

## CONTRACT OF SALE IN THE IRAQI CIVIL LAW

*Ali Ali Jaber Al-Obaidi*

*Research Scholar, The General Directorate of Education in Al-Muthanna Province, Ministry of Education, Iraq*

**Received: 25 Apr 2022**

**Accepted: 28 Apr 2022**

**Published: 30 Apr 2022**

### **ABSTRACT**

*Since ancient times, man has dealt with the financial transactions that people conduct according to their daily transactions by negotiating or concluding contracts, as these transactions and behaviors were subject to customary rules and rules, people used to be guided by them and deal with work according to them*

**KEYWORDS:** *Contract of Sales*

### **INTRODUCTION**

Since ancient times, man has dealt with the financial transactions that people conduct according to their daily transactions by negotiating or concluding contracts, as these transactions and behaviors were subject to customary rules and rules, people used to be guided by them and deal with work according to them. After that, these customs are legal provisions and rules that must be adhered to, and after the development of societies and the modernity that affected those societies, and the legal regulation that included all transactions and behaviors conducted by individuals, according to binding legal contracts that unite two or more wills, and those two wills match for the purpose of creating a specific legal obligation, Therefore, the importance of contracts emerges in preserving the rights and obligations created by people, and documenting those contracts to prevent the outbreak of any conflict between the contracting parties, and among these contracts that need to be organized and documented is the sales contract, which is one of the most important exchange contracts that are dealt with between people on a daily basis. And since the legal regulation of those contracts is between the obligation to have two or more wills to create a legal effect, and that those wills are valid and free from any defect, and that the contract It is not implemented without the fulfillment of its pillars, which are satisfaction, the place and the reason, so the congruence of the two wills to buy a specific thing is based on the availability of the consent of the contracting parties, and that the thing on which satisfaction is focused in the contract is the thing sold that is intended for the shop, and that the will comes from a sane person who is characterized by the ability to Perception, and that this will is directed to bring about a specific legal obligation, which is the cornerstone of the reason and the end for which the contract was established and which is required to be legitimate.

### **RESEARCH OBJECTIVE**

The aim of the research is to see what the contract of sale is and its characteristics, and the consequences of achieving satisfaction in the contract and conforming to the contracting parties' will, and what it contains of the offer, acceptance, and seeing the defects of consent, and the absence of those wills from any defects of consent, so that the contract is established in a correct and sound manner, and that it enjoys Contractors by awareness and discrimination, in addition to the role of the Iraqi legislator from that.

## RESEARCH PROBLEM

The contract of sale is one of the compensation contracts in addition to being considered one of the contracts transferring ownership, and because of this contract of importance in preserving the obligations of the contracting parties, documenting rights and preventing the occurrence of disputes, and that the problem of this study is based on the element of satisfaction in the contract and what happens to the offer and acceptance issued by The contracting parties, and whether the will of one of the contracting parties has been defective, and since the contract of sale is one of the formal contracts that must be concluded from a certain formality, and that registration be done in the Real Estate Registration Department, this requires that both contracting parties be qualified to practice these behaviors, so how did the legislator deal with The Iraqi contract of sale in its texts, and did it keep pace with the modernity that we live in today in light of the expansion of sales.

## RESEARCH METHODOLOGY

The writing was based on the descriptive approach and the analytical approach, by analyzing the provisions and legal texts, and addressing some of the opinions of jurists in certain places that were not addressed by the legislator.

## RESEARCH PLAN

We deal with our study in two sections. The first topic is divided into two demands. The first requirement means what the contract of sale is. The second requirement deals with the characteristics of the sales contract. The second topic deals with the corner of satisfaction. It has been divided into two demands. The first section is the presence of consent, either the second branch is concerned with the elements in which the offer and acceptance must match, or the second requirement deals with the conditions of validity in the sales contract, which was divided into two branches.

### What is the Contract of Sale.?

The sale was originally based on the process of exchanging goods and services, without using money in dealing, which is called barter, which is considered one of the most important ancient manifestations in trade, which was based on a reciprocal exchange process, a commodity for another commodity or a service in exchange for a service or something In return for something else, however, the multiplicity of societies' emergence and development, and the accompanying increase in demand for the different needs of individuals, and how to satisfy those different desires, which led to the difficulty of continuing the barter process, as the only means for trade and exchange, so money was resorted to as a flexible means in The process of commercial exchange, because it achieves the general benefit and the interest of individuals in satisfying their various desires, hence the start of the sale contract in its new appearance, as the sale contract is considered one of the most important contracts transferring ownership, as it occupies the first place and at the forefront of the so-called contracts that the legislator regulates its provisions and rules, and perhaps the reason The most important thing is that the sales contract is one of the most widespread contracts in most societies, and it is not possible to imagine dispensing with this contract in daily transactions. The Iraqi legislator turned to organizing the provisions and rules related to this contract, starting From the formation of this contract through its special provisions and the consequences of reprisals, and its termination with claims of the sales contract stipulated by law, so we will address in this section the definition of the sales contract according to Iraqi legislation, and the corresponding other legislation, as we will address the features and characteristics of the sales contract.

