



## The Philosophy of Contract between Theory and Practice

Hamad Kareem Hamad<sup>1</sup>

<sup>1</sup> Department of Law, College of Law, Knowledge University, Erbil, Iraq. Email: hamad.kareem@knu.edu.iq

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### ABSTRACT

This study provides a means of understanding Iraqi contract law's effectiveness. The foundation of the contract law mostly dealt with via the verbal interaction (deals and offers) between two different groups of individual (vendors and consumers) with tangible items or their actions. This study will consider the current contracts law used in the state of Iraq by employing models and theories of theory and practice contract law. Their confidence in successful agreement comes from authentications and legitimacy approaches. Additionally, it addresses issues pertaining to contract law in this jurisdiction and will be recognized by the efficacy of contract law in Iraqi nation determine whether Contract Law is useful to the Iraqi nation" is the stated study goal.

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Corresponding Author's Email: hamad.kareem@knu.edu.iq

## 1. Introduction

Firstly, the idea of a commitment between two individuals and the phrase "contract" are quite similar. Any individual or group that is able to contribute to a contract or simply allow themselves to be satisfied by it is considered a "party" to the agreement. A contract may be thought of as a lending arrangement between the buyers and sellers of any physical commodities, including electronics, cars, and cell phones. Another artifact, for instance, that male and female entered a contract is. the time a girl is married is legal time. Today second have a particular law for these contracts making contracts. the agreement they advocate for will most likely be carried out effectively and authentically. This assignment will center on the current situation. contract law theory and practice in country Iraq, is to be represented in this assignment being a reason of aims and objectives. Citations used in this project should be provided in the approach before that moment when the assignment is in front of me. This task is to determine the contract law of Iraq based on the given articles and sections. In addition to the topic, the exercise will give the impression that the Contract Law worked in Iraq. There is plenty to address, ranging from different types of contract violations to the consequences of statutes. "Realize on how beneficial Contract Law is in the country Iraq" is the primary objective of the study.

It can be interpreted that "Force Majeure" is one of the main reasons for the businesses to grab the attention of all those corporations and companies who are related to it. We conduct business in Iraq in compliance with regional rules and ordinances (South) (Oil & Gas, 2020). These were the violent Barasa demonstrations that had really occurred. Numerous community members and thousands of employees, mostly from oil firms, would be affected, as well as the organization of the oil corporations themselves. (Condensing) This supply chain consists of manufacturers, their contractors, suppliers of raw materials, and brand creators. According to reports, there was also mortar firing, facility burning, and a necessary lockdown that was implemented even (Oil & Gas, 2020). However, it is evident that the challenges faced by Iraqi construction enterprises persisted for a number of years. from 2003 and 2011. However, entitlement development is the major cause of the development obstacles at that point. rivalry mostly stemming from other nations' building industries (Bakhsh, Kamal, Billoo, Salman, & Aziz, 2024). The research demonstrates that each of the previously listed events has led to the development of distinct barriers between. The Iraqi government and its contractors work

together as long as revenue rates and budgetary costs are changed. Furthermore, the contractor work produced by this programmed fell short of the required quality. There was little to no standardization, we felt extremely concerned, and the project delay was never mentioned before this contract interruption. economic activities will be hampered either directly or indirectly (Al-Karawi, 2018). The two pictures up above are intended to illustrate the several issues Iraq is now facing. especially with reference to "contract law or the dispute with stakeholders, the government, or the workforce." The two distinct industry examples need to be considered while figuring out how to develop Iraq. This is the oil and gas industry.

- The concept of Contract Law theory and practice is one of the key areas of focus.
- To research the Contract Law in the country Iraq – Iraq.
- The assessment has been made using two major categories; Contract Drafting and Legal Culture.
- To identify different laws and procedures contained in the Iraqi Civil Code
- To survey the problems which are interlinked with contract Law in Iraq.

## **2. Methodology**

As for this task, secondary qualitative method will be employed for gathering the data, as this assignment are built upon present knowledge gathered from various actual interactions. The sources which are applied for the research work conditional sentence has been mostly based on secondary resources.

