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## ECONOMIC BALANCE OF THE CONTRACT

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**ABSTRACT.** Legal principles play a critical role in the contract's economic balance and the financial cost's stability by respecting the contractors' well as the basis of the contract's binding force, which is essential for the economic balance of the agreement and strength of the economic cost. Nonetheless, this will stand in the way of the involvement of the legislator and the judiciary in the economic imbalance of the contract, which would otherwise interfere in favor of the weak party under the principles of fairness required by the warranty. Moreover, if the economic equilibrium is out of balance, it affects whether or not the contract is carried out. Therefore, the attainment of justice demands compliance with economic balance and compliance with the contractual legal balance under this principle.

**JEL Classification:** K12, K13, K20

**Keywords:** economic balance, contract, Iraqi trade code

### Introduction

Custom has been the main source of law since the beginning of humanity, as the rules were described at the time as customary rules, they were based on the customs and customs of the human soul, which reflected this on the reality of the primitive laws that emerged at the time, but the situation soon changed and the legislation became the main source, which led to the decline of custom behind it, and this became achieved after the emergence of comparative laws in various parts of the world starting with the emergence of comparative laws in various parts of the world. From Roman law and through the old French law and so on to other laws, which led to the role of custom being complementary, helpful or harmful to legislation, this can be observed in various types of financial contracts, including the lease contract, since despite the regulation of the legislator for this contract, we find that there is an urgent need to return to the prevailing customs and norms of the customers and this is what came. On the basis of comparative laws, whether Iraqi, Egyptian or French, so we will try in this research to identify these topics in these laws, citing this in the comparative judicial rulings in the aforementioned countries, and therefore we will divide this research into two researchers. In the third about the link of custom to the identification of the defects of the wage and in the fourth about the relationship of custom in the way of the use of the wage, and in the fifth about the association of custom in the place of delivery of the wage to the lessor, we discuss on the sixth to the effect of custom in the expenses of improvements and additions, and in the seventh about the link of custom to sub-rent and waiver of rent and housing of others.

The second topic will be to talk about the role of custom in different forms of rent contained in the Iraqi civil law dividing it into nine demands, the first of which will look for custom and the rights of the tenant in agricultural land, and in a second about the custom and the duration of the contract for renting agricultural land, and in the third about the relationship of custom to the exploitation of agricultural land, and in the fourth about the importance of custom in the relationship dependent on the farmer towards the landowner, and in the fifth about the custom and the expenses of the farmer's contract, the sixth of which was about the link between custom and the effects of the contract, and in the seventh about the relationship of custom to the Moroccans, and in the eighth of the tradition of the contract of the commitment of the orchards, and in its ninth custom and the conduct of the transportation..

## **1. Economic imbalance of the contract**

One of the reasons for the economic imbalance of the contract is its inclusion of an arbitrary or penal requirement associated with the contract that may lead to an imbalance in the contract, usually accompanied by the arbitrary requirement of a contract of acquiescence to subject the weak party to the will of the strong party, which causes an imbalance in the contract of compliance (section I), which rules the condition invalid and can be excluded or considered as if it was not according to some laws, While the penal requirement is accompanied by an agreement compensation between contractors with equal will, however, it may cause harm to one of the parties in the event that a heavy or trivial amount of compensation is provided in a manner that leads to an imbalance in the contract (section II), and the role of the judiciary in the penal condition is limited to amending it, if the intervention of the legislator and the judiciary in the arbitrary condition and the penal condition without regard to the will of their parties when they disturb the balance of the contract is a requirement of justice to protect the weak party and make it from the public order ().<sup>1</sup>

### ***1.1. Economic imbalance in compliance contracts***

Those who own monopoly goods and services are in the position of economic power, enabling them to prepare a model of contract of their own will, which is uniformly formulated and imposed on the parties that intend to contract with him, without any negotiation or discussion of its terms or conditions, taking advantage of the principle of freedom of contract, which is one of the basic principles of law and economy together, and the other party does not have the right to refuse to contract because of the professional monopoly of goods and services, He has no choice but to comply with moral coercion and accept the contract, so the positive breach of<sup>2</sup> the balance of compliance contracts requires a contract of compliance with arbitrary conditions.

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(<sup>1</sup>) D. Mansour Hatem Mohsen , Detective Journal of Legal and Political Sciences, Volume 7, Issue 4, Babylon University School of Law, Iraq, 2015, AM 154 .

(<sup>2</sup>) Abdul Razzaq Ahmed Al-Sanhouri, Mediator, Compliance Theory, C1, M1, I3, Al-Halabi Human Rights Publications, Lebanon, 1998 AM 249

The principle of freedom of contract and adherence to it is one of the basic principles governing legal conduct and an element 3 of 4 stability that falls within the controls of obtaining economic benefits. These freedoms, as well as the freedom to obtain economic benefits, are limited by legal controls imposed by the intervention of the legislator and the judiciary in reverse relationship, the more the legislator intervenes in limiting the authority of will and authorizing the judiciary to rebalance the contract, reflected in the stability of the calculation of the economic cost and its restriction on restrictions that were not expected from the strong party in favor of the affected party, and therefore the achievement of justice in the legal sense imposes the re-adjustment of the economic cost and the legal rebalancing between the centers of contractors in many contracts, including the contract of the contract Compliance. 5

The French legislator defined the contract of acquiescence for the first time in the 2016 amendment decree in Article 1110 " The contract of acquiescence is a contract whose general terms are non-negotiable, i.e. predetermined by one of the parties" (3), 6 the contract of acquiescence from the natural phenomena in economic life where economic freedom dominates the freedom of contract and the positive is issued as a result of the economic monopoly of goods and services, Such as the employment contract, the insurance contract, the contract of water, electricity, communications, communications, transportation, basic products and other contracts, which are considered indispensable in daily life, include arbitrary non-negotiable conditions requiring the intervention of the legislator and the judiciary to address the 7 legal and economic imbalance in them, either by modifying these conditions or removing their effects or considering them as if they were not if necessary in favour of the party that was subject to it as indicated by French law in its recent amendment. For 2016 in Article 1171, "It is considered as if not every clause in a compliance contract constitutes a clear breach of the balance between the rights and obligations of the parties to the 8 contract" (4) and this amendment is 9 considered a revolution in the face of the individual will to establish arbitrary conditions in compliance contracts (5), but this provision is amended in accordance with the correction law by adding after the word clause a non-negotiable term predetermined by one of the parties.

Article 1171 became the new text for contracts concluded from October 1, 2018 as follows: "In the contract of acquiescence, any non-negotiable clause predetermined by one of the parties, which creates a marked imbalance between the rights and obligations of the parties to the contract, is considered unwritten." The wording of a non-negotiable clause predetermined by one of the parties is derived from the amendment of the definition of the compliance contract under the Correction Act in order to control the unfair conditions in the

(3) Dr. Mohammed Irfan Al-Khatib, Economic Analysis of the Theory of the Contract from a Legal Perspective, Kuwait International Law School Magazine, Year 7 - Issue 1, 2019, p. 135 .