## **THE FIRST REQUIREMENT**

### **Definition of Contract of Sale**

The Journal of Judicial Provisions defines the sale as “the exchange of money for money and it is both concluded and not concluded” while the French legislator defined the sale as an agreement by which one of the parties commits to deliver a certain thing, and the other party is obligated to pay the price, and it may take place through an official or customary contract. The Syrian civil legislator defined the sale as “a contract by which the seller commits to transfer to the buyer the ownership of something or another financial right in return for a cash price” as for the Egyptian legislator, he defined the sale contract as a contract under which one of the contracting parties is obligated to transfer the ownership of A specific thing or financial rights to the other contracting party, in exchange for cash money. Likewise, the Lebanese Law of Obligations and Contracts defined the sale as a contract under which the seller is obligated to give up ownership of the thing sold, in return the buyer is obligated to pay the price as the definition of sale was stated in the UAE Civil Transactions Law as “sale is an exchange of non-cash money.” With cash “Whereas the Iraqi legislator defined the sale contract as “exchanging money for money.” Thus, the Iraqi legislator has followed the approach of Islamic jurisprudence in defining the sale. On the sale only, but also includes both exchange and barter. As for the peace contract, the Iraqi legislator did not regulate the legal texts that deal with it, despite its actual applications on the ground in the commercial, industrial and agricultural fields. In order to avoid confusion or similarity between the sales contract and other contracts, the Iraqi legislator resorted to defining the definition of the sale, as he explained that the absolute sale is the ordinary sale that is customary and the sale is done by exchanging the eye for cash, and the sale may be an exchange, which is the exchange of cash for cash, as it can be The sale is a barter, which is the sale of an eye for an eye. And since the definition of the sale that the Iraqi legislator has adopted, has coincided with the definition of Sharia jurists who stated that the sale is “either it is a price for a price, or a price for a price, or a price for a price.” These definitions that the legislator mentioned came in a different way and contrary to civil laws. The modern, which tended to focus on the principle of the price to which one of the contracting parties is obligated, in the face of the other contracting party’s obligation to transfer ownership, and was at the forefront of modern man-made legislations that took this into account is the Egyptian civil legislation. The Tunisian Code of Obligations and Contracts also dealt with the sale, which accompanied the process of modern positive legislation by defining the sale as a contract under which the ownership of something is transferred or the right is transferred, by one of the parties to the contract to another contractor, in return for a price to be adhered to Thus, we see that the definition provided by the Iraqi legislator regarding the sale is not an adequate definition, as it does not indicate the effect of transferring the ownership of the thing to the other contracting party, when the sale contract is concluded, and this definition also did not indicate the obligation of the other contracting party (the buyer), to pay the cash price. As a compensation for the thing sold to the contracting party (the seller), and thus it did not keep pace with modernity that was dealt with by man-made laws such as the Egyptian law.

### **Characteristics of the Sales Contract**

There are many characteristics that characterize the sales contract as a contract of transfer of ownership, it goes back in terms of classification to the contracts binding on both sides, and the sales contract is one of the contracts in which each of the contracting parties takes in the contract in return for what he gives, so it is considered a netting contract And since the contract of sale is based primarily on the consent of the contracting parties to complete its contract, there are several characteristics that distinguish this contract.

### **First: The Contract of Sale is a Contract of Transfer of Ownership**

Originally, the contract of sale is a contract that transfers ownership by its nature, but the period during which the ownership is transferred varies according to the nature of the thing being sold. Movable is specific by type, so ownership is transferred through its sorting only, by counting, weighing or measuring the thing sold.

### **Second: The Contract of Sale is a Consensual Contract**

The contract of sale is generally considered a consensual contract. It is based on the consent of the contracting parties in the contract. The sale is a contract that is executed as soon as its basic pillars are satisfied, the place and the reason. Also, this contract does not require the verification of formality or other procedures. As for the sale, its other delicate issues are subject to the supplementary rules, in the event that the contracting parties do not stipulate agreement on them, and thus the contract is not concluded except in the case of agreement on all its issues.

