieved through ratification of the contract by the contracting party [37]. or the lapse of the period prescribed by law without any action indicating the annulment of the contract [42]. The contract is then rectified through ratification or the lapse of the statutory period; once the contracting party becomes aware of the mistake, they may ratify the contract, which then becomes definitively valid after having previously oscillated between validity and nullity [43].

However, this rectification does not eliminate the mistake itself. The contracting party ratifies the contract after recognizing the mistake, so ratification does not correct the error but only the contract. It results in the contracting party waiving their right to annul the contract, despite being aware of the mistake. For example, a buyer who

believed they were purchasing an antique, but later discovered otherwise after concluding the contract, may ratify the contract within the legal period; yet, this ratification does not entitle them to receive the antique they originally intended to acquire [3].

The second requirement

Correction of the Sale of Another’s Property and Contracts with Unfair Conditions

A contract for the sale of another person’s property is considered a contract threatened with nullity. It can be corrected if the true owner subsequently ratifies the transaction, at which point the contract takes effect as a valid sale from the date of ratification, not from the date of its conclusion. A contract threatened with nullity due to unfair conditions is corrected through judicial intervention, whereby the judge modifies or removes the unfair terms to ensure equality between the parties while preserving the essence of the contract [5]. For a comprehensive understanding of the topic, this requirement is divided into two sections: the first section is dedicated to explaining the correction of a contract for the sale of another’s property, while the second section addresses the correction of a contract flawed by unfair conditions.

Section One

Correction of a Contract for the Sale of Another’s Property

The Iraqi legislator did not allocate specific provisions exclusively for the sale of another’s property; rather, it is considered a form of a precario transaction, according to the first paragraph of Article 135 of the Iraqi Civil Code, which states: (“Anyone who disposes of another’s property without their permission, their act shall be suspended pending the approval of the owner”). Accordingly, under Iraqi law, a sale of another’s property is originally a valid contract; however, it remains unenforceable against the true owner, as its validity depends on the owner’s subsequent approval.

Consequently, the owner has the right to ratify or annul this transaction within a period of three months from the date of becoming aware of the contract concluded by the precario. If this period lapses without the owner taking any action, their silence is deemed an implicit ratification of the contract. When the approval is granted, whether explicitly or implicitly, its effect retroactively applies to the time of the original contract, rendering the buyer the owner of the sold item from the date of agreement with the precario, based on the principle that subsequent ratification is treated as if it were prior authorization [31].

Meanwhile, under Lebanese law, Article 385 of the Lebanese Code of Obligations and Contracts treats the sale of another’s property as a special type of sale, subject to provisions different from those of the Iraqi Civil Code. Article 385 provides:

The sale of another’s property is void except in the following cases:

If the sold item is specified by its kind or type only.

If the owner approves it.

If the seller subsequently acquires ownership of the sold item.

If the owner refuses to ratify the sale, the seller is liable for compensation and damages to the buyer if the seller knew that they did not own the item and the buyer was

unaware of this. The seller may not claim the contract’s nullity on the ground that the sale involved another’s property. This is without prejudice to the application of Decree No. 188 issued by the High Commissioner on 15 March 1926.

Accordingly, it can be said that the Iraqi legal position is more precise and consistent compared to the Lebanese and Egyptian legislations. It treats the contract as suspended, meaning it is unenforceable against all parties whether the seller, the buyer, or the true owner until ratification occurs. In contrast, considering the contract as voidable under the Lebanese and Egyptian laws necessitated invoking the concept of non-enforceability to prevent effect against the true owner, which reflects a relatively more complex legal treatment.

Moreover, keeping the contract in a suspended state provides greater protection for the owner and the contracting parties, as it prevents the contract from producing effects before its status is resolved. In a voidable contract, the contract may produce effects prior to ratification or a ruling of nullity, which could harm the true owner, especially if the property is disposed of without their knowledge or consent, and even if they never intended to sell or approve the transaction [9].

It is evident from the foregoing that the sale of another’s property under the Iraqi Civil Code constitutes an unstable contract, oscillating between validity and nullity, as it remains suspended until ratification by the true owner. If the owner approves the transaction within three months from the date they become aware of it, the contract becomes fully valid and enforceable against all parties, namely the seller, the buyer, and the owner. Thus, this represents a form of definitive contract correction through ratification.

Chapter Two

Correction of a Contract Defective Due to Unfair Terms

The Iraqi legislator granted discretionary authority to the judge to protect the submissive party in adhesion contracts in general, without restricting this power to a specific contract. This is done through modifying or exempting the submissive party from the unfair terms contained in the contract, as provided in paragraph two of Article 167 of the Civil Code, which states: “If the contract is concluded by way of adhesion and contains unfair terms, the court may modify these terms or exempt the submissive party from them in accordance with the requirements of justice, and any agreement to the contrary shall be void.”

It is evident from Article 167 of the Iraqi Civil Code that the court is granted discretionary power to intervene in amending the provisions of an adhesion contract and is not obligated to do so. Ideally, the Iraqi legislator should have explicitly regulated in the Civil Code the lifting of such submission from the weaker party in the contract by requiring the judge to modify the provisions of the adhesion contract rather than leaving the matter to discretionary authority. As a general principle, the right holder may exercise their right in the manner and method they choose, within the limits established by law.