(4) Article 1102 : Chacun est libre de contracter ou de ne pas contracter, de choisir son cocontractant et de déterminer le contenu et la forme du contrat dans les limites fixées par la loi.

(5) E. Mackaay, L'analyse économique du droit de la consommation, In Propos autour de l'effectivité du droit de la consommation, Dir Th. Bourgoignie, Cowansville, éd. Yvon Blais, 2008, p. 215s. S. Bienenstock, Trois essais sur l'analyse économique du droit de la consommation, Doctorat, 2016. Y. Guyon, Les réformes apportées au droit des sociétés par la loi du 15 mai 2001 relative aux nouvelles régulations économiques, Rev. Sociétés, 2001, p. 503s., spé, n°2.

(6) Article 1110 : Le contrat d'adhésion est celui qui comporte un ensemble de clauses non négociables, déterminées à l'avance par l'une des parties.

(7) Abdel Moneim Faraj Al-Hada', Sources of Commitment , Arab Renaissance House , Egypt , 1998 AM 55 .

(8) Article 1171 : Dans un contrat d'adhésion, toute clause non négociable, déterminée à l'avance par l'une des parties, qui crée un déséquilibre significatif entre les droits et obligations des parties au contrat est réputée non écrite..

(9) Jalil Hassan Bashar Al-Saadi, seminar entitled Innovations of French Civil Law in light of the amendment in force in 2016 was delivered in the hall of the Faculty of Law, University of Baghdad,

compliance contracts and concerns only the conditions that will be predetermined by one of the parties and therefore put forward by any negotiation.

For compliance contracts concluded after October 1, 2018, it will no longer be sufficient to include a requirement in the compliance contract in order to be considered unwritten, even if it creates a clearly excessive imbalance between the rights and obligations of the parties, the requirement must also meet the special requirements of the Correction Act 2018 .<sup>10</sup>

The wills do not really correspond to the contracts of compliance, and even if there is a match, it relates to the contract itself, i.e. in the essence of the contract, either the secondary arbitrary conditions contained in the contract, there is no agreement and does not match the will of its parties because it comes from the sole will of the provider of the commodity or service and the acquiescence of the other party, resulting in a clear breach of the balance between the rights obtained by the professional party in exchange for the submission and the obligations of the professional party. In exchange for the recalculation, therefore, the intervention of the legislator does not affect the<sup>11</sup> origin of the contract, but its secondary conditions, which, even if they are considered as if they do not affect the substance of the obligation.

The Iraqi legislator has referred to this meaning and made the rebalancing of the contract of compliance with the general provisions and give the judiciary the power to amend the conditions in it up to the extent of exemption from them for the benefit of the party that is subject to it and may not agree on its disagreement, as stated in the text of article 167 paragraph 2 " If the contract is done in a manner of compliance and has guaranteed arbitrary conditions the court may amend these conditions or exempt the party that is subject to them, As required by justice, every agreement is otherwise invalid," he said.

One example that can be referred to in the contracts of compliance is the contract of employment, the parties to the contract vary their economic positions, the employer enjoys a strong economic status compared to the weakness of the economic status of the worker and this affects the negotiation when concluding the contract, which reflects on the freedom of expression of the worker in accepting or rejecting some of the terms of the contract and makes him in the position of weakness and moral coercion and unbalanced with the other party in expressing his desire in the terms of the contract, It is between two things: rejection or acquiescence, and in the example of his status he has no choice but to comply with the conditions of the employer. <sup>12</sup>

The economic coercion to which the worker is subjected during the negotiation phase is the result of an imbalance in economic positions<sup>13</sup> and inequality between contractors() that leads to the worker acquiescing the employer out of fear of him if he refuses his conditions to lose the opportunity to work, in the light of<sup>14</sup> the circumstances of economic fluctuations, the labor crisis and unemployment, so the intervention of the legislator and the judiciary to achieve social justice requires protecting individuals from the arbitrary conditions set by the monopolist when contracting () <sup>15</sup> In addition to the rules of civil law, they are subject to some rules of

(<sup>10</sup>) 1er alinéa, que « dans un contrat d'adhésion, toute clause qui crée un déséquilibre significatif entre les droits et obligations des parties au contrat est réputée non écrite ».

(<sup>11</sup>) Bodali Mohamed, arbitrary conditions in contracts in Algerian law, Dar Homa, Algeria, 2007, p. 26.

(<sup>12</sup>) COUTURIER Gérard, Les relations entre employeurs et salariés en droit français, *in* la protection de la partie faible dans les rapports contractuels : comparaison franco-belges, L.G.D.J., Paris, 1996, p. 148.

(<sup>13</sup>) Art. (1143), «Code Civil français, éd. 2018 ». Pour plus d'informations voir : F. Dournaux, La réforme des vices du consentement, op, cit. H. Barbier, La violence par abus de dépendance, op, cit. Voir, J-P. Chazal, Violence économique ou abus de faiblesse, Droit et patrimoine, 2014, n° 240, p. 47s. E. Savaux, Retour sur la violence économique: avant la réforme du droit des contrats, Revue des contrats, 2015, n° 03.

(<sup>14</sup>) Dr. Mohammed Irfan Al-Khatib, Former source P, 138 .

(<sup>15</sup>) GHESTIN Jacques, LOISEAU Grégoire, SERINET Yves-Marie, La formation du contrat, T.1, Le contrat- le consentement-, 4eme éd., L.G.D.J.-Lextenso éditions, Paris, 2013, p. 277 .

special laws, such as the Iraqi Consumer Protection Act No. 1 of 2010, as well as the French Consumption Act No. 949 of 1993.

In a decision of the Iraqi Court of Cassation ( ) the facts are summarized that a dispute between the 16 railway authority and a civil company of machinery and equipment was brought to the judiciary where the railway authority demanded the civil company double storage wages in accordance with the requirement set by the railway authority in the contracts concluded with it in the event of delays in the lifting of goods stored in its stores, where the decision of the ruling " The court has adapted the contract between the Railway Authority and the defendant company as a contract of acquiescence, which is a valid adaptation, because the interest in transporting and storing imported goods manages a public service project in accordance with a general system established on the basis of the rule of law and does not accept to discuss its terms - article 167 paragraph 1 of the Civil Code - the court's decision to amend the arbitrary requirement in this contract, which allows the interest to double the wage of storage in the event of the accumulation of goods and delays in the case of the accumulation of goods and delays in the provision of the court. Its removal is in accordance with the provisions of paragraph 2 of the said article, so the provision is to oblige the company to normal storage wages without double wages."

