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ECONOMIC ANALYSIS OF THE TRADE CONTRACTS: AN ECONOMIC PERSPECTIVE

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ABSTRACT. The social, economic, and legal sciences system is an integrated system that requires knowing the nature and limits of the relationship between law and economy and whether this relationship is earthy or an equivalent relationship. We note that the idea of research should provide a legal reading of the theory of economic analysis from a legal perspective since the basis of the convergence between economic law is the idea of benefits generally framed by the theory of the contract. Comparing the corporate contract provisions in Iraqi and other legal systems will help us build this institution in Iraqi corporate law and avoid any disputes and disagreements between its members and third parties on the content of a corporate contract. This article proposes that Iraq should explore resolving the issue by implementing some rights inalienability limits in copyright law already present in several other jurisdictions abroad. It explores the rationales for implementing such rules in Iraq civil law, including uneven negotiating power, prediction, fairness, and valuable methods. These studies illustrate the capacity of various alienability measures to raise author compensation in the face of assertions that such limits are useless.

JEL Classification: K12, K13, K20

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Introduction

The idea that the contract is the law of the contractors underlies the freedom of contract premise (Loke, 2020). Agreements that provide for contractual flexibility are called contractual freedoms. As a result, we see that people have a solid commitment to the concepts of freedom and justice. They are willing to engage in morally correct and economically sound activities. Furthermore, the contract's economic efficiency is achieved under the economic and legal changes that have taken place in society at previous periods. Individuals have the freedom to enter into contracts or not, according to the idea of the authority of the will. So long as he does not break public order, the person can put any provisions he wishes in the contract. When it comes to ethics, we can see that our former freedom has been reduced to a collection of obligatory legal norms that some deem part of the general economic order. It is not permitted for anyone else to consent to break these laws. In other words, the detracting of this concept

may be traced back to the fact that this principle was founded on an economic foundation and subsequently impacted by financial circumstances that led to its detraction. Contractual freedom in economic life without state involvement, and this thing between the rising imbalance between the production and consuming sector, which prompted some to argue that the state should intervene by adopting regulations managing ties between individuals and businesses (Davis & Rhodes, 2020). New developments in the capitalist system are characterized by "directed capitalism," which includes the state's role in economic life and the establishment of significant companies with a monopolistic nature of goods and services to protect workers (Bianchi, 2018).

1. Freedom of Contract and The Influence of Public Order In Contracts

According to the premise that the contract is the law of the parties, freedom of contract is founded (Green, 2017). Contractual freedom deals with the ability of the parties to abide or act. Therefore, we note a connection to the two ideas of right and freedom. The two parties impact it, as is the case with the offer and acceptance, and sometimes it is outside the contract, and the will of the two parties has nothing to do with it. These factors are represented in the public order (community security), and therefore we divide this requirement into two branches:

1.1. Freedom To Contract From An Economic Concept

The principle of the contract is the law of the contracting parties has gained great fame and popularity among supporters of the direction of the dominion of will (Mik, 2017). This principle still occupies its place in legal literature. However, the traditional understanding of this concept may have diminished due to legislative involvement in contract substance, which often considers protection for the weaker party. Achieving the economic efficiency of the contract is in line with the economic and legal transformations in the life of societies at other times. The principle of the authority of the will has given the individual the freedom to conclude the contract or abstain from it (Markovits, 2020). Instead, the individual can include whatever clauses he wants in the agreement, noting that the public order is not violated. Ethics and accordingly, this freedom has declined and has become restricted to imperative legal rules that some considered part of the general economic order. It is not permissible to agree on violating it. Therefore, it led to the detraction of this principle.

Consequently, this principle was based on an economic basis and then was affected by economic factors that led to its detraction. These factors are often in a permanent movement and reach An ongoing trend towards implementing the principle of contractual freedom in economic life without the state's intervention in setting restrictions on production and circulation. The escalating imbalance between the production and consumption sectors led some to say that the state should interfere in economic life by enacting legislation governing relations. The capitalist system has been reimagined as "directed capitalism," a term used to describe this shift. The state should intervene in the economy for the working class to ensure their safety. Affluent production methods are also keeping pace with today's economic development. Large, dominant corporations' emergence provides many goods and services (Lindqvist, 2018). Some believe that the principle of the contract is the law of the contracting parties, an incomplete code unless the contracting parties are equivalent and equivalent (Kaal & Calcaterra, 2017). Justice and economic equality between the contractual parties are essential for achieving the intended outcome. The obligatory texts took the place of the interpreted and complementary texts until it seemed that the legislator is joint with the two parties in organizing the contract with the obligations it imposes to achieve economic benefits from the contractual

