

Court authority to complete the contract in Jordanian civil law

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Abstract

The principle of authority will come to liberate contractors of restrictions that restrict and limit the will of contractors. this principle puts the base (Pacta sunt servanda), it means that contractors are free with what they impose of conditions and restrictions in contracts that they put, without any prevention, but we can not take this principle without any limits, because it has some of negative results especially when there are new circumstances while execute contract and after. From this point Jordanian legislator left the right to judge to intervene in modifying some of contract terms, and determine parties' obligations in the border that he had drawn to avoid negative effects, that may harm one of the contractors.

Keywords: authority, contractors, restrictions.

1. Introduction

The authority of the judge to complete the contract content is an important issues as a departure from the most important legal principles that govern the contract. it is the principle "pacta sunt servanda" or "the binding force of contract," but the legislator mentioned many exceptions on this principle, both in formation of contract state or in implementation state. In addition, this is done through the reality of conflict, and the description of this reality legally, which allows the realization of the contained legal effect in text, that takes into account the suitability of this impact.

The legislator has gotten special attention to the interpretation and completion of the contract in many countries of the world, and singled out its own set of legal rules, which include the legal basis for the pursued system by each country, and the legal methods that help judiciary to perform its mission.

2. General provisions in the contract

First requirement Contract definition

The legal definition of contract¹: it is the of two wills or more to create or amend or terminate a legal association. Some law interpreters have been distinguished between agreement and contract, they defined agreement as two wills or more compatibility to create or transfer or amend or terminate an obligation, and the contract is more specific of an agreement, which is limited to create or transfer only.

Some scholars define contract idiomatically: that is matching two wills or more on order to establish a legal implications whether it is obligation, transferring, amending or termination.

Jordanian legislator definition of the contract

Jordanian legislator defined contract in article (87) of Jordanian Civil Code, no. 43 of 1976 that is a connection offer of one of contracting parties to accept the other. On a way, that proves its impact on agreement, consequent commitment to each other.

It is understood from this definition:

- Contract is two united linked wills not one will, Jordanian legislator was keen to emphasize the difference between the contract and the individual will, because many scholars of Islamic law use the word contract and they mean by all the legal obligations. Whether because of an agreement between

¹ Dr. Abdul-Razzaq Ahmed Sanhoury, the mediator in interpretation the civil law, commitment theory in general, commitment sources, the publishing house of Egyptian universities, Cairo, 1952, page 137 and after.

two parties such as selling, rent or was a result of one-person will such as bequest and debt repayments. For this Jordanian legislator restricted the contract definition in its technical range as arising commitments of two wills.

- Jordanian legislator took into consideration objective tendency, that prevails in Islamic jurisprudence, without self-trend that prevails in Latin jurisprudence. contract is acceptance link not only in terms that establish personal commitments between the contractors .this is prevalent in Latin tendency, but from where it proves its impact on agreed about , which means that he change the aim from case to case and hence the objective tendency appears.

The second requirement: Identify the contract area

Not every agreement intend to bring about a legal effect is a contract, this agreement must be a reality in the range of law and in the financial transactions range, (Article 90 of the Jordanian Civil Code ", the contract take place as soon as the offer accepted, taking into account as determine by the law of certain conditions").

The treaty, for example, is an agreement between country and another country, and Parliament membership is an agreement between the MP and his constituents, and the taking over general job is an agreement between the government and the employee ... but these agreements are not considered contracts, because they fall within the scope of common law, international, constitutional and administrative.

Marriage is an agreement between couple, adoption is an agreement between the adopter parent and the adopted child in the laws that permitted by. These agreements are not called contracts, even if they fall within the private law range, because it is beyond the financial transactions circle. but if the agreement was signed in the scope of the law, in the financial transactions circle, it is a contract such as selling, rent and loan.

Third requirement: the role of the will to create a contract and arrange its effects