### **Third: The Sale Contract is a Netting Contract**

The contract of sale is one of the contracts of compensation, because the contracting parties in the contract take something in exchange for what is being committed, so the buyer gets the ownership of the thing sold, and the seller gets the agreed upon price, and since the contract of sale is considered a legal act or activity, which revolves around Between beneficial and harmful acts, as this contract requires capacity, the discerning young person is considered to be deficient, and agency in it is not permissible except in the case of a special agency, and thus there is a difference from the gift contract that is considered as an act of donation, that is, harmful actions are pure harm. And in which the discerning youngster is incompetent, and he asks for a specific agency, either with regard to the special agency, it is not sufficient.

### **Fourth: The Sale Contract is one of the Specified Contracts**

Originally, the sales contract is one of the specific contracts, because it is permissible for both the contracting parties, the seller and the buyer in the contract, to determine the contractual obligations and rights of the parties to the contract when it is concluded. The sales contract can also be a contingent contract, as if it was agreed between the parties to the contract that the price of It is obligated by the buyer, as a salary income for life, and thus, determining the price according to this form, may not be set in advance as it relates to the lifespan of the seller's life

### **Fifth: The Contract of Sale is One of the Binding Contracts for both Sides**

It is clear that the sales contract includes the parties to the contract who are both the seller and the buyer, and thus this contract is bound by both the contracting parties, the seller and the buyer. He is obligated to transfer the ownership of the thing sold and guarantee it from defects and delivery, while obligations arise from the buyer, the most important of which is the obligation to pay the price. The other party's release from his obligations or the termination of the contract

## **THE SECOND TOPIC**

### **The Satisfaction Corner in the Sale Contract**

The sale contract is one of the most important consensual contracts, which takes place as soon as the will of both the seller and the buyer match, to transfer the ownership of the thing sold or any other financial rights, and the obligation in return is that the price is paid in cash, and since the sale contract, like all other contracts, is required to complete Its contract, if it fulfills the basic elements of satisfaction, the place and the reason. As for the element of reason, the legislator did not

provide special provisions for him in the sale contract, as he does not enjoy any advantages or privacy, and this can be referred to the provisions of the general theory, and since the contract of sale is not implemented from Other than the availability of these pillars, so the law required the completion of the contract of sale, that the offer and acceptance be issued by the contracting parties when concluding the contract in conformity with their will, meaning that the will of both the seller and the buyer were united in a compatible and harmonious manner to form the contract of sale, and that these wills are sound and free from Any defect in it, and that these actions were issued by the contracting parties in the contract who are qualified to complete the contract. Therefore, we will briefly address the corner of satisfaction by dividing this topic into two demands. In the first requirement, we will deal with the conditions of the sale contract, and in the second requirement, we will address the health conditions in the sale contract.

## **THE FIRST REQUIREMENT**

### **Terms of Meeting**

To complete the contract of sale, there must be an expression issued by the contracting parties, and there must be a union of the will of each of the contracting parties by consent to complete the contract. The distance or time interval between the issuance of the offer and acceptance, and that the most important elements according to which the two wills coincide is the satisfaction in the sales contract (), and this requirement can be divided into two branches.

### **First Branch**

#### **Satisfaction**

Satisfaction in the contract means the congruence of two wills, i.e. the agreement of the will of acceptance issued by one of the contracting parties, with an offer issued by the other contracting party to complete the contract. The basic detailed matters in the contract, and that the most essential issues refer to the nature of the contract, the thing sold and the price. The expression of the will issued by the contracting parties in its origin does not fall under a certain formality. Both the word offer and the corresponding acceptance are words that are used for the purpose of forming the contract, and what comes first from the word by the contracting party is indicative of the offer, or the second word is acceptance. These words may be in the past tense, the present tense, the imperative tense, or the receiving tense, which are intended to abide by the promise. This is what the Iraqi civil law indicated in the direction of the custom on the words offer and acceptance are used to form the contract, and that what is issued first of the utterance by the contracting party is an offer, either the other word is acceptance, and that these words may be in the past tense, present tense, or order. And that the existence of both the offer and the acceptance is considered a basic reason for the establishment of the contract, and in the event that one of them fails, the contract does not take place, and two things happen. As for the second command, it indicates that the contracting party does not have to accept, just as the contracting party has the option to accept or reject. The agreement is reached on the nature of the contract, the thing on which the contract is concluded, and the price, and since the will of the contracting parties is the basis for the establishment of the contract. Defects make the contract voidable, so the consent in the contract must be valid and that the contracting parties enjoy the capacity, and that the person is fully qualified, has the right to perform legal actions and is qualified to conclude the contract, unless he is affected by an accident, so he is by virtue of an incomplete capacity or without capacity