On the part of the French judiciary, the French Court of Cassation ruled that the provisions restricting the consumer were illegal and considered them arbitrary conditions in a case whose facts are that Toyota and its authorized agents have included a clause requiring the buyer of the car bearing its mark to repair it exclusively in its workshops or workshops and its authorized agents in order to continue to guarantee the validity of the car. The state of damage that has nothing to do with the reforms covered by the guarantee, because the clause informs the buyer of the need to carry out all repairs covered and not included in the 17 guarantee.

The arbitrary conditions leading to an imbalance between rights and obligations have led the Iraqi and French legislators to depart from the principle of freedom of contract and the binding force of the contract in compliance contracts and to the economic principles of the market by prevailing the requirements of legal justice by protecting the deceived party and making it public 18 order.

## 1.2. *Economic imbalance of the contract under the penal requirement*

The economic efficiency of the contract requires maintaining the calculation of the cost consistently and stably, which was carried out in accordance with the common will of the parties to the contract ( ), 19 which requires respect for this will and the legitimate expectations of the economic cost agreed to preserve the benefits of the contract, and within the calculation of the economic cost includes the penal condition agreed within the legal framework by

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*« L'inégalité de fait joue un rôle fondamental au moment de la conclusion du contrat, en raison de la dépendance économique du salarié qui redoute un refus d'embauche. Sa situation d'infériorité est telle que l'on a pu parler de subordination virtuelle »*

(16) Decision of the Iraqi Court of Cassation, Resolution No. 1518 /h / 968 dated 17/12/ 1970

(17) Cass. Civ., 20 mars 2013, N°12-14.432, Bull. Civ. N° 3, 2013, p51. « *Qu'en statuant ainsi, alors que le caractère ambigu de la clause, né du rapprochement de l'intitulé de la rubrique sous laquelle elle figure et de sa propre teneur, a pour effet de laisser croire au consommateur qu'il est tenu, pour bénéficier de la garantie conventionnelle, de faire effectuer par un concessionnaire ou agent Toyota toutes les interventions exécutées sur son véhicule, quand bien même la garantie sollicitée serait sans lien avec ces travaux, créant ainsi à son détriment un déséquilibre significatif entre les droits et obligations des parties, la cour d'appel a violé le texte susvisé* ».

(18) Dr. Mansour Hatem Mohsen, former source AM 20 .

(19) B. Deffains, L'analyse économique de la résolution des conflits juridiques, Revue Française d'Economie, 1997, n°3, Pp. 57-101



guaranteeing the principle of binding force of the contract, which includes compensation for damage as a result of the violation of its obligations by one of the parties, Economically, it is an economic value that the debtor receives a benefit that enables it to rebalance the economic balance of the contract as a result of the debtor's breach of its obligation, an agreement lined up in accordance with the economic concept of implementation in a manner of compensation that does not differentiate between the implementation of the same obligation or compensation as long as both have the same economic<sup>20</sup> cost.

The basis of the compensation benefit is not the penal condition but the damage resulting from non-implementation or delay in implementation and the penalty requirement is to estimate the value of compensation for the potential damage to be inflicted on the debtor as a result of the creditor's failure to implement his obligation, so the conditions for the benefit of compensation in the<sup>21</sup> penal condition are the same as the compensation elements in the contract liability - the error represented by the non-execution or delay in it and the damage to the creditor as a result of the debtor's breach and the causal relationship between them - the compensation is based on the achievement of damage as a result of the debtor's breach of its obligations in terms of Legal and economically is an alternative value to the desired benefit of the contract.

Taking into account the circumstances that may occur when the contract is implemented and entered into the economic cost calculation by including a requirement that includes compensation as collateral for the future rebalancing of the contract in the event that a party violates its obligation to implement the contract or delays in its implementation is a valid condition, not contrary to general provisions, and conforms to the principle of the authority of will to respect what the contractors have stipulated and is binding as required by the principle of binding force of the contract. <sup>22</sup>

However, the initial assessment of compensation by contractors is compensated for potential damage, which is often estimated to be greater than the real compensation that the creditor deserves as a result of the debtor's breach of its obligation to implement its obligation, which constitutes a breach of the economic balance of the contractors' status in a manner that is not commensurate with the real damage to the economic cost to which the<sup>23</sup> creditor has been subjected, requiring judicial intervention in the interest of the weak party to rebalance in a manner that does not violate economic justice. It requires that compensation shall not be due if the creditor does not cause harm or reduce its value if it is exaggerated, as indicated by the Iraqi Civil Code in article 170 () <sup>24</sup> "1. Contractors may determine in advance the amount of compensation by stipulating it in the contract or in a subsequent agreement, in which case 168, 256, 257 and 258 are tightened. 2. The agreed compensation shall not be due if the debtor proves that the creditor has not suffered any damage and may be reduced if the debtor proves that the estimate was gross or that the original obligation was carried out in part and that any agreement contrary to the provisions of this paragraph is invalid. 3- If the damage exceeds the amount of

(<sup>20</sup>)B. Deffains, L'évaluation des règles juridiques: un bilan de l'analyse économique de la responsabilité civile, Revue d'Economie Politique, n° 6, 2000, Pp. 752-785. E. Mackaay, La responsabilité civile extracontractuelle: une analyse économique, dans Pierre-Claude Lafond (Dir.), Mélanges Claude Masse, Enquête de justice et d'équité, Cowansville, Éd. Yvon Blais, 2003, p. 319-346. G. Maitre, La responsabilité civile à l'épreuve de l'analyse économique du droit, LGDJ, Coll. Droit et économie, 2005. G. Viney, L'analyse économique du droit: la responsabilité, l'appréciation du préjudice, Petites affiches, 2005, n° 99, p. 89s.

(<sup>21</sup>) Dr. Abdul Razzaq Al-Sanhouri, Mediator in Civil Law, Compliance Theory, C2, I2, Al-Halabi Human Rights Publications, Beirut, 2000, p. 855.

(<sup>22</sup>) J.Ghestin, l'utile et le juste dans les contrats, D.1982, p.14.

(<sup>23</sup>) Dr. Abdul Majid al-Hakim, Summary in explaining iraqi civil law obligation provisions, C2, I2, Civil Printing and Publishing Company, Baghdad, 1967, p. 32 .

(<sup>24</sup>) Iraqi Civil Code No. 40 of 1959 amended.

compensation by agreement, the creditor may claim more than this value unless it is established that the debtor has committed fraud or a serious mistake."

We note that the ethnic legislator did not take care of economic justice between damage to the economic cost and compensation as much as the benefit estimated to rebalance the economic cost lost by the creditor due to the failure of the debtor to implement the total or partial debtor's obligation, in case the estimate of the damage represented by the estimated benefit is enormous and does not correspond to the compensation represented by the economic cost lost by the creditor, the judge intervenes in the interest of the debtor to reduce the benefit to balance the cost, But if the cost spent by the creditor is more than the value of the estimated expenditure, the legislator is restricting the debtor to maintain the value of the penalty clause and the creditor may not claim more than the value of the estimated benefit, i.e. he authorized the intervention by reducing the value of the penalty clause and did not authorize the intervention by increasing it, except in the case of the debtor committing fraud or serious error, the legislator should have intervened to protect the interests of the parties.