- The principle of consensual: formalism was dominant on contracts in Roman law, templates and certain formalities must be followed to make effects, the role of will was limited, but the role of will grows over time gradually, the evolution of legal thinking and decreasing formalities became the origin of contracts, it became consensual and formalism is exception² . The meaning of the principle of consensual boils down that the contract convened by two wills to create obligations, the meaning of the principle doesn't complete unless it is explained that the two wills agree is needed and enough for contract³ .
- The principle of will authority: the principle of will authority enters into the range of philosophy of law. it has an important results, the principle of will authority is a results of the philosophy of eighteenth century that marked by individualism and free opinions, that sprang the Declaration of Human Rights. This philosophy summarize that people were born free and equal in rights, these freedom and equality require, that they are allowed to do what they want of actions, provided, they do not cause injury or harm others, while the law, which represents social oppression, must be kept to a minimum limit to protect public order.
The logical consequence of this individual free philosophy is that, the will is the source of the binding force to contract, the role of law is to achieve implementation of commitment which was favored by parties, this is expressed in (pacta sunt servanda), it mentioned in article 213 of Jordanian Civil code No. (43) Of the year 1976, "the origin in contract is the satisfaction of contractors and what they committed in contract".
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² Dr. Hassan Ali Alznou, the general theory of obligations, part 1, sources of commitment, freedom house press, Baghdad, 1976, p. 36.

³ Judge Helmy Bahgat Badawi, the assets of commitments, the first book, the theory of contract, Nuri Press, Cairo, 1943, page 61.

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3. The application results of the will authority principle

The application of authority will principle has two important results:

The first: freedom to contract: Individuals are free to establish any type of contracts and to ensure conditions that satisfy them, law is not allowed to impose restrictions on Freedom to contract, except protecting public system and morals.

The second: respecting the contractual will: both parties(creditor and debtor) must implement agreement contract as it in the way that they want, it is not permissible to modify or stop the implementation of commitment, unless there is a new agreement between them, and it is not allowed to law and judge to modify or stopping implementation⁴ (4).

Criticism to the will authority principle

- The Principle ignores the idea of social solidarity.
- Justice requires that judge and legislator intervene in times of economic crises in the life of contract, that lead to imbalance in parties obligations to modify contractor's obligations.

It must not be confused between the principle of will authority and the principle of consensual, the principle of will authority concern with the ability of will to choose the contract or not, not just the adequacy of will, as in principle of consensual⁵ "consensual is the adequacy of will to create proceedings"⁶. In other words, the first principle leads to release of will and dismantling its restrictions, while the second principle leads to show the aspects of activity, which can accommodate this free will.

The principle of consensual get formatting of a contract, not in its content, it leads to release will of the restrictions, but the principle of will authority concern with the capacity range of legal impact that established by the free will.

Will control limits on contracts at present time

- In personal status: marriage contract comes from the will of contractors, which is the foundation of family, but its implications regulated by law in accordance with family and community interests.
- In financial transactions: will is the source of many rights and obligations, to determine its effects, however, will in this area is subjected to public order restrictions and morality.

The role of will is weaken in contracts that, regulate fixed systems for denominations and groups, as in teamwork contract, making reconciliation with the bankrupt, the will of minority undergoes to the will of majority. Law recognizes the principle of will authority at present time, but keeps it in moderate circle where it balanced with will, justice and Public interest.

The position of Jordanian legislator from wills authority principle

Jordanian civil law mentioned restrictions on will authority principle, prevented absolute use of right, to protect group and public interest. the law used the theory of abuse of right, the theory of exploitation, the theory of emergency conditions, modify arbitrary conditions or waiver of compliance, and other restrictions on principle, law admitted in other several cases in arranging legal implications to respect will of contractors.

The position of Islamic jurisprudence from will authority principle

The principle of will authority prevailed in Islamic Sharia, since its inception, narrated in Hadith (the believers in their own terms, except in a condition lawful forbidden or forbidden solver). The basic principle in Islamic jurisprudence that, will is free to create many contracts and order their impact, on a condition of not violation

⁴ Lecture by Professor Mansour Hatem Mohsen Abu khbt: the principle of will authority, University of Babylon Network: <http://law.uobabylon.edu.iq/lecture.aspx?fid=7&lcid=33815>

⁵ Judge Helmy Bahgat Badawi, previous source, page. 65.

⁶ Dr. Abdel Moneim Farag Elsadda, lectures on civil law (contract theory in the Arab country's laws), part 1, consensual, Cairo, 1958, p. 15

rules of lawful and forbidden.

4. Binding force to contract, the authority of law to adapt, complete and implement contract

binding force to contract is relative, in terms of people and in terms of subject, relative impact of contract in terms of subject means that, contractors do not oblige except as mentioned by contract. It requires determining the content of contract to be explained or supplemented, both of contractors should respect the law of contract and executed consistent with good intent.

First requirement- contract interpretation

Interpretation of contract means to draw the common intention to contractors, if the text of contract is clear, there is no need to talk about its interpretation, judge is committed to apply its terms, conditions and provisions of contract.