## **Second Branch**

### **The Elements in Which the Offer and Acceptance Must Match**

#### **Agreeing on the Nature of the Contract**

First, the will of the contracting parties must go to the contract, in agreeing on the nature of the contract to be concluded, as if the will of one of the contracting parties was directed to a sale contract, while the will of the other contracting party was directed to concluding a contracting contract. Because the two wills do not match and the consent is not achieved, as well as not from the satisfaction in the price, as if one of the contracting parties asks for a specific price in exchange for the thing sold, and the other contracting agrees to a lower price, the contract is not executed because of the lack of consent on the one hand and the incompatibility of the offer with the acceptance of the contracting parties in the contract. Either if it is agreed between the contracting parties to complete the sale and the thing to be sold and the price, then the contract of sale is executed even if the date of payment of the price is not indicated, or the date of delivery of the sold item to the buyer, or issues related to interests and expenses. All detailed matters have been dealt with by law and regulations Its provisions, and that it does not prevent the entry into force of the contract of sale, but in the event of failure to reach an agreement between the parties to the contract on one of the issues, and no agreement was reached on it, the contract is not implemented due to the lack of union or agreement of the will of both contracting parties. The offer or acceptance may also be issued by the contracting parties, orally or in writing, or by using the widespread sign language, even if it was not issued by a person with special needs, the mute person, or through a real exchange that indicates the achievement of satisfaction, and taking any Another way is not to let the circumstances surrounding the contract constitute an obsession with its indication of satisfaction.

#### **Agreement on the Sale**

In order to complete the sale contract, the contracting parties must agree on the thing to be sold or the place of sale, and that this requires achieving the agreement of the contracting parties, the seller and the buyer, on the subject matter of the contract. The buyer decided to buy the white car, while the seller agreed to sell him the black car. In this case, the sale is not realized because there is no agreement on the thing sold, so the buyer's intention was directed to a specific thing in and of itself, while the seller's intention was something else

#### **Agreeing on the Price**

There is a general principle among the jurists when they begin to talk about the price by saying, that the sale does not take place without a price, and this indicates that the sale does not take place or take place without a price, and that the price is in exchange for the thing sold. The seller is obligated to transfer the ownership of the thing sold, guarantee and delivery, while the buyer is obligated to pay the price, which is a cash amount, and there is no difference in the payment of the amount by means of a bank check, money order, or any other course includes obtaining the cash amount, and that the most important characteristic of the sale contract from other contracts is the price distinction, while the consideration is other than the price, as in the barter contract or the exchange contract. A question may be raised about the hypothesis that if the seller offered something for the purpose of selling it, and the buyer agreed to buy it at a higher price, or the buyer offered a specific price and the seller agreed to sell the thing at a lower price, some of the commentators said that the acceptance must match the offer, and if the two wills do not match, then they are lowered Acceptance is the status of the offer, and it

becomes poor by accepting the offer, as the rule of wills compatibility applies absolutely. Conformity of acceptance to the offer by law. This is what the Iraqi legislator explained in saying that if the offer is issued by one of the contracting parties, the matter requires the acceptance of the other contracting party, in a manner consistent with that offer as the legislator explained the state of silence in special cases that it is acceptance, which takes place between the parties to the contract if the silence preceded the existence of a previous transaction that resulted As well as the case of the contracting party, the buyer of the merchandise, who is silent after receiving the merchandise that he purchased, this silence is considered an acceptance based on the price list of conditions. This opinion has been criticized for taking the text of Article (85) of the Iraqi Civil Code, separately from other legal texts, especially the text of Article (81/2) an Iraqi civil, and when combining the text of Articles (81 and 85), it can be concluded In words, if the buyer pays a price higher than what the seller requested, or the seller offers the sale at a lower price than what the buyer offered, then this is a new offer. For an offer in favor of the silent contracting party, the acceptance can be explicit or implicit, or take the course of silence.

## **The Second Requirement**

### **Health Conditions**

In the event that the element of satisfaction is available in the sales contract, this is sufficient to conclude the sale, but it is not a sufficient reason for its validity, and for the sale contract to be properly and properly concluded, this requires that the contracting parties have the necessary capacity to conclude the contract, in addition to that, the will must be Of the contracting parties are valid and not tainted by any defect of the will, and thus we will divide this requirement into two branches. In the first section, we deal with the eligibility in the sales contract, and in the second section we will deal with the defects of consent in the sales contract.