### **2.1. Concept of Contract Law**

The contract is an expression of voluntary agreement between the parties (two or more), sometimes called promise, with purpose of establishing legal obligation (rights and responsibilities) entered in written or oral form. Every legal order has own requirements to formation of the contract, offer and acceptance, which confirm the fact of conclusion of the mutual agreement. Contract law largely varies from jurisdiction to jurisdiction due to historical development in different local traditions and micro-economies. In response to contractual breach each state has developed own structure of remedies and enforcement procedure. This creates national borders to the worldwide trade. In the "era of industrial, economic and social expansion and world globalization occasional legal transplants no longer adequately protect conflicting social interests. Over 100 years ago it was noticed, "moral stigma to law violation has been... eradicated" Legal theory has to adjust to the present social and economic realm in order to produce satisfactory results in serving overall progress. In general contract law in Western jurisdictions is rooted in or otherwise influenced by the Roman law and derives from the principle *pacta sunt servanda*. Traditionally remedies, both statutory and contractual<sup>4</sup>, played economic function of altering behavior of the party<sup>5</sup> to contract in order to ensure its performance, which was required irrespective of changes in subjective or objective circumstances. In order to preclude breach of moral promise the remedy of specific performance has been developed. Same deterrence. Principle promotes punitive remedies, e.g. penalty, playing role of legal sanctions against the party in breach. Such remedies form group of so-called non-compensatory remedies.

Development and growth of the market economy, enhanced progress of financial and legal theories, enhanced discussion of the non-performance or breach of a contract due to changes in economic or factual situation. When obliged party realizes that "the performance he will receive under the contract is no longer more valuable than the performance he must provide" , so called by Goetz and Scott "regret contingency". Economic theory proposed that the contract should require performance unless non-performance (breach) would result in "greater joint wealth" .Doctrine of "efficient breach" suggested that damages should be reasonable and sufficient alternative of due performance, able to compensate for the loss caused by the breach. Hence the remedy became a substitute to the failed performance and gained compensatory function. The validity of a contract as a lawful agreement between and among two or more people requires that all parties should be aware of the agreement and voluntarily agree to comply with the clauses of the contract. one single person who requires carrying about doing those legal obligations. Various aspects of regular life's activities are lot more than just about contracts; for instance, taking a car loan, buying a property, signing on the dotted line. harmony is achieved in reference to job employment (Find Law, 2020). Another

mandate is that an investor should go through the terms and conditions when you are dealing with the acquisition of goods and services such as computer software and so on.

Although, I think, the main problem usually takes its beginnings when one of the parties has failed to perform its obligations. ones that they are obligated to or wanted to do at the time. In such cases, the party is involved Violation of any contract frequently allow suing for damages on the terms of money (Report of the Shanghai Education Commission, 2020). Moreover, even a slight transgression or breach in certain severe situations may be subject to the accusation in the court of law. justice. It is not difficult to compare Contracts as well with any other possible complaints that could arise from a legal point of view they are written effectively. The parties who do not fully understand the terms of the agreement can litigate each other. the contract law should be followed and proper judgement in law court also played a major role (Raza, Frooghi, & Aziz, 2020). Furthermore, when any organization gets involved in signing the contract and at the next stage this organization stops doing business or can't complete their business function. to fulfil promises. In this case, other party will take the legal action to bankruptcy or other bankruptcy-like actions. civil for obtaining relief.

## **2.2. The fact of contract law in Iraq context (Article)**

Under the direction of Thomas Donovan, the Iraq Law Alliance followed the modifications made to the Iraqi contract laws and made sure they were maintained as stated below. The Iraq Contract Law is derived from the Iraqi Civil Code (Law Number 40 of 1951, amended). The EC concluded that the notion of Iraqi contractual law was essentially based on Egypt's civil law, which was impacted by French lawmaking, as stated in the Customs Union of Europe (MEED, 2020). The Iraqi Civil Code is now divided into two main sections and a brief introduction. At the conclusion of the speech, the general issues are covered, such as identifying the literature and giving acknowledgment to sources on various levels of society and government (MEED, 2020). It also refers to the laws that are evoked, as well as the regulations, control, and categorization. Mr. Donovan made the observation that labour will become less creative and more boring as technology improves. In the event of a payment delay, the code offers a kind of interest (4%) that is often relevant in a civil situation.