Contract must be interpreted by searching for the common intention to contractors, without stopping at literal meaning of words. Common intention is what contractors wanted really. In case of real will conflict with literal meaning of words, true will takes advantage.

Firstly- rules of subjective interpretation

Rules of subjective interpretation (or subjective interpretation factors) may be legislative or non-legislative:

Legislative factors for interpretation

It is the legislative factors mentioned by legislator, interpretation contract must follow the nature of deal, and what should be available of secretariat and trust between contractors, according to custom in this transaction, it means that legislative factors of interpretation, are:

- Nature of deal.
- Secretariat and trust.
- Current custom in transactions.

Article 239/2 of Jordanian Civil code, no. (43) 1976: "If there is a need to interpret contract, we must search for common intention to contractors, without stopping at the literal meaning of words, with following the nature of deal, what should be available of secretariat and trust between contractors and according to current custom in transactions."

Non-legislative factors for interpretation

The previous factors may be insufficient to identify common will of contractors, so we must look for other factors, that:

- Each contract terms explains each other.
- Circumstances surrounded contract.
- Use of other legal actions that took place between contractors.
- If phrase have more than one meaning, the meaning that deprives legal effect must be excluded.

Secondly - rules of objective interpretation

Judge resort to objective rules interpretation when he cannot reveal common will of contractors, it means when rules of subjective interpretation fail, the rules of objective interpretation are not intended to identify common intention of contractors, but it aims to achieve objective purposes.

Jordanian Civil code has mentioned two rules of objective interpretation: The first is general rule require an interpretation for debtor interest; second is special rule require an interpretation for doubt in adhesion contracts for benefit of acquiescent party.

Article (240) Law No. 43 of 1976 of Jordanian Civil Code: "1- doubt explains to debtor's interest. 2- However ambiguous phrases shall not be interpreted in adhesion contracts in away harms interests of acquiescent party."

5. The difference between subjective interpretation and objective interpretation of contract

Subjective interpretation depend on searching for common intention of contractors, objective interpretation depend on necessity, because subjective interpretation may not lead to a positive result, then judge should not resort to objective interpretation, except when he doesn't take use of subjective interpretation.

Second requirement: contract completing

Contract completing is intended to replenish contract organizing, after judge ends interpretation of contract, he moves to determine its content, not only determine stated content of contract in accordance with common will of contractors, but also deals with what considered as contract requirements.

Jordanian legislator has decided that, contract requirements determine in accordance with law, custom and justice, according to nature of obligation. Article 202/2 of Civil Code: "2- contract is not limited to contractor obligation upon it, but also deals with its requirements, in accordance with law, custom and disposition nature."

Contract completing differs from contract interpretation that, contract completing is to fill emergency shortage on contract, while contract interpretation is searching for common intention to contractors; foundation of completing is the lack of contract organizing, but the foundation of interpretation is ambiguity of contractor's phrase.

Third requirement: Contract characterization

Characterizing contract means to appoint the legal nature of held process, characterizing contract is judge work, he must determine the legal description after detecting contractors common will, because legal rules statement that govern contract depends on identifying this description.

Interpretation differs from characterization, that interpretation is the search for the common intention to contractors, while characterization aims to determine the nature of contract and legal rules that will apply on it, the foundation of interpretation is reality, while the foundation of characterization is law.

judge does not adhere on contract legal description in his characterization, that released by contracting parties, even if they used a clear phrase in description, because the appears description may not match reality, either because of contractors error in choosing words, or because of their desire to hide fact contract. they may describe their contract as bailment use, then the judge considers an element of contract elements differ of description that contracting parties have brought to contract. as if they demanding payment for using it, in this case, judge does not adhere with naming launched by parties on their legal process. he has to correct naming that he finds it incorrect, so he describes contract a legal description as its subject then, he considers contract rent not bailment, and applies provisions of rent not bailment.

The authority of trial judge in determining the legal description of contract is subject to supervision of Cassation Court, because contract description of laws matters, not fact matters.

Control of Cassation Court on trial judge in contract interpretation and completing

The subjective interpretation of contract considers of fact issues, therefore, it is not subject to Court of Cassation supervision, except in following cases:

- If judge change apparent meaning of contract to another meaning without interpretation.
- If judge take literal meaning of words, not common intention,

However, subjective interpretation is of law issues, therefore, it is subject to Court of Cassation supervision in applying the rules of interpretation, whether illegal or wrong.