### **First Branch**

#### **Eligibility in the Contract of Sale**

When a person reaches the stage of discrimination, this is not considered a reason for that person to be a mature person, but when a person reaches that age, it is possible that the conditions of the age of majority are met in him, and that the criterion of eligibility is discrimination, and that the will is issued by a person who has the ability to distinguish, A person with complete discrimination has full capacity, either a person with incomplete discrimination is lacking in capacity, as for a person without discrimination, he is without capacity can be defined as a person's ability to earn a right, bear obligations and his ability to exercise those rights and carry out various activities, to form obligations of his own will. Obligations, while capacity to perform means the authority of a person to carry out all legal activities or actions by himself or on behalf of others And that the eligibility of being obligated is limited to the inclusion of every right and every obligation, whatever its kind, whether these rights and obligations pertain to financial or other transactions, and the eligibility of the obligation can be proven to a person from the date of his birth, and in some cases before that date according to the conditions established by law, and his eligibility continues It is obligatory until the death of the person, and it can also be continued until the estate is divided and the debts are paid As for the capacity to perform, according to some jurists, it is limited to the authority of a person to perform actual actions, in a reliable manner according to the Sharia. It is concerned with the inclusion of verbal and actual actions of a person, which entail a retaliation in the event of such actions, while another opinion goes that the capacity for performance is concerned with carrying out legal acts only, and there is another opinion that is under consideration, that the capacity of performance means to include legal and material actions And since the

legislator stated that a person passes through three roles, the first role continues from the birth of a person until he is seven years old, and the youngster here lacks awareness and discrimination, so he will be without capacity, and his actions are void, and the one who manages the money of the undistinguished young child is his right father or grandfather, and the actions that It is carried out by the undistinguished youngster, such as selling, borrowing, or mortgaging and dividing in common money. It is not valid except with the permission of the court. As for the second round, it continues from completing the age of seven until he reaches adulthood. The legislator has set the age of majority at eighteen years, and here the boy is deficient in discrimination. He has an incomplete capacity to perform and beneficial actions. Pure benefit, it is sound and takes place without the permission of the guardian. Either harmful behavior is pure harm, so it is void and if there is consent from his guardian or trustee, such as a gift, donation or will, either business and activities that revolve between benefit and harm are suspended on the consent of the guardian or guardian, or the third floor It begins with a person's completion of eighteen years, during which the person is fully aware and discerning, and therefore has a full capacity to perform. Thus, the person does not have the capacity to perform in the embryo stage, just as it does not exist for the undistinguished boy, and it can be proven in an incomplete manner for the distinguished boy, and it proves to the person the perfection of the mind and his sane attainment, and thus the strength of the capacity to perform is the mind, the essence of the capacity to perform is the mind, and the person may suffer after The completeness of his eligibility includes symptoms, which are called symptoms of eligibility, which are divided into two parts, celestial symptoms and acquired symptoms. The heavenly symptoms that afflict a person without his intervention are madness, dementia, forgetfulness, sleep and fainting. As for the acquired symptoms, they are those that afflict a person through his actions, and they are of two types. The first is in which a person is a cause of his injury, which is foolishness, ignorance, drunkenness and error, while the other is afflicted by a person. By doing others, which is coercion, so insanity and dementia are accidents that go away from the health of human awareness and lack of knowledge in taking into account and appreciating things well. Undistinguished. As the Iraqi legislator explained that the insane person and the insane person, that they are self-quarantine, and for the insane his actions are void (), the legislator also distinguished between the case of applied insanity and non-applied insanity, in that the rule of a person affected by applied insanity is the rule of the undistinguished boy, either the person The person who is infected with insanity is not applied, so the actions he takes in the case of awakening are the actions of the sane person Dementia means a lack of reason, and it was defined by the Journal of Judicial Laws in Article (945) as "the one whose feeling is disturbed so that his understanding is few, his speech is mixed, and his management is corrupt." Distinguished Boy As for the person affected by foolishness, he means the ignorant person who scatters his money in a wrong place, and enjoys being a lot of waste and extravagance, and foolishness is one of the symptoms that a person acquires by his own will, and that foolish actions and behaviors are not accepted by reason, and his judgment if he is quarantined by the court is a judgment Distinguished boy, either the financial actions before the stone are sound and according to the judgment of a sane, adult, rational person. As for Dhul-Ghafa, jurisprudence has known Dhul-GhafaIt is the person who is inflicted with unfairness when conducting financial transactions, due to the ease of his deception, simplicity and empty heart. While the foolish wasteful and wasteful in his money