## **2.3. The First Section of the Contract Law**

The first section addresses general contract provisions and the fulfilment of legal responsibilities. laws, torts, and particular kinds of theory and practice contracts. Bartering, transactions, partnerships, loans, the spread of poverty, empowerment, insurance, and leasing are typically included in this (MEED, 2020). Lastly, an intervention or some recommendations are included in the next problem. the ownership of property and matters pertaining to it. The Iraqi Civil Code puts forth the law of freedom of contract, which occurs upon the implementation of some limitations and the fundamental provisions (and/or) ensuring the protection of the weaker sides (MEED, 2020). This code being proposed is an act by both accepting the offer and making an offer, so it does not implicitly need to comply with the general law of the consideration. Mr. Donovan also mentioned that any contract does not require to check for writing, as it has a space for proving that the parties intended to be mutually bound (MEED, 2020). However, the subject matter reserved for the contract must be narrowly defined and not for the purpose of immoral behaviour destruction, insult to good morals or public order. He also noted that there will be no contract against the Islamic law and order in Islamic countries.

## **2.4. Force Majeure**

The primary clause of the law declares that a party is not required to provide any money. payment of cash as damages for failure to perform or excessive delays in contract completion, if any of the aforementioned reasons apply. not to mention authority (MEED, 2020). As a result, the Iraqi legal system specifies the consequences of each government action or rule. incident of "force majeure". It incorporates the clause stating that such discussions shall be played on fair grounds by the contracting team. In addition, standard form force majeure clauses must be included in the agreement. The evidence demonstrates that the Court of Iraq affirms. In situations closely connected to war or any other civil disturbance, this rule is often refused to be recognized and used. more so than their utilizing a political party to criticize the Iraqi government or administration (2020).

## 2.5. Contractual Solutions (Remedies)

The proof shows that the Iraqi government has the authority to issue orders or make decisions about certain matters. performance, including any violations or actions taken against the terms of the agreement. On the other hand, responsive conduct eventually matters. It won't be fair at all since the party will be too large for that person and damages will be awarded (MEED, 2020). It is possible to state that a party may quietly request to end the agreement in this regard. and eventually the demands of the public shift from remuneration to payoffs. Consequently, in most cases, the courts will return the situation to the person who was in it originally (Aziz, Salman, Hassan, Younus, & Uddin, 2023). Having carried out the agreement (MEED, 2020). Compensation shall not be granted in excess of the amount of loss in a profit-oriented setting until the court rules that a claim does not contain any instances of fraud or gross negligence.

According to the Penal Code, if there are any residual consequences of a delay or a potential violation of an obligation to fulfil, damages may take the form of loss of any gain of creditors. Conversely, damages may effectively bar a lawsuit for damages, although situations involving fraud or egregious carelessness will remain unaffected (MEED, 2020). This agreement's theory and practice losses aren't the debtor's fault; they haven't been caused by the fact that the creditors have suffered any form of loss. As a result, if necessary, the court may assist in obtaining the necessary partial consent to the designated decisions. develop beyond what is required or any function that has been partially neglected. Time Limitation First off, contracts in Iraq particularly have to be fifteen years long, however they can be extended at certain periods. considerably less. These essentially include hiring any employee (with respect to obtaining a wage or rent payment) and allowing creditors to sue for bankruptcy only after a period of five years (MEED, 2020). According to studies, the Iraqi court has set a nearly 15-year time limit on cases involving recurrent claims and financial agreements formed through written, nonverbal communication (MEED, 2020). On the other hand, unjust enrichment claims can be filed in court within three years on average. The employees are compensated at their place of employment, and they target particular professional rights with a one-year statute of limitations. The judges have emphasized that contractual arrangement between the parties to modify the period of limitation is not allowed by the court.

