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The Technical Foundations of the Theory of Termination

Dr. Ahmed Neama Attia Al-Shammari

Iraq - Baghdad - Imam Al-Kadhim College - Department of Law

ahmedatea@iku.edu.iq

Abstract. First and foremost, the fundamental principle in contracts is their binding nature, as stated in the Almighty's words: "O you who have believed, fulfill your contracts"[(1)]. The intended purpose of fulfilling a contract is its execution in a manner consistent with the principle of good faith in contract execution [(2)]. Good faith presupposes that the clauses contained in the contract must be implemented. The binding nature of execution is not limited to one party to the contract alone, but extends to all parties. Therefore, the concept of reciprocity in obligations paves the way for the application of the principle of fulfilling contractual clauses. Furthermore, this situation is not permanent, but rather fluctuates with the circumstances of contract execution, sometimes favorable and sometimes unfavorable. The law permits a contracting party to be released from the contractual obligation if the other party's performance becomes impossible. This simultaneously represents the penalty for breaching contractual obligations[(3)]. This outcome undoubtedly indicates the extent of respect and sanctity accorded to the contractual bond, and also points to the concept of the penalty resulting from disrespecting this bond. The obligations, however, while placing the option of termination in the hands of the contracting party, signify the independence of that party in releasing themselves from contractual obligations. It places the fate of the entire contract under the authority of one of the parties, as termination serves as a penalty, holding the defaulting party liable. On the other hand, it represents the non-liability of the party exercising the termination right due to the other party's unjustified refusal to perform. Furthermore, this does not imply the independent will of either party to steer the contractual relationship towards dissolution; rather, the matter is entrusted to the judiciary to consider the possibility of contract termination, based on the circumstances surrounding each party. From these elements, a clear vision emerges: the termination system has two aspects. First, it is a right for the contracting party who is serious about fulfilling the contract. Second, it is a penalty imposed on those whose actions cause a breach in the performance of the obligations arising from the contractual relationship. To clarify these two concepts, we will present, in turn, the provisions of the termination system, and we pray to God Almighty for success and guidance in this endeavor.

Keywords. Technical principles - Termination - Contract.

1. First Section The Concept of Termination:

2. The concept of termination can be explained from two perspectives:

First Perspective: Termination is a right of the contracting party. In a contract characterized by reciprocal obligations, i.e., a bilateral contract, the contracting party has the right to terminate. This right is granted by law to the contracting party [(4)] in a specific case, namely, the other contracting party's failure to fulfill

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their contractual obligations [5]. In the event of the other contracting party's breach of their obligations, the contractual relationship may be dissolved [6].

Second Perspective: Termination is a penalty for the contracting party's failure to perform their contractual obligation. Termination is therefore one of the penalties for non-performance (4). It is true that termination is not mandatory; rather, the contracting party has the option of either terminating the contract or specific performance. For example, in a sales contract, if the buyer fails to fulfill their obligation to pay the price, the seller has the option of either terminating the contract or demanding specific performance [7]. However, this specific

performance is subject to conditions stipulated in Article (246) of the Iraqi Civil Code No. 40 of 1951. These conditions were introduced to protect the economic interests of both the creditor and the debtor. A detailed examination of these conditions is unnecessary here; therefore, we refer the reader to the explanations of the general theory of obligation.

In conclusion, the concept of rescission is the termination of the contract in terms of its effects, both past and future. This implies the retroactive effect of rescission, along with compensation if there is a valid reason [8]

First Requirement

1.1The Scope of Termination and Conditions of Termination

First Branch: The Scope of Termination:

In bilateral contracts, if one of the contracting parties fails to fulfill their obligations If the contract requires him to fulfill his obligations, the other contracting party may, after giving notice, request termination with compensation if there is a basis for it. However, the court may grant the debtor a grace period, and it may also reject the request for termination if what the debtor has not fulfilled is small in relation to the obligation as a whole. In a lease contract, if the lessee refuses to pay the rent due, the lessor may terminate the lease. In a work contract, if the lessee refuses to pay the wage due, the worker may request termination of the contract. In a sales contract, the seller or the buyer may request termination if the other contracting party does not fulfill what is required of him in the contract. The right of termination is also established by the option of defect without stipulation in the contract [9]. This means that neither party may unilaterally terminate or amend the contract without an agreement from both parties or for reasons stipulated by law. The contract's clauses cannot be amended, nor can a specific clause be added, at the sole discretion of one party. [10] It is noteworthy that the court of first instance determines whether a party has the right to unilaterally terminate the contract if the intent of one or both parties is ambiguous. The court investigates the parties' intentions regarding termination, as determining the substance of their implied intent and understanding the facts of the case is the sole prerogative of the court. When the court indicates termination, it must deduce it from the facts and circumstances that reveal the parties' intent. The court must demonstrate how the agreement to dissolve the contract was reached, and its conclusions must align with the court's proceedings and final judgment. If the appealed judgment's conclusion regarding the parties' intent to terminate the contract completely contradicts the position of each party during the proceedings, who initially sought to avoid termination and instead claimed compensation for another reason, then the court's decision is invalid. This refers to the breach of contractual obligations while both parties insist on their performance. In such a case, the judgment is flawed due to a defect in the reasoning [11].

Based on the foregoing, the first condition relates to the concept of reciprocity in the contract's provisions. This concept is:

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That is, reciprocity characterizes every bilateral contract. It is a general rule that if the debtor fails to fulfill their obligation, the creditor has the right to demand enforcement. However, the creditor may also, in order to be released from their reciprocal obligation, demand the termination of the contract, that is, its cancellation and the annulment of its effects, so that neither party is obligated to the other. Clearly, this possibility does not exist in the case of a unilateral contract, because the creditor, who has no obligations in this type of contract, gains nothing from the termination if the debtor delays its performance. It is evident that the conditions for termination are:

That the contract be a bilateral contract; that one of the parties has breached their contractual obligation; that the debtor has no valid excuse for refusing to perform; and that the creditor is not responsible for the debtor's failure to perform.

1.2 Section Two: Conditions for Termination:

First: That the contract be a bilateral contract:

As stipulated in Article (131) of the amended French Civil Code of 2016

(1106) states that "a contract is binding on both parties when each party is obligated to the other in a reciprocal manner..." [12]. This text indicates that this condition pertains to the application of termination provisions, which apply to bilateral contracts. The purpose of contract termination is to release a contracting party from their obligations due to the other party's breach of their reciprocal obligations. If we are dealing with a unilateral contract, such as a gift contract, and the donor breaches their obligations, what benefit does the other contracting party (the donee) derive from requesting termination? They are not bound by any obligation to be released from it. Therefore, there is no point in accepting the termination of unilateral contracts. The scope of termination provisions is limited to bilateral contracts, without exception. This applies to settlement agreements, for example, as well as civil and administrative contracts, fixed-term contracts, contingent contracts, immediate contracts, and time-bound contracts such as employment contracts [13].

Second: That one of the contracting parties has breached their obligation:

For a contract to be rescinded, one of the contracting parties must have failed to fulfill their obligation. Since rescission is a penalty for breach of contract, it presupposes fault on the part of the contracting party. Therefore, it can only be requested when this liability is established, such as when specific performance was possible but the debtor refused, or when specific performance was impossible due to a reason attributable to the debtor's actions. However, if the debtor's failure to fulfill their obligation is due to their own fault, and the corresponding obligation is extinguished and the contract is dissolved by operation of law, then the ruling is dissolution of the contract, not rescission. Judicial rescission differs from dissolution by operation of law in that the non-performance is due to the debtor's fault.