## **Second Branch**

### **Defects of will (Complacency)**

If consent is not achieved in the contract, the contract becomes void, and since the consent in the contract is nullified in the case of insanity, drunkenness, and the undistinguished young child, and the behaviors that these perform are not considered



acceptance and consent from them, because they do not enjoy awareness and discrimination, and that consent in the contract is not considered. It is true unless it is issued by a person who enjoys the capacity, whose will is not tainted by any impurity. The defects of the will or the defects of consent, as some jurists call them, are coercion, error and outrageous unfairness that is associated with deception and exploitation.

**First: Coercion**

It means forcing a person to do an act he is not satisfied with, or forcing him to take legal actions or actions that he would not have done willingly, through the use of means of threat, intimidation or violence. Coercion is of two types, the first is called forced coercion or complete coercion, in which the forced person is compelled to do the work for which he was forced, such as the threat of death or the threat of beating, for which he is afraid of losing a member, either the second coercion is called incomplete or unforced duress, as if a person was threatened with imprisonment, beating, or acts of occupation, which caused injustice, such as preventing promotion or demotion. As the Iraqi legislator explained that coercion varies according to the nature of persons, age, position and social status, as well as the degree of influence and psychological state and its impact on beating or pain. If the contract was suspended due to a stone, coercion, mistake or deception, the contracting party may rescind the contract after the thing causing the compulsion is removed, and he may also authorize the contract and the authorization of the contract shall be explicitly or in a way that indicates it, and he may use the option of authorization or rescission, within a period of three months.

**Second: The Error**

It is a perception and an illusion that is not reality, causing the contracting party to conclude the contract, which would not have been completed without this illusion that afflicted the contracting party. It is not suitable for the purpose for which it is intended to be purchased, so the thing sold here can be revoked due to a mistake. The Iraqi legislator differentiates between two types of error, one of which is in the absence of consent and the contract becomes void. The other type does not make the consent in the contract non-existent, but the defect of consent, and the contract according to which becomes suspended, and the contracting party is not entitled to hold on to the error in the event of a fall. Except in the event that the other contracting party made the same mistake, or was aware of it, just as the error in the calculation does not affect the enforcement of the contract, but the error must be corrected.

**Third: Deception with Unfairness**

By unfairness is meant the sale that takes place on a commodity, with an increase and contrary to what was followed by custom, and unfairness is realized, or it is a lack of equality between what one of the contracting parties takes and what he gives in the netting contracts, and the unfairness is divided into two parts:

**The First**

It is called easy fraud, and it is what was included in the assessment of experts, as if a certain thing was sold for an amount of eighty dinars, and one of the assessors estimated it at eighty-five dinars and its other people at eighty dinars, while its people were valued by a third person for seventy-five dinars. in it.

## **The Second**

It is called gross unfairness, which means the lack of equality between the contracting parties in the contract, i.e. between what one of the contracting parties takes and what the other contracting party gives, or it is the harm caused to one of the contracting parties as a result of the lack of equality between what is given and what is taken, and gross unfairness does not come under the heading Under the assessors calendar

## **Deception or Fraud**

The Egyptian legislator considered fraud alone as a defect of will, as Muslim jurists called the term fraud by deception, and it means that one of the contracting parties uses deception and trickery, to push the contracting party to conclude the contract. The contractors, as if one of the contractors provided incorrect data or receipts to the other contractor, deluding him of the large revenues of the apartments in the building, which the contractor had to purchase. As for the Iraqi legislator, he did not define fraud, as one of the defects independent of the defect of will, nor did he come up with rules or provisions related to fraud, as is the case in some legislations that did not address fraud as one of the defects of consent, so the Iraqi legislator stated that deception By itself, it is not considered one of the reasons that can stop the contract, just as unfairness, even if it is gross unfairness, is not considered a defect of consent. Mistake and coercion