We have mentioned, as for contract supplement, that contract supplement means are to return to law provisions, custom and justice. Judging by law and custom is connected to law, thus it is subjected to Court of Cassation supervision, while Judging by justice is out of Court of Cassation control.

Forth requirement: contract implementing

Article 87 of Jordanian Civil Code states that, "The contract is association offer issued by a contractor to accept other and their agreement to prove its impact, and a commitment to each other by what they have to each other". Also article 202/A of law: "contract must be performed according to its content, in a manner agree with good intention ". The execution of contract in good intention requires respect for contract law, contract should not be revoked or amended, this is what is known as the principle of contract adhere, but law excluded from the principle of contract adhere:

- Agreement Parties (dismissal).

- Cases prescribed by law.

Firstly: Parties agreement (dismissal): The parties may agree on a new contract replaces previous contract, according to principle of will authority, this is called "dismissal". As mentioned in (Article 241 of Jordanian Civil Code: "If contract is right, it is not allowed to any part of contractors cancel or amend or terminate contract except by mutual consent or litigation or under law provision ". Dismissal occurs limited (indirect impact), but parties may agree to occur retrospectively, without prejudice to the rights of third parties that may arise from contract before dismissal. According to Article 243 "dismissal to parties is dissolution, and to others a new contract."

Dismissal is an apparent exception responding to contract adhere principle, because dismissal is a confirmation of will authority principle.

Secondly: Cases prescribed by law: There are cases prescribed by law, allows to one of contractors to finish contract before it expires, in spite of other contractor adhere, when there is a justifiable reason for such termination. This reasons may be specific or may be non-specific, of non-specific reasons changing contractor's intention in non-fixed-term contracts, as employment contract unlimited duration, and of specific reasons, emergency conditions.

Emergency conditions Theory

The idea of emergency conditions theory depends on the issue of economic imbalances, after signing contract, when unexceptional incidents occur during implementation. So that implementation of debtor's commitment becomes exhausting (he will have serious loss if he complete contract implementation) but it is not impossible.

Example: someone undertakes to supply goods with a certain price, then war broke out suddenly, he cannot import the goods from abroad. the price rises to double or more of the agreed price ... it may be reach a high level threaten debtor's with a heavy loss beyond the ordinary limit ... then the judge have the right to adjust the debtor's obligation under emergency conditions theory, so that it stands at a reasonable limit.

Therefore, it is clear to us that emergency conditions theory treats imbalance of contract, which occurs during execution, it allows judge to intervene to remove this imbalance.

***The Jordanian civil law position of emergency conditions theory**

Jordanian civil law took the theory of emergency conditions. as mentioned in article 205: "If there is exceptional general incidents are not be expected with the result of occurrence, that the implementation of contractual obligation, even if it does not become impossible, but tired to debtor and threaten by severe loss. Court has the right to return the commitment to reasonable limit, if justice requires that, depending on circumstances, and after balancing between interest of both parties' commitment and any contrary agreement is null.

Jordanian civil law does not require application on a certain type of contract ... the important is non-union at the time of contract with the time of its implementation. Therefore, it is applied to deferred instant contracts of delayed implementation such as, selling by delayed payment or by installments, contracts of time as a rent contract, supply contract and employment contract, but instant contracts, that carried out immediately go out of their applications.

***The application terms of emergency conditions theory**

- Time different of contract execution from hold time: The contract must be from immediate delayed implementation contracts.
- The contract must not be potentially: because potential contracts subject one of its contractors to possibility of great earning or terrible loss, as insurance contract.
- An exceptional incident should occur after contract conclusion and before implementation, such as war or revolution or an earthquake or flood occurs, debtor circumstances must be excluded from the application of this theory, such as his illness or bankrupt or workers strike
- An exceptional incident must be unexpected and cannot be cancelled, if it is unexpected, but can be cancelled; it is not being taken to apply this theory.

Standard here is objective standard; emergency incident must be exceptional, such as war or revolution or earthquake, or administrative takeover.

Exceptional incident concept differs according to time and place, exceptional incident should be general, it means, it should include a group of people at least, such as farmer's crop damage due to unusual

locusts.

Debtor should not be able to predict the occurrence of an emergency incident also, expectation standard is objective standard, for example, destruction of transport routes is an emergency incident in peacetime, as it is expected after war.

- Emergency incident should lead to make debtor's obligation exhausted, it is intended to exhausting commitment that it can be implemented, but result causes significant losses, and fatigue occur when economic equation goes wrong, where the judge determines the gravity of this imbalance.