The reason for termination is not external, and the request for termination may be made whether the contract was not performed wholly or partially, or if the performance was defective. The judge, exercising his discretionary power in this case, may either limit the termination to the unperformed part of the contract while the contract remains in effect for the remaining part, unless the contract is indivisible or the unperformed part is the essential part of the obligation [14]

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Third: The debtor must have a choice in not performing:

The debtor must have a choice in not performing, meaning they voluntarily choose not to fulfill their obligation without a legitimate excuse. If the reason for non-performance is external to the contract or the contracting parties, then:

The nature of the object of sale must be considered. If it is a valuable item that has perished, the contract is automatically terminated by law due to the debtor's inability to fulfill their delivery obligation. The second method of performance, which is performance by way of compensation [15], then the contract is considered. However, if the object of sale is a fungible item, then according to the principle that fungible items do not perish, the debtor is required to provide a replacement for the perished item from the market.

Fourth: The creditor's failure to cause the debtor's non-performance:

This means that the debtor has no right to non-performance, which is known as the right of retention. The Iraqi legislator has permitted the right of retention in Article (280) of the Civil Code, which states: (1- The seller may retain the sold item until the buyer pays the full due price, and the worker may retain the object he works on until he receives the wage due, whether or not his work has an effect on that object, all in accordance with the provisions established by law.

In every financial exchange in general, each of the contracting parties may retain the object of the contract while in his possession until he receives the due consideration.)

Second Requirement

The Legal Characterization of the Contractor's Right to Terminate

Given the inability of dividing financial rights into personal and real rights to encompass all types of rights, modern jurisprudence has analyzed the concept of financial rights and combined personal and real rights under the term "ordinary right," while preserving the distinct nature of each. Alongside ordinary rights, it has added another right known as the licensing right, which is defined as: "A power granted to a person by virtue of which they may, at their sole discretion, alter the legal status of another person, through creation, modification, cancellation, or termination." As a financial right, jurisprudence has included it within the category of licensing rights, after it was previously considered a personal right, based on its different nature from that of ordinary rights in general and personal rights in particular. Termination, according to the initial characterization, is a licensing right. However, this is insufficient to precisely define its nature due to the lack of understanding of the justifications that led to its removal from the category of personal rights and its inclusion within the category of... The right of termination, and before that, the justifications that originally led to abandoning the division of rights into personal and real, and relying instead on dividing them into ordinary and licensable, as well as the licensable right itself being divided into types: constitutive right, modifying right, and termination right. To which of these types does the right of termination, also known as the voluntary right, or what is known in French as potestatif droit [16], belong?

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2.Second Section

Types of Termination and Their Distinction from Other Legal Systems

Due to the importance of the types of termination and their distinction from other systems, we have chosen to divide this section into two subsections: the first to study the types of termination, and the second to study the distinctions of termination, as follows:

Subsection First/ Types of Termination:

One of the requirements for termination is the existence of a contract in which both parties are simultaneously creditors and debtors. This contract is binding on both parties. Then, one of the contracting parties refuses to fulfill their obligations arising from this contract without a legitimate reason. The source of termination is judicial; that is, the default method of termination is by court order, which is judicial termination. Termination may also arise from the will of the contracting parties, which is consensual termination, or it may occur by operation of law, which is called statutory termination.

Section One: Judicial Termination:

Article (1224) of the French Civil Code, as amended in 2016, presents the methods for effecting termination. According to the aforementioned article, these methods are: termination by virtue of a resolutory condition (consensual termination), termination by notice (or unilateral termination), and then judicial termination. It is noteworthy that the way these types of termination are presented shows that the French legislator, within the 2016 amendment, did not consider judicial termination the primary method, but rather, as Article (1224) states. As a precautionary measure for termination, contrary to the prevailing trend in French jurisprudence [17], which considers judicial termination to be the default, since it is effected by a court ruling, a contracting party must, before resorting to the courts to request termination, demand that the other contracting party fulfill their obligation and warn them that if they fail to do so, they will seek termination. This warning to the debtor is done by formally notifying them [18]. This is not the only instance requiring formal notification; rather, in the following cases:

In the event of the debtor's delay in fulfillment, the creditor may formally notify them, demanding performance. This is because the creditor has the option of demanding specific performance of the obligation or demanding termination. If they choose termination, the judge may not grant their request. To him, but it is possible for the judge to rule by The judge may also rule on partial performance, ordering compensation for the creditor due to the debtor's non-performance, considering the unfulfilled part of the contract to be the most important and its purpose. However, the judge may grant the creditor's request and rescind the contract, obligating the debtor to pay compensation if there is a basis for it. The obligation to pay compensation is not based on the rescission, as it is nullified by the rescission. The source of this obligation is the debtor's fault. It is noteworthy that the judge orders rescission when its conditions are met: that performance of the contract remains possible, that the creditor demands rescission without demanding performance, and that the debtor continues to fail to fulfill their obligation [19].

The judge may also rule on rescission in cases of partial performance, ordering compensation for the creditor due to the debtor's non-performance. Second Branch / Consensual Termination:

1- Definition of Contract Termination by Agreement of the Parties: This is called consensual termination because it refers to the mutual will of the contracting parties to consider the contract terminated without the need to refer to the competent court. This occurs when the debtor fails to fulfill their obligation. From this meaning, we understand that termination arising from the will of the contracting parties is generated as soon as one of the contracting parties expresses their desire to end the contract by way of

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termination without resorting to the courts. However, it should be noted that the debtor may dispute the fulfillment of this condition, in which case the creditor may resort to the courts to enforce the termination and issue a judgment terminating the contract. This judgment creates the termination process, not creates it, because the termination, in terms of its existence, has already occurred from the moment the creditor is notified of the application of the agreed termination clause [20].

2- Conditions for the Validation of Consensual Termination: The following conditions must be met for the theory of consensual termination to apply:

- The consensual termination must be within the context of contracts binding on both parties.

- There must be a breach by one of the parties of their obligations towards the other party.

- The consensual termination must be characterized by a lack of broad discretion on the part of the judge, thus obligating them to rule for termination.

- The judgment issued for the consensual termination must be a judgment confirming the termination and not based on any other grounds [21].

- The contracting party requesting termination must have fulfilled their obligation or be prepared to fulfill it and capable of restoring the situation to its state before the termination [22].

Third Branch/ Legal Termination:

This is clarified by Article (179) of the Iraqi Civil Code No. 40 of 1951, which states:

If the subject matter of the contract is destroyed while in the possession of its owner, the contract is terminated, whether its destruction is due to their actions or force majeure. The owner must return the consideration received to the owner. If the sold item perishes in the seller's possession before the buyer takes delivery, the loss falls on the seller, and the buyer bears no liability. It is clear from the above text that there are two cases that necessitate rescission by law: the first is the impossibility of performance due to the debtor's fault, in which case the court must order the debtor to pay compensation. The second case is the impossibility of performance due to an external cause that cannot be prevented or foreseen, rendering the fulfillment of the obligation impossible, such as a sudden accident or force majeure [23]. Some believe that the legal basis for rescission lies in the non-existence of the obligation because its performance has become impossible. The idea that this obligation has ceased to exist due to the absence of its cause makes this ground for rescinding the contract automatically or by law without resorting to the courts. No notice is required, as the performance of the obligation has become undeniably impossible. However, resorting to the courts remains necessary if the creditor or debtor disputes the occurrence of rescission by law. The court may award compensation or refuse rescission due to fault or negligence on the part of the debtor, or the existence of an external cause beyond the debtor's control [24].