Either the French legislator came up with a different ruling, where the court authorized intervention in both cases, making the creditor's compensation balanced in terms of the value of the benefit and giving the judge the power to intervene to achieve reciprocal justice on his own by increasing the estimated benefit if it is trivial and reducing it if it is prohibitive, without the need to request from one of the parties to the contract as stated in article 1231 paragraph 5 " when it states in the contract that those who fail to implement it are obliged as compensation, By paying a certain amount, the other party may not be granted an amount that exceeds or decreases this amount. Nevertheless, the judge may, even on his own, reduce or increase the agreed penalty if it is manifestly expensive or trivial. If the undertaking is partially implemented, the judge may, even on his own, reduce the agreed penalty by the interest rate returned to the creditor from this partial execution, without violating the implementation of the previous paragraph. It is as if he did not have every condition that violates the previous two paragraphs."

In a decision of the French Court of Appeal, which ruled that the value of the penal requirement in a case summarized by the fact that a worker agreed with the employer on a penalty clause of 11,347 French francs not to compete in the future, but the worker violated his obligation, and a dispute erupted between them was resolved by the support of the Court of Cassation for the decision of the Court of Appeal, which ruled the responsibility of the worker while increasing the value of the penalty requirement to 150,000 Francs, It considered that the amount of compensation agreed between the parties at the conclusion of the contract is trivial, and that the Court of Appeal exercised the authority authorized to raise the value of the penal condition if this is necessary.

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(<sup>25</sup>) Code civil français - Dernière modification le 01 janvier 2020

Article 1231-5 : Lorsque le contrat stipule que celui qui manquera de l'exécuter paiera une certaine somme à titre de dommages et intérêts, il ne peut être alloué à l'autre partie une somme plus forte ni moindre.

Néanmoins, le juge peut, même d'office, modérer ou augmenter la pénalité ainsi convenue si elle est manifestement excessive ou dérisoire.

Lorsque l'engagement a été exécuté en partie, la pénalité convenue peut être diminuée par le juge, même d'office, à proportion de l'intérêt que l'exécution partielle a procuré au créancier, sans préjudice de l'application de l'alinéa précédent.

Toute stipulation contraire aux deux alinéas précédents est réputée non écrite.

Sauf inexécution définitive, la pénalité n'est encourue que lorsque le débiteur est mis en demeure.

(<sup>26</sup>) Cass. Soc., 5 juin 1996, N° 92-42.298, Bull. Civ. N°6, 1996, p. 159. « Attendu, ensuite, que l'indemnité prévue en cas de violation de la clause de non-concurrence étant une clause pénale, c'est à bon droit que la cour d'appel a décidé, répondant ainsi aux conclusions invoquées, qu'elle pouvait user de la faculté reconnue au juge par l'article 1152, alinéa 2, du Code civil, d'en augmenter le montant si elle l'estimait dérisoire ; »

The loss of the benefit to the employer from the competition of the worker is more than the value of the estimated benefit as compensation in the penal condition, which led the court to estimate the value of more than the value of the agreed penal requirement to rebalance the economic cost of the employer.

The intervention of the judiciary to amend the penal requirement is subject to strict supervision by the French Court of Cassation as well as the Iraqi Court of Cassation, in accordance with the principle of the authority of will and not to infringe on the will of the contractors in modifying what was done according to their will except on the basis of an objective reason for the imbalance of economic balance in the contract (<sup>27</sup>), as ruled by the French Court of Cassation to overturn a decision of the 27<sup>th</sup> Court of Appeal summarizing its facts, That a contractor agreed with a couple to build a house for them within a certain period, and in case of delay they required him to pay compensation for each day delayed the amount of 500 French francs, and indeed the contractor delayed in completing his work, and a dispute arose filed before the Court of Appeal, where the contractor requested the reduction of the value of the penalty condition, and the court responded to his request, so it reduced the value of the condition to a quarter of its agreed value 125 Francs for each day, This prompted <sup>28</sup> the couple to overturn the decision before the Court of Cassation, which ruled that the decision was overturned because the judges of the Court of Appeal did not show the grounds they adopted to estimate that the value of the agreed penal requirement was excessive, stressing that the judiciary is not absolute in modifying the value of the penal requirement.

In a decision similar to the Iraqi Court of Cassation, in which he overturned the decision of the trial court to reduce the amount of compensation, and the reasons for overturning the decision of the trial court because it omitted the reasons for the reduction of compensation, where it stated in the decision of the cassation" that the court reduced the conditional compensation in the contract contrary to the provisions of the provisions of the contract, where it stipulated that it was interrupted - distinguished by it - from continuing study or training on its own, Or expelled or dismissed from the course, as directed by the system of management of the Institute and studies and health courses and its amendments, it is obliged to pay 200 dinars, and since the privileged has been separated from the course, it is obliged to compensate and there is no room to rely on article 170 civil to reduce compensation unless the estimate is gross or the original obligation was implemented in part, Since the court ignored the advanced legal matters, it decided to overturn the special 29 ruling."

## 2. Impact of the economic imbalance of the contract

Will is a source of strength for contractual obligations, it is the one that creates the contract and it arranges its effects, so once the contract is held acquires a force that must be implemented by its parties such as their implementation of the law, and this force prevents the will to amend what was agreed upon and its terms and conditions become the status of the law in terms of force, which requires the contractors and the judge to implement all that included it <sup>30</sup> If the debtor violates its obligations towards the creditor, the creditor has options to fulfil

(<sup>27</sup>) Osman Bilal, parties to the contract between the right to achieve personal interest and commitment to good faith, thesis for a doctorate in law, Mouloud Muammari University Faculty of Law and Political Science, Algeria, 2018, p. 150.

(<sup>28</sup>) Cass. Civ.3eme, 12 janvier 2011, N°09-70.262, Bull. Civ. N° 1, 2011, p.3. « *Qu'en statuant ainsi, sans préciser en quoi le montant des indemnités de retard résultant de la clause pénale, était manifestement excessif, la cour d'appel n'a pas donné de base légale à sa décision ;* ».