The imbalance means to exceed the usual proportions of price changes, the standard according to this is objective, there is no significant for contractor personal circumstances.

Thus, if we want to determine whether the contract is exhausting or not, we do not consider debtor's personal and financial capabilities, but we look at contract as independent contract of parties ⁷.

6. Judge authority according to emergency conditions theory

Judge has authority to modify terms of contract in accordance with theory of emergency conditions to relieve on contractor who taxing of contract terms as a result of economic condition change, between , date of contract conclusion to its implementation, as he can cancel exhausting commitment to possible extent.

Judge has authority to stop execution of contract for a limited period, but he cannot terminate the contract due to an emergency incident, and he cannot impose buyer's to purchase by amended price.

Judge authority in emergency conditions and his authority in adhesion contracts

The judge can intervene in emergency conditions to remove economic imbalance, which has occurred during contract execution, while in adhesion contracts, he can intervene to remove economic imbalance in contract conclusion, he can intervene to modify or cancel imposed arbitrary terms by the stronger party in contract

(Article 204 of Jordanian civil Code): "If contract is done by adhesion and had included arbitrary conditions, court has the authority to modify or exempt acquiescent of them as required by justice, any contrary agreement to this is null."

Judge authority in emergency conditions and exploitation

Judge intervenes in emergency circumstances to remove economic imbalance that has occurred during execution of contract. He has authority to amend contract, but in exploitation, judge intervenes to remove economic imbalance when configuring contract, without have possibility of amending the contract (judge intervenes to reduce aggrieved obligations of contractor in exploitation only, without have possibility of amending contract).

Judge authority in interpretation and completing contract

Emphasis on contractual extrapolation, binding force principle to contract, will authority principle results of legal principles. Legislator did not allow judge to intervene to interpret contract, except within certain limits.

Judge considers a stranger from contractual relationship -, we find that legislature limited judge to intervene and interpret contract unless a certain conditions are achieved, he selected specific methods and rules to adhere by in interpretation of contract.

First requirement: Terms of judge intervention to interpret contract

Adherence to commitment by contract parties is a binding force between parties, they have to adhere to it, and this is the principle and destination, which is a result of will authority principle.

Article 1134 of French Civil code confirms this concept and more, the next paragraph brought complementary rule for this important Principle, it States that contract should be understood and interprets in accordance with good intention, fairness and custom. Therefore, it prevented judge from interfering with interpretation and exposure to principle of authority will and its results, in binding force and contractual stability protection when text is clear, but in case of text ambiguity judge follows interpretation, refusing to intervene is reluctant for realization of right.

According to that French legislature put several rules to guide judge in contract interpretation within a separate chapter (Article 1156 and under Article 1164 Civil French). In addition, Egyptian legislature singled out rules of

⁷ Bassel: <http://albaseel.syriaforums.net/t56-topic> site

contract interpretation within three articles: (138, 140, 210), the rules are not mandatory, but informed to judge in contract interpretation, then he is free to take or not ⁸.

The principle of *pacta sunt servanda*, shall not be subjected to any interpret, as long as its text matches common will of contractors. This principle exception appears in a situation where contract phrases incomplete, ambiguous, or non-identical to contractors intentions, or there was a dispute over interpretation or contractors arrived court, then judge resort to interpret contract and determine its content. Contract clear phrases will prevent judge to interpret and give it a contrary meaning to its frankness; otherwise, it is considered distorted to text, that subjecting his decision to set aside or cancellation by Court, which is superior degree.

legislator prevented judge from replacing his will instead of parties will, or modifying content of commitments under the cover of interpretation, even if it seemed to him that the amendment would be fairer ⁹.

Thus, judge has to adhere to the used verbal meaning; in addition, he adjusts for this apparent meaning, which does not reflect the will of contractors to clear meaning that is intended. However, judge does not proceed to this amendment, except in a lot of caution, unless there is firm evidence that contractors misused word, then he proceed to interpret their will, according to the intended purpose¹⁰. But, this rule, which obliges judge to intervene to interpret contract when ambiguity several grounds, including:

- Dedicating justice, that dispute occurred over interpretation and interprets uncertainty that contractors did not notice it during the contract or perhaps one part pay attention want this ambiguity intentionally; here the role of judge in this case comes to save the right of goodwill.
- Give a clear concept of contract, because of great importance to the stability of transactions and the effects of contract to a third party. However, relating to incomplete contract terms, contract terms are incomplete and do not reflect contract conditions and circumstances in many cases. This is a necessary condition for intervention of judge and gives interpretation depending on the conditions of contracting or subsequent documents to contract or anything that would interpret the contract and replenish the lack, to achieve fairness and justice.
- The judge representing authority to ensure justice and equality, he is the best to trust in for this task, because he has wisdom, know all contract conditions, has good moral sense of being able to undertake this job to fullest and fill shortage or omitted by the contractors.
- Judge intervenes to interpret when contract phrases are incompatible with contractor's intention.