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Second Requirement / Distinguishing Termination from Other Legal Statuses

1- Distinguishing Termination from Nullity:

It is extremely difficult for a researcher to find a comprehensive and definitive definition of the theory of nullity within the folds of civil law. The meanings that have clarified its nature vary, and are as follows: ((The act does not acquire legal existence in the eyes of the law)) or ((Its lack of effect between the contracting parties and consequently with respect to third parties)). A review of Iraqi civil law and the civil laws of other Arab countries reveals a consensus that nullity is the consequence of the absence of a formal or substantive element of a contract. Consequently, the debate has intensified regarding the degree of nullity and whether it exists in a single category or multiple categories. The traditional theory, which emerged in the nineteenth century, posits three categories of nullity: (noneness, which occurs when an essential element of the contract is absent; absolute nullity, which arises when a substantive condition is not met; and relative nullity, which arises when consent is vitiated or when there is a defect in legal capacity). Given the evident shortcomings of this theory, the modern theory proposes two categories: absolute nullity and relative nullity. This theory, too, has not escaped criticism. After this brief overview of invalidity, we will now turn to Islamic jurisprudence to clarify its role in determining the degree of invalidity, especially since it generally divides contracts into valid and invalid ones. The latter is considered invalid in all Islamic schools of thought except the Hanafi school, which divides invalid contracts into void contracts (those lacking all their essential elements, deemed illegitimate in their origin and description) and defective contracts (those possessing all their essential elements).

One of them is flawed because that element did not meet the necessary conditions, and it is then said to be illegitimate. Our legislator, in his explanation of the theory of nullity in Islamic jurisprudence, did not adopt relative nullity as a level included in the core of the law, but rather adopted the suspended contract as an alternative. We, for our part, support the opinion of Professor Sanhouri, who believes that nullity is of a single degree and that there are no levels or degrees of non-existence. He believes that a contract that is relatively null or voidable, as defined by the laws of Arab countries, including Algeria, goes through two stages. The first stage is before its fate is determined, in which case it is considered a valid contract producing all legal effects. The second stage is when the fate of the contract is determined: either it is ratified, or the statute of limitations expires, in which case it becomes valid, or it ceases to exist by being declared null and void. Therefore, a contract that is relatively void is not considered an independent entity existing alongside absolute voidness as a separate category. Rather, it is an expression of a contract that passes through two stages: validity or voidness, as discussed in the preceding paragraphs regarding voidness and the controversies surrounding it. We now turn to the core of our study at this point, which is the distinction between voidness and rescission. It is known that both terminate the contract retroactively, with the caveat that their retroactive effect applies to immediate contracts but not to time-bound contracts, since time is an essential element in the latter, and what has passed cannot be recovered. Both the invalidation and rescission of a contract are causes for its termination, but it is incorrect to say that voidness causes the dissolution of a contract, because dissolution presupposes the existence of a valid contract with all its elements complete, and then the contractual bond is dissolved, for example, by rescission. While rescission agrees with voidness in one respect—namely, the termination of the contract—it intersects with it in several ways. One of these is that voidness arises from the formation of the contract, so the contract is born carrying within it the cause of its demise. As for rescission, the contract is initially valid and complete in all its elements, but one party fails to fulfill its obligations, thus justifying the other party's demand for rescission. The judge enjoys broad discretionary power in either declaring the contract rescinded or granting the debtor a grace period to fulfill their obligations. In contrast, in cases of nullity, the judge's only recourse is to declare the contract void. Furthermore, a rescission claim is subject to a statute of limitations according to the general rules of civil law, while a nullity claim is not affected by the passage of time. This distinction

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between rescission and nullity is clearly demonstrated in a decision by the Iraqi Court of Cassation, No. 3913/M/Real Estate/2001, dated February 19, 2001, which stated: "A rescission claim differs from a nullity claim in terms of its nature and conditions. Therefore, the Court of Appeal must rectify this error and conduct the necessary investigations in the case to ascertain the conditions for rescission stipulated in Article 177 of the Civil Code." 2- Distinguishing between Rescission and Dissolution:

The dissolution of a contract is derived from the meaning provided in Article 179 of the Civil Code and Article 159 of the Civil Code. From these texts, we find that dissolution means the termination of the contract by operation of law, without judicial intervention and without stipulating in the contract that the impossibility of performance of the obligation due to an external cause leads to the termination of the contract. The contract is dissolved by operation of law when specific performance of the obligation becomes impossible due to a reason beyond the control of either party. However, if the impossibility is due to the fault of either party, then we are dealing with dissolution, not termination. Regarding the meaning of termination, the Egyptian Court of Cassation, in its decision of November 19, 1959 (Cassation 2/10/677), and Article 179, which corresponds to the text, stated: "If the facts of the case are that the respondent company had contracted to export quantities of cotton to German trading houses, and when the last war broke out, it resulted in the severing of trade and political relations between Egypt and Germany, and at that time Military Orders No. 6 of 1939 and No. 158 of 1941 concerning trade with the government and its subjects were issued, preventing the execution of these contracts and rendering null and void anything that contravened their provisions. The appealed judgment considered the state of war, the severing of relations and communications, and the issuance of exceptional legislation as force majeure and an external cause that renders the execution of these contracts and the correct legal rules impossible, because when the performance of one party's obligation becomes impossible, the reciprocal contract is terminated due to an external cause, and that party's duty to perform it is extinguished, and the contract is necessarily terminated by operation of law, and both parties return to the position they were in before the contract, in accordance with the general provisions contained in Article Article 159 of the Civil Code, which applies to all contracts, is relevant here. Rescission and legal termination of a contract are similar in that both are grounds for retroactive dissolution. However, rescission differs from termination in several ways. Rescission has a precautionary aspect, as the creditor has the right to demand rescission or specific performance, whereas in termination, the creditor does not have this option, since the contract is automatically terminated by operation of law. Furthermore, rescission has a security aspect; it is both a penalty imposed on the defaulting party and a means for the creditor to secure their rights. Termination, on the other hand, does not aim to guarantee the performance of the contract, either directly or indirectly. Additionally, judicial rescission may be accompanied by compensation, while termination is only accompanied by compensation in one instance: when the debtor's fault combines with force majeure to create the impossibility of fulfilling the contract.