Drafting Contracts and a Legal System Culture The evidence supports the fact that in the same way as other jurisdictions, the codes of civil law of Iraq also include other provisions. the underlying framework and principles that are universally applicable in multiple fields of work (Zafar, Aziz, & Hainf, 2020). As the example shows; trading code, civil code, criminal code procedure and civil procedures code. These codes are at the beginning and the basis upon which rules and regulations for defaults are made. provided legal rationale. Besides order and security, Courts in Iraq take care of evidence that have nothing to do with that agreement! Moreover, it was sorted in a single moment. a contract which can be enforced and made for the formation of an agreement that is regarded as the very essence of law and the main purpose of law. In line with this fact, Iraq's parties, including both: On the other hand, government usually abbreviates, sometimes very short contracts, and includes a lot of legal frameworks. According to Altamimi and Co. (2020) for food to be safe to consume it must be wholesome, nutritious and is free from risk factors. The same did not seem to be the problem that followed the provided general rules. which implies that countries like those which put forth such arguments will have a hard time making such a treaty since it lacks binding clauses necessarily. regarding lack of specification.

The findings suggests that during the contact process, writers omit a lot of information from their contracts. the unwillingness to apply legal interpretations taking the whole behaviour into account. Any information that a counterparty acknowledges or that supports certain theories or the fundamental reasoning of the law. The other parties get nervous as a result. not familiar with Iraqi laws and seeking to do any type of business there (Altamimi & Co., 2020; Aston, et al. ). Thus, while entering into any kind of agreement, the Parties will consider the following various criteria. concur. They are listed in the following order:

- They need to make it in a more detailed and less complicated way. As simple contracts thus, these documents are simplified for understanding by any lawyers and need to be made as Coeful documents for audience and cost of the transaction are two benefits of

digital marketing (Farooq, Salman, Ali, Hassan, & Aziz, 2023; Manzoor, Nosheen, Abbassi, & Salman, 2023).

- The parties in mind should be reminded that Iraqi Contract Law plays its role of covering up various situations. that they should address the issues of their agreements.
- It not only comes under mention that but also the agreements like side and collateral contracts are linked with international trade. later on. For this purpose, they must have a signing contract and be flexible in their work. the various choices which are available for allowing for evolution of parties' relationship (Altamimi & Co., 2020).

### **3. Several Elements of the Iraqi Civil Code Law (ICC) (Contract Law)**

Proof indicates that the Iraq Civil Code Law goes on to discuss other provisions and details, which is an excellent illustration of the strength of teamwork. These are listed in the following order:

#### **3.1. Freedom of Contract**

The goal of the ICC's notion of freedom of contract is to treat various parties as independent entities and respect their rights to the terms of the contracts they sign (Mundi, 2003; Uddin, Salman, Hassan, Latif, & Aziz, 2023). Conversely, contract freedom cannot be unqualified and must be supported by the core principles of laws. It often acts as a bulwark for the less powerful parties throughout a contracting procedure.

#### **3.2. Conclusion of Contract**

Generally, the contract amounts to an agreement among the individuals or parties. The three these components, the law of contract will be able to conceptualize with ease and a high level of confidence. This actually includes;

- Acceptance and Offer
- Determining the Subject Matter of Contract
- Connectedness in Medical Responsibilities

The Iraq Civil Code has the following types of contracts, according to the ICC: The Iraq Civil Code has the following types of contracts, according to the ICC:

- **Binding Contract:** In the first instance, the contract will be made through an offer and an acceptance. An offer has to be specific enough so that it allows the rejection or acknowledgment of it in one way or another.
- **Qualified Acceptance:** There may be subsequently added clauses, conditions, terms, or limits to this contract (Mundi, 2003). It is believed that the following theory and practice contract contains a sufficient refusal. additional offers that the first offeror may accept or reject once again.
- **Purported Acceptance:** Alleged consent is in the process of changing the offer which has been. which in turn, making people against this action (Mundi, 2003).
- **Implied Acceptance:** Finally, Implied Acceptance is recognized if offer expires without offeror disclosing the need for the offer. all kinds of express acceptance

#### **3.3. Capacity**

Prior to signing the contract, the workers as well as the businesses should be equipped with understanding how the contract functions with no bargaining. terms (Iqbal, Salman, Naseem, Hasan, & Aziz, 2024; Mundi, 2003; Uddin et al., 2023). Nevertheless, this is not like a common problem as it has some specific there may be a certain person referred to by law that might be less respected.