In addition, uncertainty interprets for the benefit of debtor ¹¹, and the majority of legislation including Article 240 of Jordanian Civil Code confirmed this: "1 be uncertainty interpret to debtor's interest. 2. However, ambiguous phrases shall not be interpreted in detrimental effect to acquiescent interests. "Also this rule confirmed by Article 1162 French Civil, and Articles 140 and 201 Egyptian civil.

This rule is related to justice principles rather than interpretation of contracts, it provides protection to debtor, who is often the weaker party in contract, and he suffers from difficult economic situation compared with the creditor. So that when there are several interpretations to contract without any ability in weighting, judge tends to interpret text in a way compatible with interests of debtor ¹².

We mention here three rules used by judge in interpretation of contract, namely:

- Interpretation of contract as charter type requires.
- Interpretation of contract as current practice requires.
- In case of suspicion, Interpretation should be for contractor benefit¹³.

The Egyptian and French law has been taking personal way that takes interior real will in this way.

In other words, appearance will is not taken out only on assuming its match with true Interior intention. If this match did not happen, judge has to extract real intention of contracting parties that comply with interpretation and determine the arising obligations from it. Nevertheless, if contract did not contain anything that supports the

⁸ Abdul Razzaq Sanhoury, contract theory, Part II, second edition, Halabi legal publications, Beirut, Lebanon, 1998, p. 926

⁹ Adnan Mohammed Baqer: ethics rules in determining the content of the contract, Journal of the University of Babylon, Humanities, Volume 22, Issue 4, 2014, p. 777.

¹⁰ Abdul Razzaq Sanhoury, contract theory, previous source., P. 937, paragraph (829).

¹¹ Mohammed Adnan Baqer: ethics rules in determining content of contract, Journal of Babylon University, Humanities, Volume 22, Issue 4, 2014, p. 778.

¹² Atef al-Naqib, contract theory, Owaidat publication, first edition, Beirut, 1988, p. 383

¹³ Abdul Razzaq Sanhoury, previous source., P. 938, paragraph (831).

claim of one of contractors that text is not in conformity with his intention, then judge does not have the right to take such a claim, so who had neglected to take responsibility for his negligence.

Thus, judge guided by the rule that is obligatory to interpret based on the overall terms of contract without isolating a single phrase of the rest of words. The aim of that to coordinate between terms of contract on a way leads to extract intention of parties of its total as consolidated unit¹⁴, such this interpretation is consecration to the principle of good intention, which is the most important ethical principle.

If judge found a contradiction between contract terms and could not reconcile between these items, he resorted to take with what swinging of contractors intention and comes matching with other items, Article 1162 French Civil, and articles (140, 210) Egyptian Civil confirm this rule.

According to general principles that the proving origin is debtor innocence, if there is uncertainty about debtor's obligation; interpretation must make it in the narrowest limits¹⁵.

Commitment is an exception to rule, it is known that we cannot expand in exception interpretation¹⁶, and the committed intention to committee to contract terms in narrowest range, the will of creditor and the will of debtor cannot match except within this narrow range.

Also, of rule justification that creditor is the one who has to prove debtor's commitment. if contract terms assume a wider range of commitment and creditor is unable to prove this range and contract text has nothing easy to prove. judge takes the narrow range of commitment that debtor adhered to, which fits with his interest because this range what make this evidence¹⁷.

Second requirement: contract range

We have mentioned that judge has authority to interpret contract, as well as play an important role in determining its range, what intended is state what contract establish of obligations. the origin is that contract range is determined by referring to common will of contractors. but Article 100/2 text of Jordanian Civil Code: "If the two sides agreed on all core issues in contract, they maintained a detailed matters to agree later by them, they did not stipulate that contract is not complete, if they will not agree on these matters, contract is considered, it has been held. If there will be dispute about disagreed issues, court will judge in accordance with the nature of transaction, law provisions, custom and justice ". it means that judge can accomplish contract range or complete any authorized commitments by other implied commitments determined by referring to law or custom or equity.