3- Distinguishing between Rescission and Termination: Termination means terminating the contract by agreement. Both contracting parties may agree to terminate the contract, especially if they anticipate beforehand that one of them will not perform the contract. Agreements for termination in reciprocal contracts vary in degree, with the lowest level being an agreement to terminate the contract if one party fails to fulfill their obligations. Further levels may be established

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In contrast, in cases of nullity, the judge's only recourse is to declare the contract void. Furthermore, a rescission claim is subject to a statute of limitations according to the general rules of civil law, while a nullity claim is not affected by the passage of time. This distinction between rescission and nullity is clearly demonstrated in a decision by the Iraqi Court of Cassation, No. 3913/M/Real Estate/2001, dated February 19, 2001, which stated: "A rescission claim differs from a nullity claim in terms of its nature and conditions. Therefore, the Court of Appeal must rectify this error and conduct the necessary investigations in the case to ascertain the conditions for rescission stipulated in Article 177 of the Civil Code." 2- Distinguishing between Rescission and Dissolution: The dissolution of a contract is derived from the meaning provided in Article 179 of the Civil Code and Article 159 of the Civil Code. 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Rescission has a precautionary aspect, as the creditor has the right to demand rescission or specific performance, whereas in termination, the creditor does not have this option, since the contract is automatically terminated by operation of law. Furthermore, rescission has a security aspect; it is both a penalty imposed on the defaulting party and a means for the creditor to secure

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their rights. Termination, on the other hand, does not aim to guarantee the performance of the contract, either directly or indirectly. Additionally, judicial rescission may be accompanied by compensation, while termination is only accompanied by compensation in one instance: when the debtor's fault combines with force majeure to create the impossibility of fulfilling the contract.

One of them is flawed because that element did not meet the necessary conditions, and it is then said to be illegitimate. Our legislator, in his explanation of the theory of nullity in Islamic jurisprudence, did not adopt relative nullity as a level included in the core of the law, but rather adopted the suspended contract as an alternative. We, for our part, support the opinion of Professor Sanhouri, who believes that nullity is of a single degree and that there are no levels or degrees of non-existence. He believes that a contract that is relatively null or voidable, as defined by the laws of Arab countries, including Algeria, goes through two stages. The first stage is before its fate is determined, in which case it is considered a valid contract producing all legal effects. The second stage is when the fate of the contract is determined: either it is ratified, or the statute of limitations expires, in which case it becomes valid, or it ceases to exist by being declared null and void. Therefore, a contract that is relatively void is not considered an independent entity existing alongside absolute voidness as a separate category. Rather, it is an expression of a contract that passes through two stages: validity or voidness, as discussed in the preceding paragraphs regarding voidness and the controversies surrounding it. We now turn to the core of our study at this point, which is the distinction between voidness and rescission. It is known that both terminate the contract retroactively, with the caveat that their retroactive effect applies to immediate contracts but not to time-bound contracts, since time is an essential element in the latter, and what has passed cannot be recovered. Both the invalidation and rescission of a contract are causes for its termination, but it is incorrect to say that voidness causes the dissolution of a contract, because dissolution presupposes the existence of a valid contract with all its elements complete, and then the contractual bond is dissolved, for example, by rescission. While rescission agrees with voidness in one respect—namely, the termination of the contract—it intersects with it in several ways. One of these is that voidness arises from the formation of the contract, so the contract is born carrying within it the cause of its demise. As for rescission, the contract is initially valid and complete in all its elements, but one party fails to fulfill its obligations, thus justifying the other party's demand for rescission. The judge enjoys broad discretionary power in either declaring the contract rescinded or granting the debtor a grace period to fulfill their obligations. In contrast, in cases of nullity, the judge's only recourse is to declare the contract void. Furthermore, a rescission claim is subject to a statute of limitations according to the general rules of civil law, while a nullity claim is not affected by the passage of time. This distinction between rescission and nullity is clearly demonstrated in a decision by the Iraqi Court of Cassation, No. 3913/M/Real Estate/2001, dated February 19, 2001, which stated: "A rescission claim differs from a nullity claim in terms of its nature and conditions. Therefore, the Court of Appeal must rectify this error and conduct the necessary investigations in the case to ascertain the conditions for rescission stipulated in Article 177 of the Civil Code." 2- Distinguishing between Rescission and Dissolution:

The dissolution of a contract is derived from the meaning provided in Article 179 of the Civil Code and Article 159 of the Civil Code. From these texts, we find that dissolution means the termination of the contract by operation of law, without judicial intervention and without stipulating in the contract that the impossibility of performance of the obligation due to an external cause leads to the termination of the contract. The contract is dissolved by operation of law when specific performance of the obligation becomes impossible due to a reason beyond the control of either party. However, if the impossibility is due to the fault of either party, then we are dealing with dissolution, not termination. Regarding the meaning of termination, the Egyptian Court of Cassation, in its decision of November 19, 1959 (Cassation 2/10/677), and Article 179, which corresponds to the text, stated: "If the facts of the case are that the respondent company had contracted to export quantities of cotton to German trading houses, and when the last war broke out, it resulted in the severing of trade and political relations between Egypt and Germany, and at that time Military Orders No. 6 of 1939 and No. 158 of 1941 concerning trade with

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the government and its subjects were issued, preventing the execution of these contracts and rendering null and void anything that contravened their provisions. The appealed judgment considered the state of war, the severing of relations and communications, and the issuance of exceptional legislation as force majeure and an external cause that renders the execution of these contracts and the correct legal rules impossible, because when the performance of one party's obligation becomes impossible, the reciprocal contract is terminated due to an external cause, and that party's duty to perform it is extinguished, and the contract is necessarily terminated by operation of law, and both parties return to the position they were in before the contract, in accordance with the general provisions contained in Article Article 159 of the Civil Code, which applies to all contracts, is relevant here. Rescission and legal termination of a contract are similar in that both are grounds for retroactive dissolution. However, rescission differs from termination in several ways. Rescission has a precautionary aspect, as the creditor has the right to demand rescission or specific performance, whereas in termination, the creditor does not have this option, since the contract is automatically terminated by operation of law. Furthermore, rescission has a security aspect; it is both a penalty imposed on the defaulting party and a means for the creditor to secure their rights. Termination, on the other hand, does not aim to guarantee the performance of the contract, either directly or indirectly. Additionally, judicial rescission may be accompanied by compensation, while termination is only accompanied by compensation in one instance: when the debtor's fault combines with force majeure to create the impossibility of fulfilling the contract.

3- Distinguishing between Rescission and Termination: Termination means terminating the contract by agreement. Both contracting parties may agree to terminate the contract, especially if they anticipate beforehand that one of them will not perform the contract. Agreements for termination in reciprocal contracts vary in degree. The lowest level of termination is an agreement to terminate the contract if one party fails to fulfill their obligation. The contracting parties may strengthen the termination clause to the point of agreeing that it is automatically terminated or terminated automatically without the need for a court ruling. They may even agree to render the contract automatically terminated without the need for a court ruling or any formal notice. By examining the provisions of Arab civil law articles that address contractual termination and comparing them with Article 178 of the Civil Code, we find that termination is an agreement to dissolve the contractual relationship before the full performance of the subject matter of the contract or before the expiry of its specified term. This agreement to terminate is...