(<sup>29</sup>) Decision of the Iraqi Court of Cassation No. 376/ Madani / 1974 on 3/6 / 1974

(<sup>30</sup>) D. Abd El, Razzaq al- Sinhour, Former source P, 697



its right, including<sup>31</sup> the claim for in-kind execution (section I) and its requirement that "the debtor be forced to carry out its obligation in kind<sup>32</sup> where possible", or to seek compensation (section II) "if in in-kind execution is an exhaustion of the debtor, it may be limited to paying monetary compensation if this does not cause serious harm to the creditors."<sup>33</sup>

## 2.1. *In-kind execution*

The legal texts deal with the economic benefits within the controls specified by law, the concept of supply and demand governing the economic market is what leads the contractor to express his desire to contract - positive - for economic benefit, and the acceptance of the other contractor to accept this offer based on the corresponding economic benefit (), and therefore the economic interest of the parties is realized according to a<sup>34</sup> legal framework when the positive is accompanied by acceptance and the mutual obligations arise between them, This is the concept of the contract as indicated by the French Civil Code when <sup>35</sup> defining the contract as well as the Iraqi Civil <sup>36</sup> Code.

The contract in accordance with the economic concept is the exchange of benefits and the binding force to maintain the economic balance in the contract is the will of the parties, and as long as the will of the parties tends to adhere in a certain way, the economic interest of the parties requires respect for what has been agreed () this perspective is valid in the event of legal equivalent to the status of contractors, but if their legal positions vary according to the imbalance of<sup>37</sup> economic balance, The will loses its authority and the intervention of the law or judge becomes a necessity to rebalance () or impose in-kind implementation on the debtor by obliging him to carry out what he is obliged to do in the contract by subjecting him to the principle of binding force of the contract, to preserve the interest of the <sup>38</sup>creditor and restore stability to legal transactions in accordance with the requirements of justice (). <sup>39</sup>

The principle of binding force of the contract entails the sanctity of the obligation for contractors, where "contracts that have been legally formed take the place of law for those who made it", neither of which can dissociate itself from its obligations of its own will, nor does any amendment to it be carried out by the sole will <sup>40</sup>(), and in accordance with this

(<sup>31</sup>) Ahmed Shawky Mohammed Abdul Rahman, General Theory of Commitment, Contract And the will. Solo, Knowledge Facility, Alexandria Egypt, 2004, p. 192.

(<sup>32</sup>) Iraqi Civil Code No. 40 of 1951 Article 246 Paragraph 1

(<sup>33</sup>) Iraqi Civil Code No. 40 of 1951 Article 246 Paragraph 2

(<sup>34</sup>) Dr. Mohammed Irfan Al-Khatib, Former source P. 133.

(<sup>35</sup>) Article 1101 : Le contrat est un accord de volontés entre deux ou plusieurs personnes destiné à créer, modifier, transmettre ou éteindre des obligations.

French Civil Code Article 1101: Contract is an agreement Two wills. or more aimed at creating أو modulation أو transport Or invalidate theyou commit .

(<sup>36</sup>) Iraqi Civil Code No. 40 of 1951 Article 73 ( The contract is the positive link issued by one of the disabled to accept The other one. On a face that proves its impact on the contract.

(<sup>37</sup>) LEMENNICIER Bertrand, Économie du droit, Cujas éditions, Paris, 1991, p.75 et s. « *La vision classique du contrat est tout autre. Les promesses passées dans le cadre de l'échange volontaire ont une fonction essentielle dans la coordination des plans individuels ...elles servent aussi à protéger les parties des aléas ... dans la vision classique, on ne se préoccupe pas du contenu des promesses ou de savoir si ces promesses permettent de maximiser les gains a l'échange...* ».

(<sup>38</sup>) Iraqi Civil Code Article 146 Paragraph 2, (Emergency Circumstances Theory)

(<sup>39</sup>) Osman Bilal, Former source P. 35

(<sup>40</sup>) Code civil français - Dernière modification le 01 janvier 2020

Article 1103 : Les contrats légalement formés tiennent lieu de loi à ceux qui les ont faits

principle the Paris Court of Appeal ruled in a case summarized by its facts 41 () 42 One of the financiers of iron stopped fulfilling his obligations to his customers due to the high price of iron in the world market, but one of the customers refused this stop, and he brought the dispute to the judiciary, where the Court of Appeal of Paris ruled to oblige the financier to continue to implement his obligation to the client under the fold of threatening fines, in accordance with the principle of binding force of the contract stipulated in article 1193 of the French Civil Code (), 43 In Iraqi civil law, the corresponding text of this principle is Article 147. 44

It is noted through this decision that the Court of Appeal has obliged the debtor to implement the same obligation in the contract despite an economic imbalance due to the high price of iron in the world market, considering that the contract is the law governing the contractual relationship, and that the assessment of whether or not the conditions of emergency circumstances are the authority of the judge and not the authority of the debtor.

As for the position of the Iraqi judiciary, it applied what was stated in the principle of binding force of the contract in many decisions, including with regard to the in-kind implementation when its conditions are available, as stated in article 246 (), in a case () whose facts boil down to the fact that a contractor completed his work and handed over the role to the owner, and during the five-year maintenance period there were defects in the roof of the role established by the contractor, This prompted the owner of the role to file a lawsuit before the judiciary, asking the contractor to repair the ceilings, where it came the decision of the Court of Cassation " the distinguished person has asked the debtor to carry out his obligation in kind and has warned him to perform the repair of the cracked ceilings, and the in-kind implementation was possible and not impossible according to the nature of the obligation and the means necessary for this implementation, and not in this execution exhausting the debtor, so the distinguished debtor is obliged to carry out his obligation in kind by law and by the rule of the judge based on article 246 of the Civil Code."

We note that the owner of the role chose the execution in kind in order to provide his conditions as ruled by the Court of Cassation, but if the contractor continues to refrain from execution, the owner of the role may resort to seeking threatening fines, and in case the contractor insists on not implementing, the owner of the role shall not be allowed except to authorize the court to assign another person to carry out the work at the contractor's expense,

(41) Saadoun Yassin, impact of economic conditions on the contract, doctoral thesis in positive law, Faculty of Law and Political Science, Mouloud Muammari University, Algeria, 2018, p. 214

(42) C.A. Paris, 14e chambre, section A, 28 Janvier 2009, N° 08/17748, in [https://www.lexis360.fr/Document/cour\\_dappel\\_Paris\\_14e\\_chambre\\_section\\_a\\_28\\_janvier\\_2009\\_n\\_0817748/CkV1sc0x3\\_OPKDcBiGZ7l\\_gsI4kL\\_6ddWLrMQL5rsw1?data=c0luZGV4PTImckNvdW50PTExJg==&rndNum=1782253297&tsid=search2/\\_consulté le 24/02/2017](https://www.lexis360.fr/Document/cour_dappel_Paris_14e_chambre_section_a_28_janvier_2009_n_0817748/CkV1sc0x3_OPKDcBiGZ7l_gsI4kL_6ddWLrMQL5rsw1?data=c0luZGV4PTImckNvdW50PTExJg==&rndNum=1782253297&tsid=search2/_consulté le 24/02/2017). « Considérant que NEW STEEL n'est pas fondée à solliciter la renégociation du contrat convenu entre les parties le 24 janvier 2008, au motif d'un bouleversement de l'économie du contrat, dès lors que la convention des parties a force de loi et qu'il lui incombe de supporter les conséquences de son imprévision -serait elle le fruit d'un usage dans le secteur considéré- dans le choix, ou en l'occurrence l'absence, de modalités de révision du prix ».