Third requirement: judge role in completing contract range

Judge role to complete contract range differs from his role in contract interpretation, he intervenes as complementary framework at this level for contract requirements, not as a set of rules based on to interpret, role of law differs in completing contract rang depending on provisions nature, according to the traditional distinction between complementary laws to will and imperative laws.

The complementary laws to will are irreversible only if contractors keep silence on a particular issue did not organize in contract core. For example: If sufficiency occurred in sale contract to select sales price without regulating other conditions, it should refer to complementary laws regarding to sales delivery, these complementary laws remain just interpretive provisions of parties' intention.

Imperative laws role differs from complementary laws because it imposes provisions on contract regardless of contractors wills, if contract violates imperative law, it would be exhibition to invalidity, as long as it concerns with a basic element in its composition.

However, judge may replace violating requirements of contract for legal imperative rule only by requirements of this rule, for example: wage in employment contract is determined not by referring to contract only, but also by referring to the imperative rules that prescribed by legislator in this field. If contract includes fewer wages than minimum wage, contract invalidity does not fall, but wage must increase to legal minimum wage¹⁸.

¹⁴ Atef al-Naqib, previous source, p. 381.

¹⁵ Elias Nassif, Encyclopedia of civil and commercial contracts, Part II, effects of contract, Nmm Press, 1987, p. 410

¹⁶ Khalil Gregg, General Theory of obligations, Part II, legal publications, Fourth Edition, Beirut .2000, p. 348

¹⁷ Mohammed Adnan Baqer: ethics rules in determining content of contract, Journal of Babylon University, Humanities, Volume 22, Issue 4, 2014, p. 779.

¹⁸ Dr. Mohammed Zein: general theory of commitments - Part II- contract-, Second Edition, Tunisia, 1997.

Forth requirement: Restrictions on judge intervention

Jordanian law imposed many restrictions on judge, summarize in imposing rules and ethical means to interpret contract. This amplitude in imposition restrictions and not restrict, designed to limit the powers of judge in contract interpretation. so as not expose to a very important principle which is "The pacta sunt servanda", therefore contract does not lose the binding strength on judge and parties, which appears the moral character of these restrictions.

Ethical rules of interpretation

Legislator imposed ethics rules on judge in contract interpretation, of these rules is adherence to personal way when interpretation, make debtor's interest before creditor interest in case of doubt, also fill the shortage of contract through complementary and interpreted rules. French legislator expand in interpretation rules when added the following rules:

If phrase has more than one meaning, it shall be taken by meaning that makes it produce impact. (Article 1157 civil French), contract phrases interpret each other (Article 1161 Civil French), customize case by mentioning does not make it unique rule (Article 1164 Civil French), interpretation of contract according to required by goodwill and justice (articles 1134, 1135 civil French). We point out that Egyptian legislator had decided the main base in interpretation that is the necessity to touch the will of contractors (articles 138-139 -199-200). While ethical ground is based on creditor mistake of not setting clear phrases, as creditor is the one who dictates the commitment on debtor, who is the weak party in contractual relationship if he does not reach to provide such evidence, commitment must be interpreted for debtor interest. if he dictated in ambiguous way surrounded by uncertainty, he is responsible for this mistake, in such a case he has to give evidence of what he wants to expand of commitment range,

It should be noted that the rule of necessity of interpreting doubt in debtor interest is exception deals with adhesion contracts. Where it is interpreted in the interest of acquiescent party, whether a creditor or a debtor, this exception is not texted in French law. Other than some Arabic legislation such as Egyptian legislation, however, this does not prevent French diligence of emphasizing on the need to interpret doubt for the benefit of acquiescent party¹⁹.

Of Applied Examples: insurance contract on accident, where stronger side dictates conditions, it always interpret contained texts in the interest of insured, in the event of a doubt about its concept. In addition, special items are taken into account, if they are not sit well with general items contained in contract²⁰.

We point out that the terms of application this rule is debtor's good intention, the debtor who should be protected is good intention debtor's, the existence of worst intention is incompatible with ethical justification underlying this rule²¹.

Goodwill, custom and equity:

Goodwill principle is ethical and philosophical principle, it is difficult to be confined and defined, it is based on a moral basis, derivation involves for purpose of commitment to good manners and justice.

Old French law identified and considered this principle opposite to fraud and deception, and identified by Article 1156 of French Civil Code, some scholars considered that the principle of good intention is available when there is determined will to implement commitment²².