A formal notice to the debtor does not negate the need for a court order, nor can it deprive the judge of his discretionary power, while the debtor retains the right to enforce the contract to avoid its termination. However, if the contract is terminated by agreement without the need for a court ruling, it is logical to conclude that a court order is unnecessary. But if a dispute arises concerning the debtor's claim of fulfilling his obligations, it becomes necessary to refer the matter to the competent judge for a ruling. In this case, the judge's ruling is declaratory, not constitutive of termination, but it does not negate the need for a formal notice to the debtor. If the agreement is solely for termination without the need for a court order or formal notice, then the judge's discretionary power is diminished. However, this does not prevent the judge from preventing the abuse of the clause; rather, he has the right to monitor the fairness and fulfillment of the agreement's terms. Appeal No. 1188 of 1982 (51st Judicial Year), Session of April 4, 1982, indicated that the judge was deprived of all discretionary power when the contract included an explicit termination clause. The appellant's insistence on the respondent's waiver of that clause, and the judgment's failure to examine the considerations upon which the appellant relied, further illustrate this point. Similarly, a decision of the Egyptian Court of Cassation in Appeal No. 161 of 1970 (36th Judicial Year), Session of November 26, 1970, Vol. 21, p. 1181, stated that an agreement stipulating that the contract would be automatically terminated without the need for notice or warning upon breach of the obligations arising therefrom would deprive the judge of all discretionary power regarding termination. However, this is contingent upon the court verifying the availability of the conditions for contractual termination and the necessity of its application. This is because the judge has full oversight to ascertain the applicability of the clause to the contract's wording, as well as to monitor external circumstances

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that might prevent its application. If it becomes apparent to the judge that the creditor has waived their option to request termination by accepting payment in a manner that contradicts the intent of the party terminating the contract, or if... The creditor is the one whose fault caused the debtor's failure to fulfill their obligation, or if the debtor's refusal to pay was justified based on the plea of non-performance, provided its conditions were met, thus overriding the condition of contractual termination. In such a case, the creditor is left only with the option of invoking a judicial plea, according to Article 157 of the Civil Code. The burden of verifying the existence of the termination condition falls on the judge. Neither party can justify termination by claiming reasons they deem valid. The Egyptian Court of Cassation has indicated this in a recent decision: "Contract termination can only result from an agreement between the contracting parties or a court ruling to that effect, according to Article 117 of the old Civil Code. Neither party can unilaterally terminate the contract by claiming reasons they deem justifiable. Therefore, it is futile for them to challenge the ruling on the absence of a termination clause, as the court will not respond to their defense based on this premise." Contractual termination and judicial termination both result in the dissolution of the contract and the retroactive elimination of all its effects. However, the point of difference between them lies in the fact that termination differs from mutual termination in that it occurs... Judicial termination is based on a request submitted by one of the contracting parties to the court seeking to terminate the contract. Rescission, on the other hand, is based on an agreement between the two parties before the contract is concluded. Furthermore, in judicial termination, the debtor must be notified before the action is taken, whereas rescission is exempt from providing such notification if the parties agree to terminate the contract without the need for a court ruling or notification [25].

3.Third Section

Jurisprudential Trends in Establishing the Concept of Rescission

It is noteworthy that the primary focus of jurists has not been on debating the existence of the right to rescission as a subsidiary right, but rather on the basis upon which this right is founded. While its emergence was initially attributed to the explicit rescission clause, opinions subsequently varied in justifying it. Some have based the concept of rescission on the rescission clause itself. Some argue that the right to rescind is based on the implicit condition, while others favor the idea of cause (first requirement). Some base it on the concept of justice, and still others base the idea of rescission on the principle of obligation and corresponding performance (second requirement).

First requirement: The basis of the right to rescind is the implicit rescission clause and the idea of cause:

First: The idea of the implicit rescission clause: The basis of this idea is Article 1224 of the French Civil Code (amended in 2016). This article presupposes the existence of an implicit rescission clause in reciprocal contracts. This clause arises when one of the contracting parties fails to perform their obligation (1). Since a contract is an agreement between two or more parties to produce a specific legal effect [26] , it is natural for the contract to be terminated by the voluntary performance of its obligations. Otherwise, the creditor can demand the rescission of the contract and claim compensation for damages if there is a reason that satisfies the court. Furthermore, it is based on an irreversible presumption of the existence of a rescission clause, the activation of which is linked to the moment of non-performance. Criticisms have been directed at the idea of basing the right to rescission on the rescission clause. The implicit aspect of these criticisms:

1- The essence of the implicit resolutory condition theory is the permissibility of rescinding a bilateral contract in the event of non-performance of the obligation by one of the parties. However, this does not

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mean that the contracting parties intended an explicit condition stipulating this, as is the case with an explicit resolutory condition. Rather, the agreement was based on the existence of a condition assumed to exist between the contracting parties, stipulating the rescission of the contract if one of the parties fails to perform.

2- Rescission is not necessarily required; it is subject to the discretion of the judge, who may grant the debtor a grace period until after the lawsuit is filed. The debtor can also avoid rescission by offering the full amount of the debt before a final judgment of rescission is issued, provided that... This fulfillment may be detrimental to the creditor, for example, if a clause is included in the contract stating that "if the buyer breaches the terms of this contract or any one of them, the sale shall be null and void" [27].

3- The implied resolutory clause can be considered one of the fundamental elements of the contract, which does not need to be explicitly stated. It is one of the essential elements of the contract, and the judge cannot easily uncover it because it is intertwined with the very essence of the contract.

4- The implied resolutory clause is subject to the discretion of the trial judge, who has the authority to investigate and determine its validity in relation to the contract. In other words, the trial judge has full authority to rule on the permissibility or invalidity of the implied resolutory clause. Furthermore, the judge can deny the debtor a grace period for fulfillment, even after a rescission lawsuit has been filed.

5- The implied resolutory clause is presumed in bilateral contracts and aims to guarantee and protect the rights of the creditor in particular [28].

6- French lawmakers have limited the concept of the implied resolutory clause to the realm of sales contracts only [29].

Secondly: The Concept of Cause as a Basis for Termination:

As a result of the previous criticisms leveled against proponents of the implied resolutory condition as a basis for the right of termination, some have turned to basing termination on the concept of cause, since the correct basis for the theory of termination, according to the majority of legal scholars, is cause.

However, within this concept, cause has several considerations:

1- It is a technical element in the obligation. The technical cause performs two functions: it is an element in the creation of the obligation, and as such, it must be present at the time of the obligation's creation, otherwise it is void; and it is also an element in the enforcement of the obligation, and as such, it must be present at the time of the obligation's performance. If the obligation is not performed, the contract that created that obligation must be terminated, and the obligation is extinguished accordingly.

2- In the general theory of obligation, the cause refers to the direct purpose that the obligor seeks to achieve through the obligation; that is, the immediate goal the obligor intends to reach through their voluntary commitment. In this general sense, the cause differs from the subject matter [30].

3- The reason may be that which necessitates the existence of the ruling unless there is an impediment, and whose absence necessitates its absence. The reason in this sense is what is meant by the term "cause of obligation," common in the general theory of obligation. The reason in this sense is a type of positive law, just as obligation and enforcement are prescriptive rulings [31]. This means that we make the reason for one contracting party's obligation the same as the other contracting party's obligation. This provides the concept of reciprocity in bilateral contracts. When one party breaches their obligation, the other party may be released from the concept of reciprocity within the contract. The Iraqi legislator adopted the concept of reciprocal obligations when stipulating the method of release.

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Justifications for Adopting the Concept of Cause as a Basis for Termination:

Some legal scholars have adopted the concept of cause as a basis for termination. The rationale for this is that a contract is only concluded with the intention of each party receiving the performance they have undertaken from the other. Each party's obligation finds its cause in the other's obligation [32].

Criticisms of the Concept of Cause as a Basis for Termination:

1- The consequence of the absence of cause is the invalidity of the contract, not its termination. How, then, can this theory make the absence of the corresponding cause the basis for termination?

2- This cause exists as a condition for the validity of the contract's creation and its continuation. If the cause is a condition for the contract's formation, it has no role in its execution.

3- The theory of cause limits termination to the breach of a fundamental obligation by the contracting party, excluding subsidiary obligations.