(43) Code civil français - Dernière modification le 01 janvier 2020

Article 1193 : Les contrats ne peuvent être modifiés ou révoqués que du consentement mutuel des parties, ou pour les causes que la loi autorise.

French Civil Code - Last amendment on January 01, 2020

Article 1193: Contracts can only be amended or cancelled with mutual consent from the parties, or in order to Reasons authorized by law

(44) Iraqi Civil Code No. 40 of 1951 Article 146 Paragraph 1 (If the contract is executed, it is necessary and a contractor may not refer to it or amend it except by provision of the law or by mutual consent.

(45) Osman Bilal, former source, p. 40

(46) Iraqi Civil Code No. 40 of 1951 Article 246 ( 1- Forces the debtor to carry out its obligation in kind **Whenever possible, 2- As if If it's in the in-kind execution. Exhaustion of the debtor** It may be limited to paying monetary compensation if it does not cause serious harm to the creditors. ) .

(47) Decision of the Iraqi Court of Cassation, No. 579-H-1970, dated 18-6-1970

and in case of urgency work is done without the permission of the court () 48 Or claim compensation. 49

Both French and Iraqi legislators have left the appreciation of the application of the principle of binding force of the contract to the judiciary, where the judiciary intervenes as a third party to rearrange the obligations and benefits according to the will of the parties after their imbalance or according to his will as the custodian of the achievement of contract justice and the subsequent economic balance in the event of dissatisfaction with one or both parties, where the economic efficiency of the contract in lax contracts of implementation and time contracts is shaken by the changes that arise in the contract during the period of implementation, This makes the economic cost on which the will of the parties is based<sup>50</sup> unstable, and in order to re-establish confidence, the economic cost agreed upon must be respected and the parties submit to what they committed themselves to when contracting, so the implementation of the contract as agreed is a guarantee of economic justice, and the consolidation of the principle of dealing in good faith established by the creditor in the debtor at the conclusion of the contract, which extends when it is implemented to the end of the 51 contract.

## 2.2. Compensation

Forcing the debtor to carry out its obligation is legally recognized when <sup>52</sup>possible, but "if it is impossible for the obligation to be fulfilled in kind, he will be awarded compensation for failing to fulfil his obligation unless it proves impossible to implement, as a result of a foreign reason in which he has no hand, as well as if the provision is delayed in implementing his obligation" this is what is stated in article 168 of the Iraqi Civil Code, Also, in the French Civil Code with regard to compensation for non-fulfilment, the<sup>53</sup> creditor resorts to redressing its damages through compensation, which is one of the options before it, which was approved by law to protect it from the debtor's failure to fulfil its obligation, by compensating him fair compensation equal to the damage, which is not more than and does not decrease, which is called the principle of full<sup>54</sup> compensation.

Article 169, paragraph 2 of the Iraqi Civil Code, states that "compensation for any obligation arising from the contract, whether it is an obligation to transfer ownership or benefit or any other right in kind, an obligation to work or a failure to work, includes the loss of the

(<sup>48</sup>) Iraqi Civil Code No. 40 of 1951 Article 250 (1- In Commitment I'm doing if why He rises Debtor I'm executing Commitment And she didn't He was Necessary that Executed by himself jazz To the creditor. that Ask for permission from Court in execution Commitment on Maintenance Debtor if Had been This one Implementation Possible, 2- And it is may in condition Urgency that Implemented Creditor Commitment on Maintenance Debtor test permission from Court )

(<sup>49</sup>) Dr. Ayman Tariq Makki and Aladdin Kazim, the penalty for the contractor's failure to implement his commitment, magazine Detective Ornaments For science Legal And political Number 1, year 6, p. 131.

(<sup>50</sup>) Dr. Mohammed Irfan Al-Khatib, former source, p. 119

(<sup>51</sup>) Iraqi Civil Code No. 40 of 1951 Article 150 Paragraph 1 ( The contract must be executed in accordance with what it contains and in a manner consistent with what is in good faith)

(<sup>52</sup>) ROUJOU DE BOUBEE (M-E) , Essai sur la notion de réparation , Thèse , LGDJ , 1974 , P78..

(<sup>53</sup>) Code civil français - Dernière modification le 01 janvier 2020

Article 1231-1 : Le débiteur est condamné, s'il y a lieu, au paiement de dommages et intérêts soit à raison de l'inexécution de l'obligation, soit à raison du retard dans l'exécution, s'il ne justifie pas que l'exécution a été empêchée par la force majeure.

French Civil Code Article 1231-1: The debtor is sentenced, if necessary, to pay damages either for non-performance obligation, either because of the delay in implementation, if the implementation was not justified prevented by Force majeure.

(<sup>54</sup>) Ibrahim Ibrahim Al, Desouki Abu Night compensation Miss Opportunity, section First, magazine Rights Kuwaiti, Sunni 10:00, Issue 2nd, 1986, p. 156

creditor and the loss of the right due to the loss of the right to it or because of the delay in fulfilling it, provided that this is a natural consequence of the debtor's failure to fulfil the obligation or for delaying its fulfilment." This is fair compensation for the benefit of the contract for the creditor, and a fair penalty for breach of its obligation and the resulting harm.

Compensation in the legal sense is consistent with compensation in the economic sense that both are not aimed at erasing the damage but rather to force the person responsible to enter into the injured person a value equal to the value from which he was deprived ( ) 56 and usually the compensation is monetary, which is the origin of the compensation ( ), and despite the points of convergence between the 57 law holders with their economic counterparts, they differed in many constants, including the order of priorities in the event that the debtor does not meet the voluntary implementation, According to the legal perspective, the origin of the implementation is in kind implementation whenever possible and then in the event of impossibility we move to compensation, i.e. the purpose of implementation in accordance with this perspective is to reach the same right by implementing it voluntarily and in case we wish to implement it forcibly whenever possible, and then in the event of impossibility of implementation because of the debtor we move to compensation, While economic theory suggests that the purpose of implementation is to reach the same economic cost by reaching the equivalent value of that right ( ) regardless of the 58 form of implementation, all forms of implementation are equal and exonerate the debtor's taste, as long as they are economically costable, and the debtor is granted the right to choose the method of implementation, whether it is in kind execution or compensation. 59

If the authors of the legal theory object to the concept of economic implementation of the contract because it ignores and contradicts the foundations and concepts of the theory of the contract, including directly related to the idea of implementation in the first place, and indirectly related to fixed legal principles associated with the contract, such as the principle of binding force of the contract, the principle of good faith and the principle of distinction between in-kind implementation and compensation and others, and this cannot be accepted legally 60 ( ) It also falls short of absorbing the moral value of implementation, which is the commitment to what has been agreed upon, in accordance with the principle of binding force of the contract and dealing in good faith, as well as to absorb compensation as a penalty for non-fulfilment of the obligation and not as an alternative to implementation, while implementation from the point of view of economists is an economic return that is no different from compensation if its economic value is equal and does not consider ethical 61 values.