## **Fourth**

Exploitation means opportunism practiced by one of the contracting parties, in which he exploits the psychological weakness that exists in the other contracting party and the exploitation has two elements. What is included in the contract of the texts. Either the second element is called the psychological element, and it is what the Egyptian legislator went to by saying, that one of the contracting parties suffered injustice, and that the aggrieved contracting party did not conclude the contract except because the other contracting took advantage of the recklessness or the unbridled passion of the aggrieved contracting party or the weakness of experience and understanding, and thus the consent The contract was not issued by a sufficient choice. The Iraqi legislator has gone that one of the parties to the contract has exploited the need of the other contracting party or his unbridled whims, or exploited his recklessness or weakness in his experience and understanding. He requests that the injustice be lifted to a reasonable extent, but if those behaviors issued by him indicate a donation, then he can revoke the contract And that the imbalance in equality in the lack of justice between what is given and taken by the contracting parties, is looked at from the angle Whatever is different, it is viewed from its physical perspective and defined as unfairness, and viewed from its moral side as exploitation, and the legislation has varied about adopting the theory of exploitation according to the economic and moral vision on the basis of which any legislation was based Whatever is different, it is viewed from its physical perspective and defined as unfairness, and viewed from its moral side as exploitation, and the legislation has varied about adopting the theory of exploitation according to the economic and moral vision on the basis of which any legislation was based

Finally, mention the summary of the research and the most important results that were reached through the research,

- The sales contract is considered like the rest of the other contracts. The law stipulates that the basic pillars of its contract be fulfilled, and these pillars are satisfaction, place and reason, and the contract formula is fulfilled by offer, acceptance and conformity, to achieve satisfaction and that this is sufficient for the existence of the contract, but not sufficient for the validity of the contract, and that the consent of the contracting parties is sound. It is tainted by any defect of will.
- The law stipulated that each of the contracting parties have the capacity necessary to conclude the contract, and that each of them be a sane adult of sound mind.
- The actions of the obligated contracting party are subject to the authorization of the obligee.
- If unfairness is combined with deception, then they are considered defects of will, and if the unfairness is obscene in the contract, the contract is suspended on the permission of the aggrieved contract.

## RECOMMENDATIONS

- The Iraqi legislator defined the sale as (exchange of money for money), and this definition was not brief, but comprehensive for absolute sale, exchange and barter, and thus it came as a minor lag behind other legislation, as it did not refer to the transfer of ownership to the buyer, while the Egyptian Civil Code, Which showed that the sale is a contract by which the seller is obligated to transfer to the buyer the ownership of something or another financial right in exchange for a cash price, which was more modern and keeps pace with societal developments, in addition to the fact that it stipulated the transfer of ownership.
- The Iraqi legislator must keep pace with modernity and development, in making the issue of sales and contractual transactions take place through digital outlets that pass through the Internet and are connected to the Iraqi courts, to speed up the completion of transactions, accuracy in work, prevent delays, eliminate administrative red tape, and eliminate one of the doors of corruption.
- The Iraqi legislator tended to make deception associated with unfairness and consider that a defect of the will, and we see that this is unsuccessful, so the legislator had to make deception alone or unfairness alone as independent defects, and thus the contract is not suspended for deception accompanying the contract except in the case of its association with unfairness. Obscene, as is the case with the Egyptian legislation, which we see as being more modern than its Iraqi counterpart, which considered the existence of unfairness a legitimate motive in the permissibility of invalidating the contract. Therefore, the Iraqi legislator must differentiate between unfairness and deception, and make unfairness alone or deception alone as they are independent defects of defects of will.

## REFERENCES

1. *Ahmad Al-Saeed Al-Zaqard, Al-Wajeez in the Sale Contract in Kuwaiti Civil Law, Kuwait University, Faculty of Law, Office of Legal Studies and Consultations, Kuwait.*
2. *Bassam Abdel-Wahab Al-Jali, Journal of Justice, First Edition, Beirut - Lebanon, Dar IbnHazm for printing, publishing and distribution, 2004.*
3. *HossamTawakkolMoussa, Regulations of Eligibility in Egyptian Law, Legal Pamphlets, 2017.*