4- The concept of cause restricts the judge's discretionary power. When a contracting party fails to fulfill their obligation, the judge is obligated to terminate the contract without any discretionary power. Estimated [33].

Second requirement / The basis of the right of termination is the idea of equity and reciprocal performance:

The idea of the implied termination clause and also the idea of cause did not withstand the criticisms directed at these two ideas. As a result, legal scholars searched for another basis upon which to establish the idea of termination. They found no suitable basis other than the idea of equity and the idea of the connection between financial performance between the contracting parties, based on the principle of reciprocity.

The essence of bilateral contracts is that, if the conditions for termination are met, the buyer has the right to request termination and a refund of the price paid [34].

Section One: The Concept of Equity

The term justice means establishing equal protection for rights at the same level without discrimination. This is the general meaning of justice. In the field of contracts, justice means achieving balance in the legal obligations arising from the contract. The essence of the idea of justice in this area indicates that when a contracting party fails to fulfill their contractual obligation, it is unjust to compel the other contracting party to fulfill their obligation. This is what some legal scholars have argued, based on the reciprocal nature of obligations in bilateral contracts[35]. However, this requires that the creditor demanding termination be fully prepared to restore the situation to its state before the contract. The creditor seeking termination must be ready to fulfill their obligation arising from the bilateral contract. It is not just for them to breach their obligation and then demand termination due to the debtor's failure to fulfill their obligation [36]. We may find that the essence of the idea of justice—as previously mentioned—is very consistent with the content of Article (177), Paragraph 1 of the Iraqi Civil Code, because it gives the right to the party who is ready to fulfill their obligation to demand termination and claim compensation whenever possible. To him

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Justified, as this article stipulates: "In bilateral contracts, if one of the contracting parties fails to fulfill their contractual obligations, the other party may, after giving notice, request termination of the contract with compensation if warranted." The Iraqi legislator acted wisely in expressing the concept of fulfilling obligations with the phrase "as required by the contract," specifying the agreed-upon terms. Prior to this article, the Iraqi legislator emphasized the obligation to execute the contract according to its agreed-upon terms. Article (150) states: "-1 The contract must be executed according to its terms and in a manner consistent with good faith." Paragraph (37) of this article also points to the necessity of employing the concept of justice for the purpose of execution. While the Iraqi legislator, in the aforementioned texts, emphasized the obligation to execute the contract according to its terms and conditions—a requirement of the principle of justice—we find that the Iraqi judiciary, in some of its rulings, has disregarded this principle and deviated from its essence. For example, a ruling by the Iraqi Court of Cassation stated: "Upon review and deliberation, it was found that the appeal was filed within the legal timeframe. Therefore, it was decided to accept it in form. Upon examining the appealed judgment, it was found to be correct and in accordance with the law. This is because, in bilateral contracts, a contracting party cannot claim their entitlements arising from the contract if they allege that the other party breached their contractual obligation, except after requesting the termination of the contract, pursuant to the provisions of Article 177 of the Civil Code. Since the plaintiff did not request the termination of the contract in their statement of claim, it is inadmissible on this basis. Therefore, it was decided to uphold the appealed judgment, reject the appeals, and charge the appellant with the appeal fees. The decision was issued unanimously on 7 Jumada al-Ula 1429 AH, corresponding to May 12, 2008 AD." (38) Our comment on the content of this ruling is that the judiciary The Iraqi judiciary prohibits a creditor from demanding that a debtor fulfill their contractual obligations. This contradicts Article 246 of the Iraqi Civil Code, which stipulates that a debtor is obligated to fulfill their contractual obligations, which are also considered entitlements of the other party. Despite this, the judiciary requires a request to rescind the contract and a waiver of the creditor's rights stipulated within it. In our opinion, this approach by the Iraqi judiciary is questionable, as it encourages breach of contract by the debtor and a return to the pre-contractual status quo. This provides the debtor with a safeguard, placing them in a stronger legal position than the creditor. Furthermore, the judiciary requires that the breach be justified for the creditor to receive compensation. Naturally, the burden of proving this justification falls on the creditor, making it difficult to obtain the rights arising from the contract.

It is noteworthy that justice does not permit a contractor to remain bound by a contract that has not achieved its purpose and under which the other party has not received what is due to them. Otherwise, the reciprocal contract loses its fundamental characteristic, which is the creation of mutual obligations incumbent upon both parties. Hence, termination can be understood as a penalty for the contractor's failure to obtain what the contract stipulated for them from the other party. Justice requires that each contractor receive what was agreed upon under the contract (39), since the contract entails the execution of the reciprocal obligations it contains. The basis of these contracts is the theory of interdependence between the obligations of each of the contracting parties, and this leads to the contractor's request for termination due to the non-performance of the reciprocal obligation. It is worth mentioning that it is inconceivable to demand termination within a contract binding on one party, as is the case in a guarantee contract, since The reason for this is the absence of the concept of a binding agreement from the outset, which would grant the right to request termination of a contract if it is binding on both parties, unlike a contract binding on only one party, since the latter type of contract involves only one creditor, and termination may harm their interests, so they find that the best solution is enforcement.

The contract is void because termination is not in the creditor's interest. The creditor can compel the debtor to fulfill their obligation and can also terminate the debtor's obligation at will. As for the debtor, they cannot request termination because there is no obligation binding the creditor, who is the counterparty. In a guarantee contract, the guaranteed party can terminate the guarantor's obligation at

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will, but the guarantor cannot terminate the guarantee because the guaranteed party is not obligated to anything that would allow for termination [40].

Section Two: The Concept of Counter-Performance

3. The concept of reciprocal performance refers to the interdependence of the financial obligations of both parties to a contract. This stems from the reciprocal nature of the obligations, a characteristic inherent in bilateral contracts. The first party's obligation is a right owed to the other party, making each party both a creditor and a debtor simultaneously. This is the essence of reciprocal obligations. For the concept of reciprocal performance to be realized, the following conditions must be met:

4. 1- The concept of reciprocity must exist in the financial obligations.

5. 2- The fulfillment of one party's obligation must be the same as the reason for the other party's obligation. 3- The contractor's refusal to fulfill their obligation must not be based on a legitimate reason.

6. The interdependence underlying this concept is not established through prior agreement at the time of contract formation; rather, it is implicit and derived from the nature of reciprocal obligations. Termination only applies to bilateral contracts because such contracts create reciprocal obligations. This explains the basis of termination, which stems from the concept of reciprocity between obligations in bilateral contracts. This type of termination is based on the idea of interdependence between reciprocal obligations, an interdependence unique to bilateral contracts where each party is obligated to perform a specific duty corresponding to the other party's obligation. Each party then has an interest in requesting termination to be released from their own obligation. This contrasts with unilateral contracts, where this consideration does not exist. The purpose of termination is to allow a contractor to be released from their obligation due to the other party's failure to fulfill theirs. The Egyptian legislator has adopted the concept of reciprocal performance in Article (157) of the Civil Code, as is the case in... The Iraqi Civil Code, in the text of Article (177) Paragraph 1. Some legal scholars believe that the requirement that the contract be binding on both parties should apply to immediate contracts or fixed-term or indefinite-term contracts, such as sale or lease, because the system of termination is based on the idea of the connection between the obligations of the two parties to the contract, which are described as reciprocal, while contracts binding on one party do not have the idea of reciprocity in the obligations. The concept of reciprocity in obligations, and consequently the permissibility of termination due to a party's failure to fulfill their contractual obligations, is not limited to the civil sphere but extends to the commercial and administrative domains as well [41]. However, the concept of reciprocity between obligations allows the creditor to employ one of the following options:

7. 1- The plea of non-performance: This means that if the obligations are reciprocal and the debtor ceases to fulfill their obligations, the other contracting party may insist on non-performance of their obligation until the other party fulfills theirs. This is because the basis of the contract is the obligation to perform it according to its terms. For the plea of non-performance to be applicable, the debtor's cessation of contractual performance must be unlawful [42].