The economic implementers also justify the debtor's breach of its obligation, which lies behind an economic benefit or loss that it intends to avoid, required by the weight of implementation in the manner of compensation for in-kind implementation, taking into account the non-harm to the creditor, in accordance with this perception. However, it has no material return and is therefore not taken into account in accordance with the economic concept, but

(<sup>55</sup>) just Algebraic Muhammad lovely ' Al , Tanfth The general For commitments Streptococcal ' house Thought University ' Alexandria P. 30.

(<sup>56</sup>) Rajab generous slave God, negotiation. on Decade study Rooting Analytical Comparison, Dar Al , Nahda Arabic, Cairo ' 2000 AM 120

(<sup>57</sup>) Iraqi Civil Code No. 40 of 1951 Article 209 Paragraph 2 (compensation in cash is estimated to be permissible for the court.... )

(<sup>58</sup>) M. Mekki, Les remèdes à l'inexécution dans le projet d'ordonnance portant réforme du droit des obligations, Gazette du Palais, 2015, n° 120, p. 222.

(<sup>59</sup>) S. Jamet-Le Gac, De l'utilité de la bonne foi: Une analyse économique de la bonne foi dans et pour l'exécution des contrats, Mémoire de DEA, droit des contrats, Lille II, 1998, n°74.

(<sup>60</sup>) Dr. Mohammed Irfan Al-Khatib, Former source P. 144.

(<sup>61</sup>) Previous source, p. 144.

according to the legal concept, moral damage requires compensation and the imposition of compensation on the creditor is contrary to the principle of good faith and the binding force of the contract, which is one of the basic principles in all contracts.

The high costs of implementing the obligation may threaten the debtor with a loss as a result of the economic imbalance of the contract, such as the high prices of raw materials, which threaten to increase the price of the manufactured product, as the debtor's continued implementation of its obligation to supply the product to its creditor clients with economic imbalance is economically unacceptable, and this cannot be left to the sole will of the debtor because it is contrary to the prevailing legal principle of the contract the law of contractors ( ) 64 Therefore, the judiciary must intervene to balance legal justice with economic justice, and if it considers that the reason did not make implementation impossible but cumbersome and threatens the debtor with a heavy loss as a result - emergency circumstances ( ) - it is to balance the interests of the parties ( ), and if he considers that the impossibility of execution due to a foreigner as a result - force majeure ( ) - impossible to implement, it is impossible to implement and exempt the debtor from liability for compensation, but if the reason for the impossibility is due to the debtor itself as a result - breach of contractual responsibility ( ) - It then provides for fair compensation to the creditor to ensure that both legal and economic justice is achieved.

In a compensatory decision of the Iraqi Court of Cassation, the facts are that one of the municipalities registered agricultural land in its name by including it by a fire decision, and included agricultural land with it by mistake, and they were excreted into residential parts and public streets, and then the owners of the land filed a lawsuit to claim their land where the decision of the ruling "the procedure carried out by the municipality is considered legally invalid and is supposed by law to return that space to the owners of the land, However, it is also established that the general provisions prescribed by law, whether in contractual or default liability if it is impossible to return to what they were, will in this case be due to compensation, which would lift the injustice inflicted on the owners of the property, it is stated in article 138 of the Civil Code, if it is impossible to return the contracting parties to the situation they were in before the contract, The equivalent compensation, as well as the contract liability in article 168 of the Civil Code, is impossible for the committed person to carry out his obligation in

(62) Previous source, p. 145.

(63) POLLAUD-DULIAN Frédéric, « Réforme du droit civil des contrats par l'ordonnance n° 2016-131 du 10 février 2016 », R.T.D.Com, N° 3, 2016, p. 507.

(64) G. Rouhette, La force obligatoire du contrat, Rapport français, In Le contrat aujourd'hui: comparaisons franco-anglaises, LGDJ, 1987, p.27. J. Ghestin, Traité de droit civil: La formation du contrat, LGDJ. 1993, n° 252s. L. Cadet, Une justice contractuelle, l'autre, In Études offertes à J. Ghestin, Le contrat au début du XXI<sup>e</sup> siècle, LGDJ. 2001, p. 177. J-P. Chazal, De la signification du mot loi dans l'article 1134 al, du Code civil, RTD civ, 2001, p. 265s.

(65) Iraqi Civil Code No. 40 of 1951 Article 146 Paragraph 2 (If there are accidents Exceptional Generally unthought, and as a result, the implementation of the contractual obligation, although not impossible, has become so burdensome for the debtor that it threatens to lose so badly, the court may yet Al , Mitzna It is in the interests of the parties to reduce the burdensome obligation to the acceptable extent if justice so requires, and any agreement to the contrary is invalid.

(66) ANCEL Pascal, « Les sanctions du manquement à la bonne foi contractuelle en droit français à la lumière du droit québécois », R.J.T., N° 1, 2011, p. 96./ Lequette Yves, Préface HAGE-CHAHINE Najib, La distinction de l'obligation et du devoir en droit privé, Université Panthéon-Assas éd , Paris, 2017, p. 3.

(67) Iraqi Civil Code No. 40 of 1951 Article 168 ( If it is impossible for the contractor to implement the obligation in kind, he will be awarded compensation for failing to fulfil his obligation unless it is proved impossible to implement. foreign He has no hand in it, and so is the judgment if the committed person is late in fulfilling his commitment. .

(68) Previous source



kind, and in the default liability in article 197 of the Civil Code, if the usurper of the property is damaged and it is impossible to return the situation to the former, so is compensation, as is the case in the case subject to discriminatory 69audits."

From this decision, we find that compensation is the provision established by the judiciary to violate contractual or default liability when it is impossible for the committed to carry out his obligation in kind or when it is impossible to restore the situation to what it was before the contract or to what it was before.