This principle has multiple meanings, such as: derivation, not abuse of truth, sincerity in excusing business management to others, equity, ignorance seller case, not harming others, purpose and aim, not enrichment at expense of others²³.

The commitment to principles of justice, fairness, not exceeding right and deal with integrity and honor with others, which means that judge can resort to custom to complete what repeal of contract terms in the absence of legal text. customs are general rules known by everyone as mouthpiece of collective will represent justice in

¹⁹ Atef al-Naqib, a previous source, p. 384

²⁰ Ahmed Shawki, responsibility for car accidents, Renaissance Publishing House, Cairo 2001, p. 267

²¹ Reza Almargha and Abdul Hamid Aboud, judicial interpretation in civil law, Institute of Public Administration, Saudi Arabia, 1983, p. 153

²² Sami Mansour, element of stability and change agent in a civil contract, first edition, Lebanese thought home, Beirut, 1987, p. 311, paragraph 239.

²³ Sami Mansour, *ibid.*, P. 332.

dealing, along as legislative text²⁴(24), judge resort to custom in completing or interpreting contract to give commitments its content or to determine obligations.

The principles of equity include taking into account balance in reciprocal commitments, judge must be heading towards giving the meaning of text in interpretation, which provides balance to ambiguity text. but if text is clear and explicit, judge decline interpretation and therefore weighting, although it seemed to him that there is an imbalance in the commitments, because he do not has to intervene in decision of contract parties, this is very important point has been approved unanimously by jurisprudence²⁵. Thus, if contract text or law provisions or general rules or customs do not provide contract interpretation, which allows judge to interpret contract or determine its range. Judge has the right to resort to principles of justice, which must dominate parties' relationship; and it is supposed to be taken into account through negotiating and contracting²⁶.

Moral commitments branched of good intention and equity principle:

Firstly: commit to contractual Security's or safety:

Some of contracts nature assume safety obligation or guaranteed as the origin in employment contract and contract of persons carriage.

Commitment to ensure safety is of two kinds: first, the commitment to achieve goal, which requires deliver of transfused safely to place of destination in carriage contract. The second commitment: to commit by means, which require doing work according to rules and profession work, such as: foresight and careful lookout without the obligation to reach result, like a doctor in taking care through patient treatment within modern medical systems and rules. Article 358 of Jordanian Civil Code text: "If debtor is required to maintain thing or to do or manage or caution in implementation of his commitment, he will have been committed, if he do efforts at required average, even he has not been achieved intended purpose, unless law or agreement provides otherwise. In any case, debtor remains in charge of what he gets from fraud or serious error".

Second: Informing commitment:

French jurisprudence added Informing and some other commitments in interpreting contract as advice and alarm.

Commitments to give dependency information can resume from apparent commitments, even it was not shown in contracts, executing to articles (1134.1145 French civil). we point out that courts add them to commitment of Informing and security on basis of good intention and fair principles rarely, therefore, scholars point out frankly that entering these commitments is based on justice and equity principles²⁷.

7. Results and recommendations

According to *pacta sunt servanda* principle, and binding force to contract principle, judge has not the right to amend or terminate contract prior to its execution, unless contracting parties have agreed on it. However, for justice considerations on one hand and for public good on the other hand pushed Jordanian legislator to give judge an exception authority to terminate or amend contract in certain cases. judge role is limited to apply what contractors will tended to according to the rule "*pacta sunt servanda*", so judge has not right to reconsider contract or interfere with its content in order to re-balance contract. However, Jordanian legislator cited many exceptions for this rule, which restricted the freedom of will to determine contract effects, judge has a remarkable role in interpretation, complete and modify contract.

Modern laws granted judge authority to become a reality based on legislative texts, clear and non-controversial. It constitutes the protection to contractual justice of violating under will authority principle; judge authority expands not to be limited in stage of contract composition only, but also until implementation stage thereafter.

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²⁴ Abdul Razzaq Sanhouri, decade theory, Part II, second edition, halabi legal publications, Beirut, Lebanon, 1998, p. 944, paragraph 837.

²⁵ Mustafa al-Awaji, the contract, first part, eternity home, second edition, Beirut, p. 718.

²⁶ Atef al-Naqib, a previous source, p. 387.

²⁷ Mohammed Adnan Baqer: ethics rules in determining content of contract, Journal of Babylon University, humanities, volume 22, issue 4, 2014, p. 783.

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