process. Despite all of this, the flexibility of the contract remained. As long as the intention to establish a new legal condition persists, it has its shine to bring the contract into existence. Then the legislator intervenes in organizing this contract. The offer and acceptance, which constitute the contract's last two aspects, determine how far the economic wheel has moved in society. The positive corresponds to supply, demand, and acceptance as a legal indicator of the completion of the legal wheel of the contract with economic significance and an example of contractual freedom in the light of economic and technological development where consumers have become in dire need of utility services. General lines such as electricity, water, and gas prompted the legislator to draw general lines for contractors of this type of contract, known as contracts of submission in the Iraqi civil law. The French legislator included the contracts of compliance for the first time in the amendment of the French Civil Code of 2016 in Article 1110 if there is a difference between bargaining contracts and contracts of submission (Rowan, 2017). French jurisprudence has traditionally called this accession contract because the acceptor and His consent were present (Kuzmina & Baculin, 2019). Still, he joined the contract without discussing and negotiating with the obligor because of the nature of this type of contract that relates to services and essential life amenities.

1.2. The Restrictions on Freedom of Contract

People's freedom of contract allows them to enter into private agreements with one another, even if those agreements do not meet society's expectations. Contracts can not be scuppered by the government or any external force (Davis & Rhodes, 2020). Most international business transactions are predicated on the idea that the parties are bound to fulfill their responsibilities and that disputes should be resolved outside of court (Schmitz & Rule, 2019). How one's partner and one's capacity to enter into a contract is characterized as a measure of freedom. For a contract to be valid, it must not include unlawful activity or conditions that are unjust to the parties involved.

On the other hand, state law may restrict the ability of parties to form their contracts depending on the language they use. It is morally wrong to include language in an agreement that limits or dismisses the equitable treatment of one party over the other. Contracts of this type are immediately canceled. It has become increasingly difficult for people to freely enter into contracts because of various issues, including constraints on the legal foundation level. At the same time, the other part is related to the restrictions related to public order (community security).

1. The Incoming Restrictions At The Legal Base Level.

The legal rules include provisions that individuals must consider when drafting contracts and concluding legal actions (Malmberg & Britton, 2020). The employer indeed has the right to appoint workers, dismiss them and hold them accountable until all of this falls under the Labor Law. It specified the conditions for hiring the worker, working hours and holidays, and vacations accordingly. Also, individuals have the freedom to dispose of their money because of a disparity in the deposited and withdrawn money (Jakubowski, 2019). For example, suppose the person who disposes of it is real estate (house or apartment). The disposer must consider the owners of the right of pre-emption under what is recognized by the Iraqi Civil Code. These legal rules limit the circulation of goods And money, which negatively affects the economy, just as there are contracts that are devoid of the idea of maximizing economic benefits. It is not possible to imagine that the gift contract, for example, puts the gifted in circulation, and therefore gifts are considered a restriction that affects not the freedom of contract but rather affects the economy of society

2. The Restrictions On Public Order

The term contractual freedom is subject to what is imposed by public order, morals, and customs that have been codified in societies, forcing the state to intervene more in the contracts' economic life (Jennings & Perez, 2020). Economic to create a balance between individual and group interests (Jain, 2020). It is a set of objective controls that the legislator intervenes in the contract to limit the agreement's provisions concluded by the two parties and includes not violating the national economic and social public order and imposes everything that would achieve the economic and social public interest. The general social order aims to protect the weak party in contractual relations (Goffman, 2017). Therefore, the legislator sets the conditions that govern the contractual relationship, which leads to the exclusion of the arbitrary conditions imposed by the strong party and thus achieves the minimum rights that the weak party should enjoy.