## Conclusion

According to economic theory, a contract is an exchange of benefits, and the binding force that ensures the contract's economic balance is the parties' will. As long as the parties' intention tends to adhere in a particular direction, the economic interest of the parties requires respect for what has been agreed. This perspective holds if their legal status is comparable to contractors', but their legal standing differs according to the economic balance's imbalance. The will loses its authority, and the intervention of the law or judge becomes necessary to rebalance or impose in-kind implementation on the debtor by obliging him to perform the contract's obligations by subjecting him to the contract's binding force principle to protect the creditor's interest and to restore stability to legal transactions consistent with the requirements of justice. Regarding the Iraqi judiciary's position, it applied the principle of contract binding force in numerous decisions, including in-kind implementation when the contract's conditions are met. As stated in article 246, in a case whose facts boil down to the fact that a contractor completed his work and handed over the role to the owner, and during the five-year maintenance period, there were defects in the roof of the part established. This caused the role's owner to initiate a case with the judiciary, requesting that the contractor restore the ceilings, which resulted in the Court of Cassation's judgment. Because the distinguished person asked the debtor to perform his obligation in kind and warned him to complete the repair of the cracked ceilings, and the in-kind performance was possible and not impossible in light of the nature of the obligation and the means necessary for its performance, without exhausting the debtor, the distinguished debtor is obligated to perform his duty in kind by law and by the judge's rule based on arrears, the distinguished debtor is compelled to fulfill his obligation in style by law and by the judge. If the authors of legal theory object to the concept of economic implementation of the contract on the grounds that it disregards and contradicts the foundations and concepts of contract theory, including those directly related to the idea of implementation in the first place and those indirectly related to fixed legal principles associated with the contract, such as the principle of contract binding force, the principle of good faith, and the principle of distinction between It also falls short of absorbing the moral value of implementation, which is the commitment to what has been agreed upon in accordance with the contract's binding force and good faith, as well as compensation as a penalty for non-performance of the obligation and not as a substitute for implementation, despite the fact that implementation, from an economist's perspective, is an economic return that is identical to compensation if its eco Economic implementers also justify the debtor's breach of its obligation by stating that it is motivated by a financial benefit or loss that it wishes to avoid, as required by the weight of implementation in the manner of

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(<sup>69</sup>) Federal Court of Cassation, Decision No. 1707 / Compensation / 2008 on 3/6 / 2008

compensation for in-kind implementation, taking into account the creditor's non-harm. However, because it has no material benefit, it is not considered economically. However, in the legal sense, moral damage requires compensation, and imposition of payment on the creditor violates the principle of good faith and the contract's binding force, which is one of the fundamental principles of all arrangements. The high costs of performing the obligation may threaten the debtor with a loss due to the contract's economic imbalance, such as high raw material prices. It threatens to increase the manufactured product's worth, as the debtor's continued performance of its obligation to supply the product to its creditor clients with economic imbalance is economically unacceptable. This cannot be left to the debtor's sole discretion. It is a legal requirement. Therefore, the judge must act to strike a balance between legal and economic fairness if the reason does not render execution impossible but makes it more difficult and threatens the debtor with a significant loss as a consequence - emergency circumstances. It is to strike a balance between the parties' interests. If he believes that the inability of execution is attributable to the presence of a foreigner, he may invoke force majeure. It is impossible to execute and so exempts the debtor from compensation duty, but only if the cause for the inability is attributable to the debtor's breach of contractual responsibility. It then provides equitable reimbursement to the creditor to ensure both legal and economic justice..

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11. Article 1103 : Les contrats légalement formés tiennent lieu de loi à ceux qui les ont faits
12. Article 1110 : Le contrat d'adhésion est celui qui comporte un ensemble de clauses non négociables, déterminées à l'avance par l'une des parties.
13. Article 1171 : Dans un contrat d'adhésion, toute clause non négociable, déterminée à l'avance par l'une des parties, qui crée un déséquilibre significatif entre les droits et obligations des parties au contrat est réputée non écrite..

14. Article 1193 : Les contrats ne peuvent être modifiés ou révoqués que du consentement mutuel des parties, ou pour les causes que la loi autorise. French Civil Code - Last amendment on January 01, 2020
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16. Article 1231-1 : Le débiteur est condamné, s'il y a lieu, au paiement de dommages et intérêts soit à raison de l'inexécution de l'obligation, soit à raison du retard dans l'exécution, s'il ne justifie pas que l'exécution a été empêchée par la force majeure.
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25. Code civil français - Dernière modification le 01 janvier 2020

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52. Iraqi Civil Code No. 40 of 1951 Article 146 Paragraph 2 (If there are accidents Exceptional Generally unthought, and as a result, the implementation of the contractual obligation, although not impossible, has become so burdensome for the debtor that it threatens to lose so badly, the court may yet Al , Mitzna It is in the interests of the parties to reduce the burdensome obligation to the acceptable extent if justice so requires, and any agreement to the contrary is invalid.
53. Iraqi Civil Code No. 40 of 1951 Article 150 Paragraph 1 ( The contract must be executed in accordance with what it contains and in a manner consistent with what is in good faith)
54. Iraqi Civil Code No. 40 of 1951 Article 168 ( If it is impossible for the contractor to implement the obligation in kind, he will be awarded compensation for failing to fulfil his obligation unless it is proved impossible to implement. foreign He has no hand in it, and so is the judgment if the committed person is late in fulfilling his commitment. .
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56. Iraqi Civil Code No. 40 of 1951 Article 246 ( 1- Forces the debtor to carry out its obligation in kind Whenever possible, 2- As if If it's in the in-kind execution. Exhaustion of the debtor It may be limited to paying monetary compensation if it does not cause serious harm to the creditors. ) .
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58. Iraqi Civil Code No. 40 of 1951 Article 246 Paragraph 2
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63. L'inégalité de fait joue un rôle fondamental au moment de la conclusion du contrat, en raison de la dépendance économique du salarié qui redoute un refus d'embauche. Sa situation d'infériorité est telle que l'on a pu parler de subordination virtuelle»
64. LEMENNICIER Bertrand, Économie du droit, Cujas éditions, Paris, 1991, p.75 et s. « La vision classique du contrat est tout autre. Les promesses passées dans le cadre de l'échange volontaire ont une fonction essentielle dans la coordination des plans individuels ...elles servent aussi à protéger les parties des aléas . dans la vision classique, on ne se préoccupe pas du contenu des promesses ou de savoir si ces promesses permettent de maximiser les gains a l'échange... ».
65. Lorsque l'engagement a été exécuté en partie, la pénalité convenue peut être diminuée par le juge, même d'office, à proportion de l'intérêt que l'exécution partielle a procuré au créancier, sans préjudice de l'application de l'alinéa précédent.
66. M. Mekki, Les remèdes à l'inexécution dans le projet d'ordonnance portant réforme du droit des obligations, Gazette du Palais, 2015, n° 120, p. 222.



67. Néanmoins, le juge peut, même d'office, modérer ou augmenter la pénalité ainsi convenue si elle est manifestement excessive ou dérisoire.
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78. Saadoun Yassin, impact of economic conditions on the contract, doctoral thesis in positive law, Faculty of Law and Political Science, Mouloud Muammari University, Algeria, 2018, p. 214
79. Sauf inexécution définitive, la pénalité n'est encourue que lorsque le débiteur est mis en demeure.
80. Toute stipulation contraire aux deux alinéas précédents est réputée non écrite.