#### **3.4. Invalidity**

According to ICC, a contract may be deemed void for a variety of reasons, including the following: According to ICC, a contract may be deemed void for a variety of reasons, including the following:

#### **3.5. Undue Influence**

- Duress
- Mistake
- Misinterpretation

- Illegality

### **3.6. Contracts Interpretation**

Among the services provided to us by the ICC with reference to the provisions and wording of law are contract interpretation and conclusion, as well as commercial customs and Islamic law. Article 146 CC, as previously indicated, emphasizes the connection between contracts and the development of laws or parties such as (Mundi, 2003). It can be changed or withdrawn with the agreement of both parties, the impartial ruling of the law, or both.

### **3.7. Contracts Adjustment**

Ultimately, the binding nature of law has its generic traits based on good credence. On the in contrast, the Court may, in exceptional circumstances, interfere with the binding power of any contract. to develop socially acceptable approach which takes both parties into account (Mundi, 2003).

### **3.8. Authorization of Third Party**

A contract may only be founded on an employment and other contracts, according to the legislation. Contraction of law based on the idea that an individual is able to negotiate on behalf of another individual (Mundi, 2003).

### **3.9. Sales of theory and practice Contract**

According to the article (506-600), sales contracts are generally governed by the ICC and, to some extent, by the Commercial Code (Mundi, 2003). The fact that an item is transferred more successfully when a contract is being closed or when it is articulated upon a moving object.

### **3.10. Damages**

When one party breaches the terms of the agreement, the harmed party finally looks for There are assertions that the contract must to be fulfilled in exchange for payment or annulled (Mundi, 2003).

### **3.11. Events of Unforeseeable**

Later, the Iraqi Civil Law introduce the notion of "the unforeseen circumstances" (Mundi, 2003). In other words, the risk that a special emergency may conflict with existing contractual performance can never be eliminated (World Bank, 2003). gets so enormous that it is intimidating for the debtor and thus the threat of heavy losses. In this context, Court could work for common good of all people.

### **3.12. Prescription**

In the end, the ICC stipulates that the civil duties ruling is time barred in line with the contract after around 15 years. will involve a unique situation (Aziz & Pangil, 2017; Mundi, 2003; Salman, Hasan, Iqbal, Naseem, & Aziz, 2024). The ICC's article 434 states that disputes over baseline ownership are a recurring issue. lockdown for ongoing commitments like as rent, salaries, loan interest, and pensions. five years later, still statue-barred.

### **3.13. Contracts of Construction**

The regulations regarding contracts of works path are regulated by ICC Chapter 864. This article contributes to the examination of employment contracts as contracts in. Which party between the two is in charge of completing the various tasks and services? (Mundi, 2003).

### **3.14. Contracts Termination**

Along with the characteristics of the legal systems, the basic rule is that a party may be removed from a contract by submitting a claim for suitable termination (Mundi, 2003). Furthermore, there may be no other grounds for contract termination. When a contract specifies precise grounds for an extrajudicial termination, it qualifies as good cause.

### 3.15. Rights of Assignment

The cited item is managed by Articles 362–374 of the Administrative Right of Assignment (Mundi, 2003). One thing about rights is that they automatically become resolved unless any formalities of statutory rules or other commercial agreements are broken.

## 4. Conclusion

The Iraqi Contract Law is the subject of this assignment, which will be assessed. Through this work, I have been able to comprehend the appropriate notion of contract law and recognize its significance in the given situation. The majority of the article has been devoted to discussing the country of Iraq and how its constitution mentions the Contract Law under the Iraq Civil Code. The assignment has provided an overview of Iraqi law and the culture of contract drafting. I have learned that this body of law has two major sections: general principles, and limitations and exceptions. Part one deals with how law should be made of a contract law and a negligence rule such as; certainty contract, implied contract as well as purported contact. The second section has also the issue of property and challenges that arise from property. The work gives two instances in which the disruption of the proper contract has led to different issues in the country being faced. The second consideration is the portrayal of all the regulations and rules that go with the ICC. The purposes of this assignment have been achieved successfully by the implementation of different authentic sources from the websites and journals.

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