3. Acceptance and Creative Interpretation of The Contract

This paragraph looks at offer and acceptance from an economic perspective. We also show the role of the judge in the creative interpretation of the contract when the text is ambiguous

2.1. Acceptance of Contracts From An Economic Perspective

The formation of the agreement requires consent or convergence between two wills that tend to have a legal effect (Maroufi, Abdoolee, & Tazekand, 2019). Consent is the mainstay of the contract in French civil law, where jurists believe that consent can create obligations, and the latter has elements that must be fulfilled. From a valid and legitimate reason, and mutual consent is not sufficient for a unit to conclude the contract, there must be adequate or economic feasibility. As for the Iraqi civil law position, the jurisprudence concluded that the two pillars of the contract are mutual consent and reason (Majeed, 2020). The rule of the agreement in the Iraqi civil law creates the obligation. On specific grounds and conditions, it is the first will in the contract) As for acceptance, it is the definitive expression of the party's intention to whom the offer is directed. It is the second will in the contract.

The offer from one of the parties does not necessarily mean that the approval (acceptance) is simultaneous with the proposal. Instead, it may require deliberation and taking sufficient time. It is possible that the acceptance of the offer is concerned about the contract's economic efficiency and the degree to which it benefits. To ensure that the transaction goes smoothly, the buyer makes sure that they are familiar with the house's area. The availability of quality, luxury, and services that this place enjoys and the price of the home compared to the prices of other houses (Vilain, Mylopoulos, & Jacobsen, 2020). The acceptance is that the two contracting parties do not unite them in one place, which requires sending the offer to the acceptor and knowing the position of the letter's addressee. Determining the economic benefits from the contractual process is not absolute. Efforts are made to maximize these advantages and expand them in methods and mean not permitted by law, leading to the invalidation of this legislation. The French Civil Code stipulated that every person is free to contract or not to contract, choose his counterpart in the contractual process, and determine the content and form of the contract within limits established by law (Rowan, 2017). The contractual freedom does not allow derogation from the rules linked to the public order.

For this reason, the contractual party frames his agreement in this way: In a three-pointed space, the freedom to contract or not, the freedom to decide its counterpart in the contractual process, and the freedom in the form and substance of the contract are supplied. All

of the preceding is done under the law, and as a result, there is no room for profit. Nevertheless, particular constraints, such as those found in civil law or the Iraqi Civil Code's equivalency, limit the freedom of this text considerably in Iraq. If a contract does not compromise public order, anybody can draw it out under Article (75). The place and the offer are just suggestions, and the acceptance method should be considered in some types of contracts. In the case of *Welling v. Ohio and the Eastern Railroad Company*, the court ruled that verbal acceptance does not make any contract binding and that written notice of acceptance must be given to professionals (Welling & Heakes, 1979).

2.2. The Economic Interpretation of the Contract

The creative interpretation of the contract is an issue that is not studied from an economic point of view for the contracting parties. Therefore this section sheds light as much as possible on this aspect. The interpretation of the creative contract finds its broad scope and eloquent impact concerning the contract whose formulation seemed ambiguous, so it tries to interpret the contract in a manner that achieves the economic interest and contractual justice for the contracting parties. The French legislator devoted an entire chapter to that, from Article 1154 to 1164 (Estrella Faria, 2016). The same is true of the Iraqi legislator, as he allocated eleven articles from Article 155 to Article 166 of the Civil Code. It is possible to define the scope of the contract as a legal system and its value as a method of controlling economic activity through the interpretation of the contract as a legal system. The contract's meaning and understanding are in question will be demonstrated in turn.

1. Using The Contract To Optimize Both Parties' Benefits

What is meant by precise phrases is not in their linguistic meaning, but rather the clarity of the contract's utterance, based on what was stated in the total of its terms, because the contract is considered a unit of corresponding parts with integrated provisions (Craswell, 2005). Commitment to the contract terms is an urgent matter for the parties involved in the transaction. The contract's terms and conditions bind the parties and nothing else. It came with a complementary rule and stipulated that the contract must be understood and interpreted according to good faith, fairness and custom, thus preventing the judge from interfering when the text was clear (Tvarnø, 2010). The judge refrains from interpreting the precise terms of the contract to avoid giving them a meaning contrary to their explicitness. Thus, waste the parties' will and reduce the improper effectiveness of a Protective and economic agreement. The two contracting parties wanted, and this is the Iraqi Court of Cassation, followed the original interpretation of the terms is to be taken in the true sense and it is not permissible to deviate from it to other meanings, etc.