8. 2- The request for termination: This is the subject of this study, but it is required that the contracting party does not resort to a legitimate refusal to fulfill the other contracting party's reciprocal obligations. In other words, the contracting party must request one of the options mentioned above. It should be noted that not every instance of non-performance constitutes a right for the creditor to demand termination. Non-performance must be classified as a breach of obligation because, in a bilateral contract, a party may legitimately refrain from fulfilling their obligation, intending to compel the other party to perform. This, in itself, is not a fault. Therefore, the creditor cannot demand termination; rather, it can be termed a temporary or limited suspension of the contract. This is a legally guaranteed means

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of safeguarding the creditor's rights. It is not necessary to determine whether the non-performance stems from a primary or secondary obligation, as the plea of non-performance is indivisible [43].

9. Conclusion

10. It becomes clear from the pages of this research that the concept of termination, with its advanced principles, acts as a protective shield against the economic disruption that may befall the creditor. This is because it allows the creditor to obtain the fulfillment of what was agreed upon in the contract, but in the form of compensation, if warranted, according to the provisions of comparative civil law (Article 1231 of the new French Civil Code, Article 158 of the Egyptian Civil Code, and Article 177 of the Iraqi Civil Code). These laws have relied on varying technical principles to avoid prejudice to the creditor's legal position as a result of the debtor's deliberate breach of contractual obligations. Modern jurisprudence has benefited from the criticisms that have been found regarding theThe foundations of traditional art and the concept of justice, linked to the principle of reciprocal obligations in bilateral contracts, were established. This concept of connection was not dictated by legal rules but rather by the connection of obligations at the time of agreement. The agreement at the time of concluding the contract included this concept, so it was more appropriate for the connection to remain during the contract's execution phase. Since the purpose of concluding contracts is to execute their clauses, it was more appropriate to find a way to enforce the contract against the debtor's will. Although the Iraqi legislator stated in Article (246) of the Iraqi Civil Code the idea of compelling the debtor to perform their obligation in kind, this did not prove effective with some obstinate debtors who refused to perform. Therefore, the second paragraph of the aforementioned article was resorted to, whereby performance is carried out in consideration as a penalty for non-performance. However, this is not the only consequence of the debtor's failure to perform their contractual obligation. There is another consequence, namely termination, which is also a means of guaranteeing against the debtor's unjustified refusal to perform. We conclude from what has been presented in our research topic some results and some suggestions, as follows:

11. First: The consequences of Research Topic:

12. 1- Regarding the mechanism for considering termination: In Egyptian and Iraqi law, termination is only considered through a court request. However, in the new French law, Article (1224) does not explicitly state that judicial termination is the norm.

13. 2- The technical basis of the termination theory is limited to bilateral contracts. This theory cannot be applied to unilateral contracts because the other contracting party, who was not obligated, can easily withdraw from the contract, although they should be more likely to demand the fulfillment of the other party's obligation.

14. 3- Termination of a contract, according to the technical basis of the termination concept, is simply a form of contractual liability. It involves dissolving the contractual relationship as a penalty for one of the parties to a bilateral contract breaching one of the obligations arising therefrom. 4- While the right to rescind a contract is granted to the creditor by the civil legislator in specific provisions, it is only valid when filed in court, i.e., when a lawsuit is brought to request rescission. However, according to modern Iraqi jurisprudence, a creditor cannot claim the entitlements arising from a contract in which the debtor has ceased to fulfill their obligations. The creditor must demand the rescission of the contract and then seek compensation, without claiming the entitlements resulting from the contract. This approach adopted by the Iraqi judiciary encourages contracting parties to fail to fulfill their obligations, which is a clear violation of the objectives of civil law, namely, that contracting parties perform the contract according to its terms and in a manner consistent with the principle of good faith in contracts.

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15. Second: Research Suggestions:

16. 1- We suggest that the Iraqi legislator, in the Civil Code, include specific provisions for the concepts of total and partial termination, and authorize the contracting parties to partially terminate the contract based on some of its substantive elements, as is the case in the new French Civil Code of 2016.

17. 2- We suggest that the Iraqi legislator, in the Iraqi Civil Code, include a third option for the creditor in Article (177), allowing the creditor to insist on specific performance of the contract. If this becomes impossible due to the debtor's refusal without excuse, the obligation will be fulfilled at the debtor's expense. This constitutes a form of compensation in a different manner, while simultaneously respecting the will of the contracting parties who were aware of their obligations at the time of contracting and fulfilling its terms.

References*:*

[1] Part of Surah Al-Madina, verse 1.

[2] See the text of Article (150) of the Iraqi Civil Code No. 40 of 1951, Article 150:

a. The contract must be executed according to its terms and in a manner consistent with good faith.

b. The contract is not limited to obligating the contracting party to what is stated therein, but also includes what is required by law, custom, and equity, according to the nature of the obligation.

[3] See: Texts that refer to the right of termination: the new French Civil Code of 2016, Articles (1224-1230), Article (157, paragraph 1) of the Egyptian Civil Code, and Article (177) of the Iraqi Civil Code.

[4] This is evident from the phrase "the other contracting party may" in Article (177), paragraph (1).

[5] Article (177), paragraph (1). (3) See: Muhammad Hassan Qasim, Towards Unilateral Termination: A Reading of Modern Judicial and Legislative Trends - Journal of Law for Legal and Economic Research, Faculty of Law, Alexandria University, Issue 1, 2010, p. 59. http://libwebserver.uob.edu.bh/en/Teachingresources/Law

[6] Hamdi Abdel Rahman, The Intermediate in the General Theory of Obligations, Book 1, Dar Al-Nahda Al-Arabiya, Second Edition, 2010, p. 589.

[7] Ismat Abdel Majid Bakr, A Concise Guide to Named Contracts: Sale and Lease, Zain Legal Publications, First Edition, 2015, p. 277.

[8] This is evident from the phrase "the other contracting party may" in Article (177), paragraph (1).

[9] Article (177), paragraph (1). (3) See: Muhammad Hassan Qasim, Towards Unilateral Termination: A Reading of Modern Judicial and Legislative Trends - Journal of Law for Legal and Economic Research, Faculty of Law, Alexandria University, Issue 1, 2010, p. 59. http://libwebserver.uob.edu.bh/en/Teachingresources/Law

[10] Hamdi Abdel Rahman, The Intermediate in the General Theory of Obligations, Book 1, Dar Al-Nahda Al-Arabiya, Second Edition, 2010, p. 589.

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[11] Ismat Abdel Majid Bakr, A Concise Guide to Named Contracts: Sale and Lease, Zain Legal Publications, First Edition, 2015, p. 277.

[12] Abdel Moneim Farag Al-Sadda, Sources of Obligation, Dar Al-Nahda Al-Arabiya, 1992, p. 219.

[13] Article (177) of the Iraqi Civil Code.