In this regard, Article 26 of the Lebanese Consumer Protection Law provides: “Terms shall be considered unfair if they aim or may lead to a disruption of the balance

between the rights and obligations of the professional and the consumer to the detriment of the latter. The unfair nature of the term shall be assessed at the time of contracting, with reference to the provisions of the contract and what follows, excluding those related to the price.”

In practice, the judge amends the contract by modifying the unfair terms contained therein, thereby securing the interest of the submissive party, or by completely exempting the submissive party from them in accordance with the principles of justice. In this case, the judge effectively alters the contract by removing certain provisions agreed upon by the contracting parties.

The judge, in intervening in this manner, maintains the existence of these terms but addresses them through modification in the manner deemed appropriate. He may adjust the reciprocal obligations between the parties by increasing or decreasing them to achieve balance between the contracting parties. Special cases may arise, such as modifying an excessive penalty clause or adjusting unfair terms without affecting the contract as a whole. Therefore, such modification represents the most suitable solution to remove the disadvantage from the weaker party [14]. As for the mechanism of such modification, it can be carried out in one of two ways, which will be examined in some detail as follows:

First: Modification by Reducing the Burdensome Obligation

The judge rules to reduce the obligor’s performance with the aim of removing the coercive aspect, as reducing the burdensome obligation is considered the natural and customary means to relieve the debtor. The judge may resort to this reduction method to alleviate the burden and restore the financial balance of the contract to a reasonable level, either quantitatively by decreasing the amount the debtor must provide, or qualitatively by requiring the debtor to deliver the agreed quantity in a lower-quality form [24].

In this context, modifying the penalty clause means that the clause subject to modification is a penalty clause. A penalty clause is an agreed-upon compensation between the contracting parties, considered by both as a sanction in the event of non-performance or delayed performance. This clause may appear in the contract as a subsequent provision to the main contract [33]. The penalty clause here must be included in the adhesion contract for the judge to intervene and modify it. If the judge finds that the penalty imposed on the adhering party is excessive, he may reduce its amount proportionally to the value of the damage, according to the circumstances.

Second: Adjustment by Increasing the Obligation Corresponding to the Burdensome Obligation

There are numerous applications that provide fertile ground for the judge’s intervention in modifying unfair terms, which we will address successively as follows:

1. Sales Contract: The adjustment may involve increasing the corresponding obligation in a way that balances the parties’ obligations. For example, in a water supply contract, the term may initially stipulate discontinuation of water supply after one day to fulfill the obligation. The judge may modify this term to extend it to one or two weeks [29].

2. **Employment Contract:** The adjustment may involve balancing obligations by reducing excessive penalties. For example, fines imposed on an employee for minor errors may be lowered by the judge in accordance with principles of justice [16].
3. **Insurance Contract:** In adhesion contracts, the party imposing the contract terms bears the burden of ambiguity. Therefore, the court interprets any unclear clauses in favor of the weaker party, without enforcing the terms unilaterally set by the stronger party. For example, if an insurance company requires payment of premiums at its own office, while it customarily collects them at the policyholder’s location, the court may treat this as a modification of the term, preventing abuse against the policyholder as the weaker party [1].

CONCLUSION

Fundamental Finding: (1) A contract threatened with nullity is a legal act with a defect or deficiency in its essential or formal elements but is not void from the outset. It remains valid until annulled, unless corrective legal mechanisms are applied to remove or prevent the cause of nullity. (2) The causes of nullity are divided into internal (related to elements such as consent, subject matter, or consideration) and external causes (related to formalities like delivery). Both types can lead to nullity or voidability under Iraqi and Lebanese law. (3) The threat of nullity can be addressed through modifications (reduction, addition, substitution) to the contract's elements or through ratification and the statute of limitations, preserving the contract and ensuring transactional stability. (4) The legislator prefers to repair contracts instead of annulling them, and methods for addressing nullity differ between a contract threatened with nullity and a void contract.

Implication: The findings highlight the importance of addressing the threat of nullity in a way that maintains the integrity of contracts, aligning with the principle of transactional stability. The ability to repair a contract or prevent its annulment through legal mechanisms like ratification and the statute of limitations ensures that parties' intentions are preserved. This approach can reduce the risk of unjust annulments and promote legal certainty in contractual relationships. **Limitation:** The study is limited by the lack of detailed legislative provisions in some jurisdictions, such as Iraq, for correcting contracts threatened with nullity. Additionally, while the theory of mere lesion is applied in specific cases, its broader applicability remains underdeveloped, and the current limitation periods for annulment claims may not adequately reflect the nature of psychological exploitation. **Future Research:** Future research should focus on expanding the legislative framework for correcting contracts threatened with nullity, particularly by establishing clear guidelines for various correction methods and their application. Further studies could also explore the broader application of the theory of mere lesion and propose more balanced limitation periods for annulment claims. Additionally, research into enhancing the role of mediation and arbitration in resolving contract disputes may provide valuable insights for preserving contractual relationships and preventing their collapse.

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