2. The Interpretation of Confusing Contract Terms To The Parties' Economic Efficiency

The creative interpretation of the contract finds the impact of the eloquent and its prominent role when the phrase "contract" is not precise in meaning or significance (Hietanen, 2007). The contract's provisions are open to interpretation by the judge. For example, if the contract's parties had drafted them to arrive at a mutual understanding of their meaning, they would have done so. To identify the intentions of the two parties in light of the economic benefits reached when concluding the contract. The judge must intervene to explain the contract when it is ambiguous, and the creative intervention has several rules, the most important of which are:

1. to devote the reciprocal contractual justice that the dispute revolved around its interpretation in a way that achieves economic benefits from the contract. In the

linguistic ambiguity. For example, one of the parties may have lousy faith and wanted this ambiguity to acquire his interest. So, the judge removes this ambiguity to preserve the right of good faith for the other contracting. The Court of First Instance confirmed this in Paris in its ruling issued on March 4, 1981, that good faith must prevail in forming and implementing contracts.

2. It is essential to convey the contract's significance to the stability of transactions and its impact on other parties. Sometimes the terms of the agreement are incomplete and do not express the conditions and conditions of the contract. This matter is considered a condition for the judge's intervention to fill the deficiency in the agreement. This intervention includes justifications Ethical, the most prominent of which is the need of the parties to the contract for justice and fairness
3. The judge sometimes intervenes when the terms of the contract are conflicting parties. Suppose the contract was interpreted in the debtor's interest, which was confirmed by most legislation, including Article (1162) of the French Civil Code. Article (166) of the Iraqi Civil Code doubt is interpreted in favor of the debtor. This rule is ethical With distinction. It is related to the principles of justice more than it is associated with the interpretation of contracts. It protects the weak party's benefit in the contract, which often suffers from a difficult economic situation compared with the other party. The estimated water allowances are based on the necessity of tampering with the scale. The tampering claim is dubious because the check is construed in the debtor's favor based on the Article's content (166). Therefore, the distinguished ruling with what he decreed is under the law.

Based on the above discussion, the judge intervenes in interpreting the ambiguous term of the contract to achieve the economic effectiveness of the parties to the agreement, provided that contractual reciprocal justice is achieved.

Conclusions

According to French civil law, the establishment of a contract is predicated on consent or convergence between the wills of two parties. This consent is the cornerstone of the contract, with jurists arguing that approval can generate responsibilities that must be met. There must be a good and reasonable purpose to conclude a contract, and mutual consent is insufficient. This contract must be adequate or economically feasible. When it comes to Iraqi civil law, jurisprudence said that mutual agreement and the rationale were the two foundations of the contract. In Iraqi civil law, the contract is governed by the formation of an obligation. An offer can only be accepted once specific requirements and conditions are met; hence, it can only be accepted after a particular amount of time has elapsed after it was initially made. Since it is rarely discussed from the perspective of the contractual parties, this page seeks to provide as

much light as possible on the subject matter. The subject of creative interpretation of the contract. It aims to interpret the contract in a way that serves the economic interests of the contracting parties while also providing an eloquent impact in connection to the contract whose wording was uncertain. Articles 1154 to 1164 of the French constitution were devoted only to the topic. The Iraqi lawmaker did the same thing, allocating eleven provisions of the Civil Code from Article 155 to Article 166. Because of this, we will show that the contract's meaning and interpretation are open to question and that legal recourse is available to assess the contract's scope and usefulness to the parties as a tool for regulating economic activity. Because the contract is viewed as a unit of connected components with integrated provisions, exact phrases refer not to their linguistic meaning. But to the overall clarity of the contract's utterance, based on the sum of its expressions. Commitment to the contract's declared terms and the contract's substance, such that the contractual parties are bound by the contract's stated terms and the contract's content only. Additional rules said that the contract must be construed according to good faith, justice, and custom to avoid the court from meddling where the wording was unambiguous.

For this reason, the court refrains from interpreting the contract's precise words to preserve the parties' will and restrict the contract's inappropriate efficacy. The Iraqi Court of Cassation followed the contractual parties' desire for a protective and economically beneficial. The original interpretation of the terms is to be taken in the true sense, and it is not permissible to deviate from it to other meanings. Elevated in creative contract interpretation when the meaning or significance of the term "contract" is unclear. The court sees a lot of room in the contract's provisions as if the contractual parties themselves created them to get at the shared purpose of the contracting parties. The judge must intervene when the agreement is vague to discern the parties' intentions regarding achieving economic gains while concluding the contract.

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