4. *Hassan Ali Al-Thunun, Explanation of Civil Law: The Origins of Obligation, Al-Maaref Press, Baghdad, 1970.*
5. *Hussein Al-Nouri, The Symptoms of Civilization in Islamic Sharia with Comparison with Man-made Laws, 1st Edition, Al Bayan Al Arabi Committee Press, Cairo, 1953.*
6. *Khalifa Al-Kharroubi, Contracts Named Agency - Sale and Negotiation - Rent - Al-Hiba, 2nd Edition, Al-Atrash Complex for Specialized Books, Tunis, 2013.*
7. *Dr. Muhammad LabibShanab, Lessons in Theory of Commitment, Sources of Commitment, Dar Al-Nahda Al-Arabiya, Cairo - Egypt, 1977.*
8. *SaeedSaad Abdel Salam, Al-Wajeez in Civil Contracts called Contracting - Sale, Dar Al-Nahda Al-Arabiya, Cairo, Egypt, 1999.*
9. *Saeed Mubarak (and others), the summary of contracts called sale - rent - contracting, 1st edition, Al-Sanhouri Library, Baghdad, 2015.*
10. *Suleiman Morcos, Contracts Named Sales Contract, 4th Edition, World of Books, Cairo, 1980.*
11. *Samir Abdel-SayedTanago, Sale Contract, Explanation of the Provisions of the Sale Contract in the Light of Jurisprudence's Opinions and Judicial Rulings, 1st Edition, Al-Wafa Legal Library, Alexandria, Arab Republic of Egypt, 2009.*
12. *SalehDhaoui, Tunisian Code of Obligations and Contracts after its reorganization in accordance with Law No. 87 of 2005 dated August 15, 2005.*
13. *Abd al-Rahman al-Sharqawi, Contracts Law named Book One, Contracts Transferring Ownership, Sale Contract, 1st Edition, 2011.*
14. *Abd al-Razzaq Ahmad al-Sanhoury, the mediator in explaining civil law, sources of obligation, vol. 1, edition 1, Egyptian Universities Publishing House, 1952.*
15. *Abdul Qader Al-Arawi, The Short Sale Contract in the General Theory of So-Called Contracts, 3rd Edition, Dar Al-Aman Library, Rabat, 2011.*
16. *Abdul KarimZidan, Al-Wajeez fi UsulFiqh, 6th Edition, Cordoba Foundation, 2007.*
17. *Abdullah Mabrouk Al-Najjar, Principles of the Sale Contract, 2nd Edition, Dar Al-Nahda Al-Arabiya, Cairo, 1997.*
18. *Abdul Majeed Al-Hakim (and others), Al-Wajeez in the Theory of Commitment in the Iraqi Civil Law Sources of Commitment, Part 1, Copyright reserved to the Ministry of Higher Education and Scientific Research, 1980.*
19. *Adnan Ibrahim Al-Sarhan, Explanation of the Civil Law of Contracts Named Contracting. Agency. Sponsorship, 1st Edition, House of Culture for Publishing and Distribution, Amman, 2006.*
20. *Ismat Abdel MajidBakr, Al-Wajeez in Civil Contracts Named as Contracting and Agency, 1st Edition, Zain Law and Literary Library LLC, Beirut - Lebanon, 2015.*
21. *Ghani Hassoun Taha, Al-Wajeez in the So-called Contracts of Sale, Part 1, Al-Maaref Press, Baghdad, 1970.*

22. Kifah Abdul Qader Al-Suri, *Deception and its Impact on Contracts*, 1st Edition, Dar Al-Fikr Publishers and Distributors, Hashemite Kingdom of Jordan - Amman, 2007.
23. MazaHanan, *Subcontracting in a Building Contracting Contract*, PhD thesis in Science, Faculty of Law and Political Science, Oran University 2, 2016.
24. Muhammad Abu Zahra, *Fundamentals of Jurisprudence*, committed to printing and publishing, Arab Thought House, 2007.
25. Muhammad Bakbak, *The General Theory of Obligation to Legal Disposition*, 1st Edition, Al-Atrash Complex for Specialized Books, Tunis, 2009.
26. Muhammad Shelah, *The Sultan of Will in the Light of the Moroccan Law of Obligations and Contracts, Its Foundations and Aspects in Contract Theory*, Rabat, 1983.
27. Muhammad Sabri al-Saadi, *The clear explanation of civil law, the general theory of obligations, sources of commitment, contract and unilateral will*, 4th edition, Dar Al-Huda Ain Melilla - Algeria, 2005.
28. Mustafa Al-Nayer Al-Manzoul, *the so-called contracts of sale - the lease contract - the agency contract - the contracting contract*, 1st Edition, African International University Press, Khartoum, 2009.
29. Munir Al-Qadi, *Bahrain Forum, Brief Explanation of the Iraqi Civil Law, Volume One*, Baghdad, Al-Ani Press, 1951-1952.
30. Nabil Ibrahim Saad, *Contracts Named Sale, Part 1, Edition 1*, Dar Al-Nahda Al-Arabiya for Printing and Publishing, Beirut, 1997.
31. Wahba Al-Zuhaili, *Islamic Jurisprudence and Its Evidence, Volume 4*, 3rd Edition, Dar Al-Fikr, Damascus, 1989.