[14] See: Appeal No. 0973 of 1989, Technical Office 40, Page 440, dated 09-02-1989, Subject: Contract, Collection of Egyptian Court of Cassation Judgments.

[15] See: Appeal No. 0472 of 1969, Technical Office 20, Page 7, dated 02-01-1969, Subject: Contract, Collection of Egyptian Court of Cassation Judgments.

[16] Dr. Raqia Abdul Jabbar Ali indicated in her book, "The Contract of Sale – A Comparative Study between Bahraini Civil Law and Comparative Arab Laws," on page 9, that the French legislator divided contracts in Articles 1105 and 1106 into gratuitous contracts and exchange contracts. However, this assertion is incorrect, because... During the 2016 amendment to the French Civil Code, this division was mentioned exclusively in Article 1106. It should be noted that the book was published in 2017, and it would have been more appropriate to research any subsequent developments in French law.

[17] See Professor Dr. Tharwat Abdel Hamid – General Theory of Obligations in Egyptian Civil Law – Sources of Obligation – p. 319.

[18] See the provisions of Article (246) of the Iraqi Civil Code No. 40 of 1951, as amended.

[19] Dr. Muhammad Azmi Al-Bakri – Termination of Contracts – Dar Mahmoud for Publishing and Distribution – 2017 – p. 15.

[20] Said Hamdine – Abuse of the Right of Termination in Contracts – Master's Thesis in Private Law – Algeria – p. 17 – Website: http://193.194.83.98/jspui/bitstream/1635/13914/1/HANTIT_AMMAR.pdf

[21] Dr. Muhammad Hassan Qasim, Civil Law, Obligations, Contract, Volume Two, Al-Halabi Legal Publications, 2018, p. 388.

[22] Dr. Ismat Abdul Majeed Bakr, Contract Theory in Arab Civil Laws: A Comparative Study, Publisher: Dar Al-Kutub Al-Ilmiya, 2015, p. 632.

[23] Counselor Anwar Al-Amrousi, The Comprehensive Encyclopedia of Civil Law, 5th Edition, Dar Al-Adala, 2015, p. 557.

[24] See in this regard Dr. Muhammad Azmi Al-Bakri – Termination of Contracts – Dar Mahmoud for Publishing and Distribution – 2017 – p. 66.

[25] Dr. Omar Ali Al-Shamsi, Termination of Contract, National Center for Publications, 2010, p. 434.

[26] Dr. Muhammad Azmi Al-Bakri, same source, p. 11.

[27] Abdul Majeed Al-Hakim, A Concise Guide to the General Theory of Obligation, Vol. 1, Al-Sanhuri Library, 2008, pp. 179-180.

[28] Counselor Anwar Al-Amrousi, The Comprehensive Encyclopedia of Civil Law, Dar Al-Adala, 5th ed., 2013, p. 558.

[29] Sahar Jabbar Yaqoub, Judicial Termination of Administrative Contracts Due to Administrative Error, pp. 14-20, published in the Al-Marjaa Al-Ilmiyya website: https://almerja.com/reading.php

[30] See in this regard: Dr. Salah al-Din al-Nahi, A Concise Guide to the General Theory of

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Obligations, 1950, p. 162.

[31] Our professor: Dr. Munir Mahmoud al-Watari, Administrative Contracts and Socialist Transformations, a research paper published in the Iraqi Judiciary Journal, Issue 2, Volume 32, 1977, p. 177.

[32] Lawyer Abdel Wahab Arafa, Contract Rescission, Contract Dissolution, Contract Dissolution, Dar Al Majd for Publishing and Distribution, no place or year of publication, p. 48.

[33] Ahmed Farag Hussein – Ownership and Contract Theory in Islamic Jurisprudence, University Press, Alexandria, no publication date, p. 70.

[34] Dr. Muhammad Hassan Qasim, Civil Law, Obligations, Contract, previous source, p. 376.

[35] Dr. Al-Allamah Al-Sanhuri states that the first to propose this well-known comparison between the subject matter and the cause was Professor Audot, and many jurists subsequently adopted it. See Al-Sanhuri, "The Intermediate Treatise on the Explanation of Civil Law," Part One, "Sources of Obligation," p. 338, footnote 1.

[36] Dr. Jamal Al-Din erred in his work, "The Reason for Obligation and its Legality in Islamic Jurisprudence," a study. Comparison on page 121, where he said: “There is no doubt among us that the reason according to the fundamentalists differs from the reason we are discussing, which is the reason for the obligation.” (See our late professor, Dr. Mustafa Ibrahim Al-Zalmi, Obligations in Islamic Law and Arab Civil Legislations – Al-Nahrain University – College of Law – Part One – Al-Saadoun Printing and Publishing Company, no publication date – Baghdad – pp. 114-115). This relates to the contract at the time of non-performance of the obligation by one of the parties to the contractual relationship, as stated in Article (177) of the Iraqi Civil Code: “(1- In bilateral contracts, if one of the contracting parties does not fulfill what is required of him in the contract, the other contracting party may, after giving notice, demand termination with compensation if warranted.)” The essence of this text points to the idea of the interconnectedness of obligations arising from the contract, and the content of this interconnection in the event of non-performance of one of the parties’ obligation arising from the contract. It is necessary to terminate the contract because it is not permissible to compel the other contracting party to perform his obligation himself, except to demand performance of exactly what the debtor committed to, whenever possible, just as he has the right to demand termination.

[37] Dr. Muhammad Hassan Qasim: Civil Law Obligations, previous source, p. 377.

[38] Dr. Muhammad Hassan Qasim, same source, p. 378.

[39] In accordance with the provisions of Article (177) Paragraph 1 of the Iraqi Civil Code, see: Federal Court of Cassation Judgment No. 616 dated 7/6/2008.

[40] Dr. Mahmoud Gamal El-Din Zaki, A Concise Guide to the General Theory of Obligations in Egyptian Civil Law, p. 401; Dr. Abdel Fattah Abdel Baqi, The Theory of Contract and Unilateral Will, p. 952; Dr. Samir Abdel Sayed Tanago, The Theory of Obligation, p. 171.

[41] Dr. Sharif Al-Tabakh, The Comprehensive Encyclopedia of Civil Defenses, 1st ed., Dar Al-Adala for Publishing and Distribution, Cairo, 2015, p. 392.

[42] Federal Court of Cassation Ruling No. 493 dated 12/5/2008, Civil Section, published

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on the website of the Iraqi Supreme Judicial Council https://www.hjc.iq/qview.909/

[43] Dr. Muhammad Hassan Qasim, Civil Law, Obligations, Contract, previous source, pp. 279-280

[44] Al-Mufeed fi Sharh al-Qanun al-Madani al-Iraqi (The Useful Explanation of Iraqi Civil Law), Dr. Abdul Basit Jassim, College of Law and Political Science, Department of Law, University of Anbar, Iraq, p. 8. Website:
http://www.uoanbar.edu.iq/eStoreImages/Bank/11176.docx

[45] Dr. Omar Ali Al-Shamsi, Termination of the Contract, previous source, pp. 44-47.

[46] See the following articles of the Iraqi Civil Code: (150); (282, paragraph 1).

[47] Our professor: Dr. Suleiman Barak Dayeh, Termination as a guarantee of implementation, research published in the Journal of the College of Law for Legal and Political Sciences, University of Anbar, College of Law, pp. 105-106. The journal's website: https://www.iasj.net/iasj/download/a3bb04f3628d9219